



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 783/2023

Ku. Shital Dinkar Bhagat,
Aged about 26 yrs., Occ. Service,
R/o. Mahendra Colony, Amravati,
Tq. & Dist. Amravati.

...APPLICANT

VERSUS

State of Maharashtra,
through Police Station Office,
Lakhandur, Tq. Lakhandur,
Dist. Bhandara.

...NON-APPLICANT

Mr. P.S. Patil, Advocate for applicant.

Mr. A. Madiwale, Addl. Public Prosecutor for non-applicant/State.

CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI JJ..

DATE : 05.08.2024

ORAL JUDGMENT : (PER: VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. This is an application seeking to quash First Information Report (“FIR”) vide Crime No. 92/2023 registered with Police Station Lakhandur, Tq. Lakhandur, Dist. Bhandara for the offence punishable under Section 309 of the Indian Penal Code. The applicant was serving as a Police Constable. She has attempted to commit suicide on 23.03.2022 by causing injury at her wrist by knife. The learned counsel appearing for applicant would submit that the applicant was having love affair with married fellow colleague Yuvraj Uike. Since Yuvraj never responded, she under frustration did the act under stress and thus, in view of Section 115 of the Mental Healthcare Act, 2017 (“the Act of 2017”), she cannot be tried and punish for the offence under Section 309 of the Indian Penal Code.

4. The Police have carried investigation on the basis of report lodged by P.I. Milind Borkar. It is informant’s case that on 23.03.2022, while he was at Police Station, the applicant came, inquired about Yuvraj Uike who was posted at said Lakhandur Police Station. She was informed that Yuvraj is on long leave of one month, on which she blamed all Police, took knife and caused injury at her wrist and thus, tried to commit suicide.

5. During the course of investigation, several statements have been recorded including the statement of Yuvraj. It is his statement that he got married long back with another lady, but love relationship was developed with the applicant. Since wife of Yuvraj resisted for the affair, at her behest he got himself detached from the applicant, switched off his mobile and went to his native place. In the said background, we have examined the material against the applicant. It reveals that she had love affair with Yuvraj, but as she was unable to contact Yuvraj, she took extreme step by causing serious injury at her hand. The Act of 2017 has taken care about the offence of attempted suicide punishable under Section 309 of the Indian Penal Code. It provides that by the nature of the act itself, such person shall be presumed to be under stress and therefore, he/she shall not be tried and punished. The act of causing injury perhaps life injury to himself/herself is considered to be an act committed under stress and therefore, he/she has been excluded from the penal consequence unless proved otherwise. Thus, the presumption runs in favour of accused and the contrary is to be proved by the prosecution.

6. The relevant provision of the Act of 2017 reads as under:-

“Section 115(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. Thus, is it apparent that the person who tried to commit suicide, enjoys a statutory presumption about mental stress and having regard to such presumption, he has been excluded from putting on trial. Though it is submitted that during trial the presumption can be lifted, however the statute itself precludes to put said person on trial. We have examined material from which we could gather nothing to infer that the applicant was normal and not under stress. It reveals that the applicant though carried knife unpredictably caused injury to herself and thus, it is an instance of committing the act under mental stress. In view of Section 115(1) of the Act of 2017 which has overriding effect to Section 309 of the Indian Penal Code, the

applicant cannot be tried for the offence of Section 309 of the Indian Penal Code.

8. In view of above, application is allowed and disposed of. We hereby quash FIR vide Crime No. 92/2023 registered with Police Station Lakhandur, Tq. Lakhandur, Dist. Bhandara for the offence punishable under Section 309 of the Indian Penal Code.

9. The non-applicant/State is directed to take necessary steps as contemplated under Section 115(2) of the Act of 2017.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Gohane