

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

THURSDAY, THE 7TH DAY OF APRIL 2022 / 17TH CHAITHRA, 1944

CRL.MC NO. 6522 OF 2021

CC 1783/2020 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -III,

THRISSUR

CRIME NO. 1539/2020 OF OLLUR POLICE STATION, THRISSUR DISTRICT

PETITIONER/ACCUSED:

SIMI.C.N
AGED 49 YEARS
D/O. NARAYANAN,
VILLAGE OFFICER,
RESIDING AT PORODATH HOUSE,
NGO QUARTERS NO. III,
AYYANTHOLE,
THRISSUR 680 003

BY ADVS.RAJIT
RAMAKRISHNAN M.N.
MARY MANJU VINCENT

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM 682 031

BY SMT. SREEJA V., SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
02.02.2022, THE COURT ON 07.04.2022 PASSED THE FOLLOWING:

'C.R.'

ORDER

Accused in C.C. No. 1783/2020 before the Judicial First Class Magistrate's Court – III, Thrissur has moved this Court under Section 482 of the Code of Criminal Procedure seeking to quash the proceedings which arose from the final report in Crime No. 1539/2020 of Ollur police station. That crime was registered on 11.08.2020, on the first information given by Mini Unnikrishnan, president of Puthur Grama Panchayat alleging offence under Section 309 of the Indian Penal Code. It is alleged that on 10.08.2020 at 1.30 P.M., when the defacto complainant and others had demanded issue of certificates to applicants in connection with the Life Mission Scheme through manual mode, the petitioner who is the Village Officer of Puthur village insisted that she will issue certificates manually only on getting instruction from the official hierarchy, which led to altercation in the village office; out of the mental turmoil, the petitioner attempted to commit suicide by cutting her veins on the left hand and thus committed the above stated

offence. The petitioner submits that on 10.08.2020, the defacto complainant, president of the panchayat and her aids from the panchayat and other persons from the ruling party came to the village office, wrongfully restrained and confined her; they had formed an unlawful assembly and in prosecution of their common object, obstructed the normal course of work in the office, gheraoed her, showing off the political influence and prowess on the confidence that they belong to the ruling party. They wanted the petitioner to issue income certificates to some of the men of the defacto complainant and her aids in manual mode whereas the official directions and standing instructions insisted that such certificates shall be issued only online mode since the applications were filed online. Then she insisted that she will be able to issue certificates in manual mode only if specific directions are issued by the Tahsildar or the District Collector. There were about 185 applications received online from 03.08.2020 onwards. For a few days, network was not available. But the president of the panchayat and her supporters wanted her to issue the certificates that day itself which was

not possible. Then the Sub Inspector of police also reached there, who spoke to the Tahsildar. The president and her aids started pestering, abusing, harassing and ridiculing her in the presence of the general public; some of the aids of the defacto complainant started to videograph the scenes in the village office. According to the petitioner, she was haunted by the defacto complainant and her men and thus, due to the utter harassment and severe mental strain, out of fear of anxiety and loss of balance of mind for a moment, she took out a blade and cut her veins on the left arm and was removed to hospital and was given medical aid. According to her, she indulged in such an act without any intention, out of the compulsions of the circumstances to get out of the severe mental stress, which cannot attract offence under Section 309 of the Indian Penal Code. According to her, by virtue of Section 115 of the Mental Health Care Act, 2017 also, hereinafter referred to as the Act, her act would not fall within the ambit of Section 309 of the IPC. Therefore, entire proceedings are sought to be quashed.

2. I heard the learned counsel for the petitioner as well

as the learned Senior Public Prosecutor for the respondent.

3. According to the learned counsel for the petitioner, Section 115 of the Act saves criminal liability of the petitioner, an attempt to commit suicide shall be presumed, unless proved otherwise, to have done under severe stress and shall not be tried and punished under the Code. According to the learned counsel, in order to attract Section 115 of the Act, the person need not be mentally ill, any person under stress can get the benefit of the provision. The learned counsel also pointed out that the petitioner is a divorcee having the burden to look after her son, was rounded up and hunted like a wild animal, raising illegal demands for issuing certificates then and there by the president of the panchayat and her aids; their attempt was to take political mileage and to obtain benefits from the village office by hook or crook. Relying on the parliamentary discussion on the Mental Health Care Bill, he pointed out that the object of the Act is to de-criminalize attempt to commit suicide and to re-habilitate persons who make such attempts. According to him, this is a fit case in which entire proceedings

are quashed invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C.

4. On the other hand, the learned Senior Public Prosecutor submitted that whether the petitioner had attempted to commit suicide out of severe mental stress is a fact to be considered at the time of trial and is a matter of evidence. Therefore, she pressed for dismissing the CrI.M.C.

5. The facts are not in dispute. The petitioner was the Village Officer of Puthur village from 2016 onwards. On 10.08.2020, she had reached office at about 11.30 A.M., after attending a covid clinic organized by the Health Department in Nadathara. She reached office along with her son. At that time, the president of the panchayat, Smt. Mini Unnikrishnan, the defacto complainant and Sri. Shaji, member of the panchayat, CWs 1 and 2 in the charge sheet, along with some of her aids and few members of public were present in the village office. When she entered her office room through the staff room on the southern side, both CWs 1 and 2 also accompanied her and insisted her to issue income certificates to applicants of Life

Mission Project aspirants that day itself. The version of the petitioner can be seen in the First Information Statement which led to the registration of Crime No. 1539/2020 of Ollur police station registered on 10.08.2020 alleging offences under Sections 143, 147, 342, 353, 354, 506, 509 read with 149 of the IPC. She gave such a statement while undergoing treatment in Jubilee Mission Medical College Hospital, Thrissur. According to her, from the very inception, she heard the said Shaji talking over phone that he will return from the office only after taking a decision on the issue. She was intimidated by them; she told them that online applications from 04.08.2020 are pending due to some defect in the server. But such explanations did not satisfy them. They talked as though she was purposely delaying issue of certificates. According to them, from other villages of Puthur panchayat certificates in manual mode were being issued, that they have received complaints against the delay in issuing certificates. Then the president commented that she is troubling them for the past four years; she was intimidated and humiliated by them before the general public. They spoke bad

about her. She could see another member of the panchayat by name Gopi threatening her, she also heard member Sivan directing others to reach the office to give a shawl (ponnada) to the village officer. Then other aids of the president also reached the office and one Raju was found taking videographs and abusing her. On enquiry by the Tahsildar, she had given explanation. But the people assembled in the village office, under the leadership of the president and others, insisted that they will disperse only after the arrival of the Tahsildar or the District Collector and giving them an assurance, that they will not allow her to close the office without issuing all the certificates. Thus, they obstructed the discharge of her official functions. At about 1.45 P.M., Sub Inspectors of Police, Benny and Vimod also reached there and enquired about the incident. Vimod talked to the Tahsildar over phone and asked her to contact the Tahsildar. Even though she tried to contact the Tahsildar over phone, she could not get him. She was severely abused, harassed and under such a mental strain, she cut her veins on the left arm and was taken to hospital. It appears that

investigation of Crime No. 1539/2020 is underway.

6. The medical records indicate that she was taken to Jubilee Mission Hospital with a lacerated wound 4 x 1 cm proximal to wrist exposing soft tissues and two hesitation wounds proximal to the first wound. There was no active bleeding. She was admitted in hospital, undergone plastic surgery and was discharged on 13.08.2020. The statements of witnesses also broadly indicate that the petitioner had refused to issue certificates to the aids of the president and members of the panchayat as demanded by them. There are also reasons to think that 185 applications were pending. Those applications were received online and that there was standing instruction that certificates shall be issued only online. The version of the petitioner suggests that there was some defect in the server for sometime from 04.08.2020 onwards so that the officials could not issue certificates promptly and that was how some delay occurred in issuing the certificates. The defacto complainant and others demanded the issue of the certificates that day itself stating that the last day for submitting application under the

Life Mission Scheme was 14.08.2020.

7. But it requires to be highlighted that there is no allegation forthcoming from the panchayat president or others that the petitioner had demanded any illegal gratification or had adopted any corrupt practice, or that she had purposefully delayed the issue of certificate for troubling the applicants. Her stand on the question is very clear. The Investigating Officer did not examine any official in the hierarchy like the District Collector or the Tahsildar; the prosecution also has no case that the petitioner had purposely delayed the issue of certificate with some bad motive. Even the charge sheet states that she had attempted to commit suicide by cutting the veins out of mental strain (മാനസികസംഘർഷത്താൽ).

8. The legality and correctness of the provision punishing attempt to commit suicide have always been subject matter of hot discussion in judicial circle from decades. It is to be remembered that the Law Commission of India during 1970-'71 in the 42nd report had recommended the deletion of offence of the attempt to commit suicide from the Penal Code.

During 1978-'79 the recommendation was virtually accepted by the Government of India. But before amendments could be brought in, the Lok Sabha was dissolved in 1979 and the Bill got lapsed. In 1985, in **State v. Sanjay Kumar Bhatia [1985 SCC OnLine Del 134]**, the Delhi High Court condemned the penal provision as 'unworthy of human society'. In 1986, the Bombay High Court held it to be ultravires on the ground that it violates Articles 14 and 21 of the Constitution of India. A two-judge bench of the Supreme Court in **P. Rathinam v. Union of India [(1994) 3 SCC 394]** struck down Section 309 of IPC (attempt to suicide) as unconstitutional. However, in 1996 a five-judge bench of the Supreme Court in **Gian Kaur v. State of Punjab [(1996) 2 SCC 648]** overruled the decision in **Rathinam** holding that the right to life does not include right to die and upheld the validity of Section 309. It is to be mentioned that in 2008 the Law Commission again favoured scrapping of Section 309 of the IPC in its 210th report on 'Humanization and decriminalization of attempt to suicide'. The Supreme Court in **Common Cause (A registered society)**

v. Union of India and another [(2018) 5 SCC 1] had recommended the Parliament to consider decriminalizing attempt to suicide, saying the provision had become anachronistic while giving guidelines to passive euthanasia. It also appears that majority of the States have agreed to the proposal to bring amendment to Section 309 IPC. The Act had brought into force and notified on 07.04.2017 in such a backdrop.

9. It being a recent enactment, authorities on the subject are very few. However, I have come across the decisions of Orissa and Himachal Pradesh High Courts in which prosecutions initiated under Section 309 IPC have been quashed by the High Courts. In **Pratibha Das v. State of Orissa [MANU/OR/0374/2019]**, a learned Single Judge of Orissa High Court has quashed the proceedings in the light of Section 115 of the Act stating that proceedings cannot be continued for want of criminal intent. Similarly, in a detailed judgment of the Himachal Pradesh High Court, a learned Single Judge in **Pratibha Sharma v. State of Himachal**

Pradesh and others [MANU/HP/2052/2019] has taken the same view and held that proceedings is a sheer abuse of the process of law. Incidentally, I have also come across an order dated 11.09.2020 of a Full Bench of the Hon'ble Supreme Court in **Red Lynx Confederation v. Union of India and others [MANU/SCOR/37553/2020]** where the prayer is for directions to ensure prevention of attempts to commit suicide by persons by throwing themselves in the animal enclosures in zoos. The Supreme Court has observed that Section 115 of the Act which creates a presumption, has an impact on Section 309 IPC. Now notices have been issued to Government of India and others and the matter is tagged with the Writ Petition pending challenging the constitutional validity of Section 309 IPC.

10. It is also apposite to quote the following paragraph in **Common Cause**, quoted supra, which reads thus:

“366. This Court’s holding in *Gian Kaur* that the right to life does not include the right to die in the context of suicide may require to be revisited in future in view of domestic and international developments pointing towards decriminalisation of

suicide. In India, the Mental Healthcare Act 2017 has created a “presumption of severe stress in cases of attempt to commit suicide”. Section 115(1) provides thus:

“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.”

Under , the Act also mandates the Government to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence. Section 115 begins with a non-obstante provision, specifically with reference to Section 309 of the Penal Code. It mandates (unless the contrary is proved by the prosecution) that a person who attempts to commit suicide is suffering from severe stress. Such a person shall not be tried and punished under the Penal Code. Section 115 removes the element of culpability which attaches to an attempt to commit suicide under Section 309. It regards a person who attempts suicide as a victim of circumstances and not an offender, at least in the absence of proof to the contrary, the

burden of which must lie on the prosecution. Section 115 marks a pronounced change in our law about how society must treat and attempt to commit suicide. It seeks to align Indian law with emerging knowledge on suicide, by treating a person who attempts suicide being in need of care, treatment and rehabilitation rather than penal sanctions.”

11. To put it in other words, decriminalisation of attempt to commit suicide is the general view of Courts and legal luminaries. Criminal prosecution followed by conviction and imposing substantive sentences and fine on those convicted of suicidal behaviors are believed to constitute an affront to human dignity. It is believed that a large section of the society considers that 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. Medical circles also believe that it is not an offence against the State, but, on the contrary, the State itself may be indirectly responsible for the plight of the victim who is left with no other alternative, except to end his life. From a societal perspective,

decriminalization is a more sensitive and humane way of dealing with the problem compared to prosecution. Additionally, it will also help in 'improving the reporting and generation of better epidemiological data on suicidal behaviour.' What is important is to give sociological and psychological support to the victim rather than trying to punish him. That is why it was opined by one of the Hon'ble members of the Parliament in the discussion that the police should be trained to understand that an attempt to commit suicide is a cry for help and not a crime.

12. The allegations against the petitioner have to be considered in the above backdrop. As indicated earlier, no one has a case that the petitioner had malafides or any motive in delaying the issue of certificates. She had her own explanations; she was not expected to issue certificates in manual mode, when applications were received online. But the president of the panchayat and her lieutenants rounded-up the petitioner and put her under severe mental stress. Numerous members of the panchayat had reached there; they had solicited their aids to

reach the village office and all of them targetted the petitioner, a lady. The tense situation created in the village office on the arrival of the petitioner is imaginable. Following the petitioner, the president and a male member of the panchayat entered her room insisting to issue the certificates then and there; they squatted in the room and were not prepared to give her breathing time. At the same time, their supporters started lining up outside the office. They started abusing and shouting at the petitioner. At the instance of the president and other members, more and more supporters reached the office, all demanding issue of certificates at once. Mass psychology of the people is understandable. President and members only encouraged the masses. They declared that the petitioner will be allowed to leave the office only after issuing certificates that day itself. Issuing income certificates is not a mechanical process. Even accepting their demand to issue certificates in manual mode, verification of records, obtaining field report etc., may be required. It seems that the object of the president and others was to obtain certificates by frightening the petitioner.

13. Knowing the tense situation created in the office, police also reached there. Everything had to be faced by the petitioner single handed. She, as a single parent, must have her personal worries as well. She was being abused and pressurised to do an official act against the procedures to be followed in the office. There are reasons to believe that she was not getting support from the official hierarchy also. She was abused and threatened in the midst of the general public. It also appears that she was illegally restrained and confined in the room. Her videographs were being taken. In such an utterly annoying and exasperating situation, under severe stress, she lost balance for a moment and attempted to commit suicide by cutting her veins, for which prosecution proceedings have been initiated against her. In my view, overwhelming reasons are made out to say that she had committed the said act under severe mental stress which stands saved from being tried and punished under the Penal Code.

14. It is the settled proposition of law that when the allegations made in the FIR or complaint, if taken at its face

value and accepted in their entirety, do not prima facie constitute any offence or when uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not make out a case against the accused or when the allegations or the evidence cannot end in conviction, there is no point in continuing the proceedings.

15. Section 115 of the Act saves the act of the petitioner from the penal provision. I am in respectful agreement with the observations made by the Orissa and Himachal Pradesh High Courts and therefore, the proceeding, if allowed to continue, is a clear abuse of the process of Court. Resultantly, entire proceedings in C.C. No. 1783 of 2020 pending before the Judicial First Class Magistrate's Court-III, Thrissur are quashed and the petitioner shall stand exonerated.

The Crl.M.C. is allowed as above.

Sd/-

K. HARIPAL

JUDGE

DCS/Okb/30.03.2022

//true copy//

P.A. to Judge

APPENDIX

PETITIONER'S ANNEXURE

ANNEXURE A

**TRUE COPY OF THE CHARGESHEET NUMBERED
827/2020, FILED BY THE OLLUR POLICE IN
CRIME NO. 1539/2020 DATED 30.10.2020**