

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 12TH DAY OF SEPTEMBER 2024 / 21ST BHADRA, 1946

CRL.MC NO. 8305 OF 2019

CRIME NO.466/2019 OF Kattakada Police Station, Thiruvananthapuram

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.623 OF 2019 OF
JUDICIAL MAGISTRATE OF FIRST CLASS ,KATTAKADA

PETITIONER/ACCUSED:

NAVEED RAZA
AGED 33 YEARS
S/O ABDUL RAZAK, ELLUVILA VEEDU, KANDALA, ARUMALLOOR,
MARANALLOOR, THIRUVANANTHAPURAM DISTRICT.

BY ADVS.
MANSOOR.B.H.
SMT.JANET JOB

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM - 682 031.
- 2 STATION HOUSE OFFICER,
KATTAKADA POLICE STATION, THIRUVANANTHAPURAM DIST.,
PIN - 695 572.

SRI. NOUSHAD K. A. (PP)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
12.09.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



BECHU KURIAN THOMAS, J.

CRL.MC NO. 8305 OF 2019

Dated this the 12th day of September, 2024

ORDER

Petitioner banged his head inside the lockup after he was arrested for an offence. The aforesaid conduct has resulted, in another prosecution alleging an attempt to commit suicide. Two questions have been raised for resolution (i) whether banging the head on a wall could be regarded as an attempt to commit suicide, and (ii) whether the offence under Section 309 IPC will be attracted from the nature of allegations in the final report, after the coming into force of the Mental Healthcare Act, 2017.

2. Petitioner was arrested on 04.04.2019 in connection with Crime No.464/2019 of Kattakkada Police Station. While he was lodged in the police lockup, it was observed that petitioner repeatedly banged his head on the walls on account of mental distress in an attempt to commit suicide. The said conduct resulted in another FIR being registered as Crime No.466/2019 of Kattakada Police Station under Section 309 IPC. After completing the investigation, the final report was filed which was taken cognizance as C.C.No.623/2019 on the files of Judicial First Class Magistrate's Court, Kattakada. The aforesaid proceedings are sought to be quashed in this



petition under section 482 Cr.P.C

3. Sri. B.H.Mansoor, the learned Counsel appearing for the petitioner contended that the uncontroverted allegations in the final report do not make out the offence under Section 309 IPC in view of Section 115 of the Mental Healthcare Act, 2017 (for short 'MH Act') and further that mere banging of head on the wall cannot amount to an attempt to commit suicide.

4. Sri. Noushad K.A., the learned Public Prosecutor, on the other hand, contended that the restriction against prosecution under Section 115 of the MH Act is a rebuttable presumption and it is always open to the prosecution to rebut the same. It was also submitted that whether banging of head would amount to an attempt to commit suicide depends upon the circumstances in which such an act was done and therefore this Court cannot decide the said issue in this proceeding.

5. Decriminalizing attempts to commit suicide has been under consideration for the last several decades. Though section 309 IPC remained in the statute book, with the enactment of the MH Act in 2017, attempts to commit suicide became, to a large extent, no longer an offence. In fact, the new penal legislation in India - The Bharatiya Nyaya Sanhita, 2023, has not included attempts to commit suicide as an offence, except when the attempt is to compel or restrain the exercise of lawful power (see section 226 of BNS).

6. Since penal provisions are applicable on the basis of the law in force



as on the date of commission of the offence, the new legislation - BNS has no application in the instant case. However, section 115 of the MH Act having been enacted in 2017 has applicability. Section 115 of the MH Act reads as below:

'S.115. Presumption of severe stress in case of attempt to commit suicide.—

(1) Notwithstanding anything contained in section 309 of the Indian Penal Code (45 of 1860) any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.'

7. After the coming into force of the MH Act, a statutory presumption is created that a person who commits suicide is under severe stress. Due to the stress which he is presumed to have undergone, he cannot be prosecuted under the Indian Penal Code. Thus from 2017 onwards, law presumes that a person who attempts to commit suicide is undergoing stress. The said statutory presumption has created a legal inference that the element of stress exists in a person attempting to commit suicide. When a statutory presumption is created, the burden shifts to the opposite party who must disprove the said presumption. Viewed in the perspective of section 115 of MH Act, if a prosecution has to be launched for an attempt to commit suicide, the prosecution themselves must allege and prove that the person was not under any stress when he attempted to commit suicide.



8. In the instant case, the final report itself alleges that due to mental distress for having been arrested in a crime, petitioner started banging his head on the pillar inside the lockup. The use of the word 'mental distress' in the final report indicates that the prosecution has no contrary material to disprove the statutory presumption. The rebuttable nature of the presumption became a conclusive presumption in the light of the prosecution case as seen from the final report. Thus the uncontroverted allegations in the final report itself makes the petitioner immune from prosecution for the offence under section 309 IPC.

9. Apart from the above, mere banging of head cannot be generally branded as an attempt to commit suicide. It is not uncommon for individuals to bang their heads as a means of expressing anger, distress, anxiety, frustration or even panic. The personality, behaviour and situations characterize such a conduct. In the absence of any external or internal injuries, it cannot be assumed that each time a person bangs his head, he is attempting to commit suicide. Of course, it depends upon the circumstances of each case.

10. The recent observations of the Supreme Court in **Kumar @ Shivakumar v. State of Karnataka** [2024 INSC 156], are worth reproducing in this context. It was observed in the said decision that “ *Human mind is an enigma. It is well neigh impossible to unravel the mystery of the human mind. There can be myriad reasons for a man or a woman to commit or attempt to commit suicide: it may be a case of*



2024:KER:69658

failure to achieve academic excellence, oppressive environment in college or hostel, particularly for students belonging to the marginalized sections, joblessness, financial difficulties, disappointment in love or marriage, acute or chronic ailments, depression, so on and so forth”.

11. In the decision of this Court in **Simi C.N v. State of Kerala** [2022 (3) KLT 665] it was observed that decriminalisation of the attempt to commit suicide is the general view of Courts and legal luminaries. The Court went on to hold that criminal prosecution followed by conviction and imposing substantive sentences and fines on those convicted of suicidal behaviours constitute an affront to human dignity and suicidal behaviour is typically a symptom of psychiatric illness or an act of psychological distress, suggesting that the person requires assistance in his personal and psychological life, not punishment with imprisonment or fine.

12. In the instant case, no material is adduced or available to indicate that any injury was inflicted or damage was caused to the head, the brain or to the skull of the petitioner to even regard such conduct as an attempt to commit suicide. Thus, in the absence of any material, merely because petitioner banged his head on a wall inside the lockup, it cannot be assumed that the petitioner was attempting to commit suicide.

13. Before concluding, this Court expresses its anguish and pain that instead of giving psychological support to the petitioner, the police went ahead to implicate him in another crime, despite realizing that he was in



mental distress. Such behaviour reflects a lack of sensitivity, concern and empathy for the fellow human, even if he is an accused. The sensitivity required to be shown to a person in distress was unfortunately not reflected in the instant case, even after being aware that he was in distress. The MH Act has, in section 115(2) specifically obliges the State Government to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide. This statutory obligation was also completely lost sight of. Considering the circumstances, I say no more.

14. In such a view of the matter, the prosecution of the petitioner under Section 309 IPC in C.C. No.623/2019 on the files of the Judicial First Class Magistrate's Court, Kattakada is an abuse of the process of court and the said proceedings are hereby quashed.

This Criminal miscellaneous case is allowed.

Sd/-
BECHU KURIAN THOMAS
JUDGE

Nsd



APPENDIX OF CRL.MC 8305/2019

PETITIONER ANNEXURES

ANNEXURE A

**CERTIFIED COPY OF THE FINAL REPORT IN CRIME
NO. 466/2019 OF KATTAKKADA POLICE STATION.**