2024:KER:77662

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

MONDAY, THE 21ST DAY OF OCTOBER 2024 / 29TH ASWINA, 1946

WP(C) NO. 27794 OF 2020

PETITIONER:

[redacted]

BY ADVS.
C.P.UDAYABHANU
SRI.NAVANEETH.N.NATH
SRI.P.U.PRATHEESH KUMAR
SHRI.RASSAL JANARDHANAN A.
SHRI.ABHISHEK M. KUNNATHU
SHRI.S.K.PREMRAJ

RESPONDENTS:

1 **STATE OF KERALA,**
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
MARADU POLICE STATION,
MARADU, KOCHI 682 304
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM -682 031.

2 **STATE OF KERALA,**
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM -695 001.

BY ADVS. ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.C.K.SURESH, PUBLIC PROSECUTOR (SR)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL HEARING ON 08.10.2024, THE COURT ON 21.10.2024 DELIVERED THE FOLLOWING:

"C.R."

C.S.SUDHA, J.

W.P.(C).No.27794 of 2020

Dated this the 21st day of October 2024

J U D G M E N T

This writ petition under Article 226 of the Constitution of India raises an interesting question as to whether the provisions of the Mental Health Act, 2017 (the MHA), can have retrospective operation. The petitioner seeks issuance of a writ of certiorari or other appropriate direction or order quashing Ext.P3 final report in C.C.No.2585/2016 on the file of the Judicial First-Class Magistrate Court-VIII, Ernakulam.

2. The petitioner is the accused in C.C. No.2585/2016, in which she is alleged to have committed the offence punishable under Section 309 IPC. Her husband, a sitting MLA, was contesting in the election. While so, one of his opponents created and circulated an audio clipping which contained the petitioner's edited conversations. Her conversations at various times were edited and made into an audio

clipping which highly damaged the election prospects of her husband and was highly defamatory to the petitioner. Due to this, she was under severe stress and hence had consumed an overdose of sleeping bills.

3. The learned counsel for the petitioner relying on Section 115 of the MHA submitted that proceeding with the criminal case would be a clear abuse of the process of law and hence the final report is liable to be quashed. In support of the argument, reference was made to the dictums in **Naveed Raza v. State of Kerala**, (**Crl.M.C.No.8305 of 2019**); **Pratibha Das v. State of Orissa, 2019 ICO 2445; Simi C.N. v. State of Kerala, 2022(3) KHC 346; Maruti Shripati Dubal v. State of Maharashtra, MANU/MH/0022/1986; State v. Sanjay Kumar Bhatia, 1985 Crl.L.J.931; P.Rathinam/Nagbhusan Patnaik v. Union of India, AIR 1994 SC 1844; Smt.Gian Kaur v. State of Punjab, AIR 1996 SC 946** and **State through Central Bureau of Investigation v. Gian Singh, AIR 1999 SC 3450**.

4. *Per contra* it was submitted by the learned Public Prosecutor that the MHA came into being with effect from

07/07/2018. The incident alleged in this case took place on 10/05/2016, apparently before the MHA came into being and therefore the petitioner cannot avail the benefit of Section 115 MHA. In support of this argument reference was made to the dictum in **Gian Kaur v. State of Punjab, 1996 KHC 505 : 1996 (2) SCC 648** in which case the Apex Court held that right to die is not included in the right to life under Article 21 and therefore Section 309 IPC is not violative either of Article 14 or Article 21 of the Constitution of India. The prosecutor, therefore argued that as long as Section 309 IPC remains in the statute book, persons who attempt to commit suicide would be liable to be prosecuted under Section 309 IPC.

5. Heard both sides.

6. Before I go into the merits of the case, I take note of the fact that the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The ideal course would have been to resort to Section 482 Cr.P.C. for quashing the final report. The jurisdiction of the High Court under Article 226 is couched in wide terms and exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly

provided in the Article. But the exercise of this jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. (**Thansingh Nathmal v. A.Mazid, Superintendent of Taxes, AIR 1964 SC 1419**). It is settled position that the High Court do not ordinarily entertain a writ petition under Article 226 if an effective alternative remedy is available to the aggrieved person or if a statute itself provides for a mechanism for redressal of the grievance. It is also well settled that alternative remedy does not act as an absolute bar for entertaining a writ petition where the vires of any statutory provision is under challenge, or the order impugned is completely without jurisdiction or has been passed in clear violation of the principles of natural justice. The principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternate remedy is available, is a rule of prudence and not a rule of law. The existence of an alternate remedy does not mean that the jurisdiction of the High Court is ousted, the rule of alternate remedy is a rule of discretion and not a rule of jurisdiction. The very amplitude of the jurisdiction demands that it would ordinarily be exercised subject to self-imposed limitations.

7. Be that as it may, as this writ petition has been admitted way back in the year 2020, I proceed to consider the matter without relegating the party to resort to the remedy available under Section 482 Cr.P.C.

8. The Mental Health Act, 1987 was unable to protect the rights of persons with mental illness and promote their access to mental healthcare in the country. In the said background a new legislation by repealing the Mental Health Act, 1987 was proposed. The Mental Health Act, 2017 (MHA) is an Act to provide for mental healthcare and services of persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto. Going by the statement of objects and reasons, the Act has recognized that persons with mental illness constitute a vulnerable section of the society and are subjected to discrimination in the society. Persons with mental illness are to be treated like other persons with health problems and the environment around them is to be made conducive to facilitate recovery or rehabilitation and full participation in society. Therefore, it was to protect and promote the

rights of persons with mental illness and to ensure healthcare treatment and rehabilitation of persons with mental illness etc., the new Act of 2017, which came into effect from 07/07/2018, has been enacted. MHA is clearly a beneficial piece of legislation enacted for the benefit of persons suffering from mental illness and for their rehabilitation and treatment.

9. I refer to Article 20(1) of the Constitution of India, which reads-

> *"20. Protection in respect of conviction for offences-(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*
>
> *(2) xxxxxxxxxxx*
>
> *(3) xxxxxxxxxxx."*

Here it would be apposite to refer to two decisions of the Apex Court, that is, **Rattan Lal v. State of Punjab, AIR 1965 SC 444** and **Commissioner of Income Tax-I, New Delhi v. Vatika Township Pvt. Ltd., (2015) 1 SCC 1**. **Rattan Lal** (*Supra*) was a case in which the appellant therein aged 16 years at the time of the conviction was

found guilty of the offences punishable under Sections 451 and 354 IPC and hence sentenced accordingly. The Probation of Offenders Act, 1958 (the PO Act) was extended to the district in which the offence was committed after the appellant had been convicted. The question that arose was whether the beneficial provisions of the PO Act could be extended to the appellant when the incident happened before the PO Act was extended to the area concerned. The Apex Court held that under Article 20 of the Constitution, no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than which might have been inflicted under the law in force at the time of the commission of the offence. But an ex post facto law which only mollifies the rigour of a criminal law does not fall within the said prohibition. If a particular law made a provision to that effect, though retrospective in operation, it would be valid. The PO Act was not an Act whereby neither the ingredients of the offence nor the limits of sentence were disturbed, but a provision made to help the reformation of an accused through the agency of the court. It is therefore a post facto law and has retrospective operation.

In considering the scope of such a provision the rule of beneficial construction as enunciated by the modern trend of judicial opinion without doing violence to the provisions of the relevant section was to be adopted.

9.1. In **Vatika Township Pvt. Ltd.** (*Supra*) the Apex Court considered the general principles concerning retrospectivity. It has been held that of the various rules guiding how legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. A retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated, when introduced for the first time to deal with future acts ought not to change the character of past transactions carried out upon the faith of the then existing law. The obvious basis of the principle against retrospectivity is the principle of 'fairness' which must be the basis of every legal rule. Thus, legislations which modified accrued rights, or which impose obligations or impose new

duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. However, it has also been held that where a benefit is conferred by legislation, the rule against the retrospective construction is different. If a legislation confers benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving a purposive construction, would warrant it to be given a retrospective effect. The doctrine of fairness is a relevant factor to construe a statute conferring a benefit in the context of it to be given a retrospective operation. Where a law is enacted for the benefit of a community as a whole, even in the absence of a provision, the statute may be held to be retrospective in nature.

10. There can be no doubt that MHA is a beneficial legislation and so the benefits contained therein require to be extended to the entire class of persons for whose benefit it was enacted. As it is

a beneficial piece of legislation, a retrospective effect can be given to the same.

11. Now coming to Section 115 of the MHA which reads-

> "*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."* (Emphasis supplied)

Therefore, unless and until the prosecution is able to prove otherwise, a person who attempts to commit suicide is presumed to have been under severe stress and so is not liable to be tried or punished under IPC. It is the duty of the prosecution to rebut or disprove the said statutory presumption. When a prosecution is launched alleging commission of the offence punishable under section 309 IPC, it will

have to be alleged and proved that the person was not under any stress when the attempt to commit suicide was made. On going through the final report in C.C. No.2585/2016, I find that the prosecution has no such case. There are no materials to rebut the presumption contained in Section 115 MHA. That being the position, I find that it would be an absolute waste of time and an abuse of the process of the court to proceed with the case.

12. It is quite disturbing to note that in spite of the obligation of the State made clear under sub-section (2) of Section 115 to provide care, treatment and rehabilitation to a person who attempted to commit suicide under severe stress, the State thought it fit to prosecute the petitioner for reasons best known to it.

In the result, Ext.P3 final report in C.C.No.2585/2016 on the file of the Judicial First-Class Magistrate -VIII, Ernakulam, is quashed. The writ petition is disposed of accordingly.

Interlocutory applications, if any pending, shall stand closed.

Sd/-
C.S.SUDHA
JUDGE

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APPENDIX OF WP(C) 27794/2020

PETITIONER'S EXHIBITS:-

EXHIBIT P1	**TRUE PHOTOCOPY OF THE FIR IN CRIME NO. 628 OF 2016 OF THE MARADU POLICE STATION.**
EXHIBIT P2	**TRUE PHOTOCOPY OF THE FINAL REPORT IN CRIME NO. 628 OF 2016 OF THE MARADU POLICE STATION.**
EXHIBIT P3	**CERTIFIED COPY OF THE FINAL REPORT IN C.C NO. 2585 OF 2016 ON FILES OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-VIII ERNAKULAM.**
EXHIBIT P4	**TRUE PHOTOCOPY OF THE SUMMONS ISSUED TO THE PETITIONER IN C.C NO. 2585 OF 2016 ON FILES OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT - VIII, ERNAKULAM.**