HC-KAR
CNR: KAHC010386162025

NC: 2026:KHC:62699
CRL.P No. 8281 of 2025

®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 8281 OF 2025 (482(Cr.PC) / 528(BNSS)-)

BETWEEN

JYOTI BAI
W/O OMBEER SINGH PARMAR,
AGED 37 YEARS,
R/O DOOR NO. D-2,
SUARPANIKA HOUSE,
CISF TOWNSHIP,
NEAR MRPL,
SURATKAL DISTRICT,
DAKSHINA KANNADA-575014
KARNATAKA.

ALSO AS PER FIR
ACHARI,
SUB INSPECTOR,
CISF UNIT, NMPA,
PANAMNUR,
MANGALORE-575010
PRESENTLY AT
D-1/70, PALAM EXTENSION,
SECTOR 7, DWARKA,
NEW DELHI-110075

...PETITIONER

(BY SRI: TARUNN SURANA., ADVOCATE)

AND

1. THE STATE OF KARNATAKA
   PANAMBUR POLICE STATION,
   MANGALORE-575011
   REPRESENTED BY THE LEARNED

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STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE-560001

2. K P RAJU
AGED ABOUT 40 YEARS,
POLICE OFFICER,
CISF UNIT, NMPA,
PANAMNUR,
MANGALORE-575010

…RESPONDENTS

(BY SRI. RANJITH KUMAR N., HCGP FOR R1)

THIS CRIMINAL PETITION IS FILED U/S.482 (FILED U/S.528 BNSS) CR.P.C BY PRAYING TO ALLOW THE PRESENT PETITION AND SET ASIDE THE IMPUGNED ORDER DATED 26.12.2024 IN THE CRIMINAL CASE BEARING NO.2422/2023 PENDING BEFORE THE HONBLE JUDICIAL MAGISTRATE FIRST CLASS II (JMFC) MANGALURU AND ETC..

THIS CRIMINAL PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 13.10.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioner, who is a Sub-Inspector with the Central Industrial Security Force (CISF), is before this Court seeking for the following reliefs;

> *a. Allow the present Petition and set aside the impugned Order dated 26.12.2024 in the Criminal Case bearing No. 2422 of 2023 pending before the Hon'ble Judicial Magistrate First Class II (JMFC), Mangalore;*

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b. Call for the records in C.C. No. 2422/2023 pending before the Hon'ble Judicial Magistrate First Class II (JMFC), Mangalore; and

c. Quash the entire proceeding in C.C. No. 2422/2023 for offence under section 309 of IPC registered by the Panambur Police Station, Mangalore which is pending before the Hon'ble Judicial Magistrate First Class II (JMFC), Mangalore;

d. Pass any other order and directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice.

2. The Petitioner is before this Court aggrieved by the order dated 26.12.2024 in C.C.No.2422/2023 dismissing the application filed by her under Section 239 of the Cr.P.C. and Section 115 of the Mental Health Care Act 2017 (for short hereinafter referred to as "**MHC Act, 2017**"). The case of the prosecution is that the Petitioner, who is a Sub-Inspector in the CISF, was deputed at the NMPA-Mangalore, Karnataka. On 12.10.2022 when she was posted as a shift-in-charge at Mallya Gate from 0600 Hrs to 1300 Hrs, she attempted to commit suicide by firing one round from a 9 mm pistol at her abdomen at around 06:10 hours.

3. After the incident, the Petitioner was admitted to AJ Hospital, where a major surgery was undertaken and

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she was put in the surgical ICU from 12.10.2022 to 20.12.2022 and discharged on 24.11.2022. Due to the nature of the incident, the medical expenses were not borne by the CISF/Government. She had to bear the entire medical expenses of ₹5,00,000/- from her own pocket.

4. Disciplinary proceedings were also initiated against the Petitioner, and she was punished with a major penalty of reduction of one stage of pay for lifetime and no promotion for the next five years.

5. On account of the abovesaid incident, on a complaint filed by the CISF Constable, a case was registered under Section 309 of the IPC against the Petitioner. An FIR in Crime No.70 of 2022 was filed, cognizance was taken, and the case was registered in C.C.No.2422 of 2023. The Petitioner filed an application under Section 239 of the Cr.P.C., read with Section 115 of the MHC Act, 2017.

6. The submission of Sri.Tarunn Surana, learned counsel for the Petitioner, is that:

6.1. The case involves a sensitive personal and medical history. The petitioner was about 36 years of age at the time of the incident and was

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under severe mental distress on account of her inability to conceive. It is submitted that, after years of unsuccessful treatment, she developed severe depression and, in that state of mind, used her service pistol to shoot herself in the abdomen, directing the shot towards the part of her body which she associated with her inability to bear a child.

6.2. Learned Counsel submits that the petitioner was married in 2015 and had been unable to conceive for more than eight years. She had been informed that she suffered from a blocked fallopian tube and that this condition would prevent her from conceiving. In an effort to have a child, she consulted doctors at Kolkata, Jaipur and Mumbai and underwent IVF treatment between 2020 and 2022. Despite these efforts, she was unsuccessful. The continuing disappointment and distress arising from her inability to conceive eventually led her to take the extreme step of inflicting a gunshot injury upon herself.

6.3. Learned Counsel submits that the allegation, even according to the prosecution, is one of an

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attempt to commit suicide and that the statutory protection under Section 115 of the Mental Healthcare Act, 2017, is therefore directly attracted. He relies upon the said provision, which reads as follows:

> ***115. Presumption of severe stress in case of attempt to commit suicide.***
>
> *(1) Notwithstanding anything contained in section 309 of the Indian Penal Code 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.*

6.4. By relying upon Section 115, learned Counsel submits that the provision creates a statutory presumption that a person who attempts to commit suicide is suffering from severe stress, unless the contrary is established. The use of the expression "shall be presumed" makes the presumption mandatory, and the further direction that such person "shall not be tried and punished under the said Code" protects the person from prosecution and punishment under the IPC, unless the presumption is rebutted.

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6.5. Learned Counsel advances two submissions in this regard.

6.5.1. First, the petitioner is entitled to the presumption of innocence, and the prosecution must establish the ingredients of the offence alleged against her.

6.5.2. Secondly, and more importantly, Section 115 of the Mental Healthcare Act provides a specific statutory protection in cases of attempted suicide. The petitioner is entitled to the presumption of severe stress, and the burden lies upon the prosecution to establish otherwise. In the absence of material rebutting that presumption, the petitioner cannot be subjected to trial and punishment under Section 309 of the IPC.

6.6. Learned Counsel further submits that the protection under Section 115 ought to have been considered at the very stage when the Investigating Officer examined the material and decided whether to prosecute the petitioner. It was also required to be considered by the learned Magistrate while taking cognizance and,

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in any event, when the petitioner sought discharge under Section 239 of the CrPC. Neither the Investigating Officer nor the learned Magistrate considered the statutory presumption or its consequence. The petitioner could not have been prosecuted under Section 309 of the IPC without first giving effect to the mandate of Section 115 of the Mental Healthcare Act, 2017

6.7. He relies upon the decision of the Co-ordinate Bench of this Court dated 13.09.2022 in ***Manoj Kumar vs. State of Karnataka*** [Crl.P.No.200775 of 2022], more particularly paragraphs 26, 37, 38, 39, 40 and 41 thereof, which are reproduced hereunder for easy reference:

> ***26.*** *Therefore, in view of the object and reasons in bringing New Mental Healthcare Act, 2017 and in view section 115 in the said Act which raises presumption in favour of a person attempting to commit suicide, it is necessary to refer section 115. It reads as under:*
>
> *Section 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*

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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."

It is evident that said section starts with non-obstante clause, meaning thereby, unless the Investigating Officer is satisfied that attempt to suicide is not under severe stress, he cannot proceed to register the case. In the light of above referred section 115, it is to be seen whether continuation of proceedings against the Petitioner is abuse of process of court needs to be quashed by the court in the ends of justice.

37. *Suicide is more of a concept related to moral, religious and psychological qualities of the person in the existing socio – economic and cultural circumstances of the society. Instead of having sympathetic approach towards the victim, if further punishment would be inflicted upon him, it would be simply ruthless act. The very essence of section 309 IPC also doesn't mandate for punishment in every case, rather it only sets the higher limit of such punishment. The courts are endowed with enormous power to ensure that unnecessary harsh dealing or injustice is not caused to the victims who are under severe mental stress. It is to be remembered that the life of a human being is very important.*

38. *It is to be noted here that after coming into force of new Mental Healthcare act 2017, the implementation of provisions of the said act appears to be not significant. Though there are developments in the Judicial decisions by invoking the provisions of the said act to safe guard the persons with mental illness and stress but the concerned authorities and organizations appears to be slow in implementation of the act in its letter and spirit. It is stated that the*

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National Judicial Academy and State Judicial Academies in the country are conducting regular Seminars and Workshops on the Mental Healthcare Act 1987. There are rise in the cases of attempt to commit suicide in the last few years as per the data from the National Crime Records Bureau. Day in and day out we see both in print and electronic media, the people committing suicide for silly and inconceivable reasons. Though one cannot define the reasons for attempt to commit suicide but broadly the reasons can be categorized as unemployment, isolation stress, academic failures, financial difficulties, debt, family and relationship issues, helplessness, depression, fright desperation, other Psychological disorders and frustration. It is high time that the Police authorities, medical professionals, the welfare associations, the civil society groups and other stake holders needs to be sensitized regarding the object and reasons for enacting Mental Healthcare Act 2017 and take such remedial measures to address an act of attempt to commit suicide.

39. *It is the duty of the society and the stakeholders concerned to find out the reasons for such an attempt and try to bring him/her to the main stream of the society. Such persons needs to be treated with sympathy, care and love.*

40. *It is not that the Petitioner intended to get some favorable decisions or order in his favour or he was instigated by some other external force to commit such an act in order to threaten, intimidate or harass the School management members. It is not motivated by any group or association so as to bring undue influence or to take coercive measurement on the management to head to his request. If the act is committed by the Petitioner under any of the above stated circumstances then such an act should be viewed differently. Because there are instances and incidents where in people attempt to commit suicide just to force the authorities or persons to*

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> *comply with their request or demand, whether legitimate or not and go on disturbing the public peace and cause disorder in the society. In this case, the alleged act was not to blackmail anybody or intimidate any person. The act of the Petitioner is not to create a public disorder. The circumstances which forced the Petitioner attempt to commit suicide are totally different. Such an act does not attract the offence under section 09 of the IPC in view of section 115 of Mental Healthcare Act, 2017.*
>
> ***41.*** *In the light of the principles stated in the above referred decisions and discussion if the allegation against the Petitioner is considered, in my considered view, continuation of the criminal proceedings against the Petitioner is nothing but wasting the judicial time. Therefore, the FIR registered against the Petitioner, the charge sheet filed, the cognizance taken, the process issued against the Petitioner and subjecting the Petitioner for ordeal of undergoing the trial is nothing but an abuse of process of court. Such proceedings deserves to be quashed to secure ends of justice*

6.8. By relying on ***Manoj Kumar's*** case, his submission is that the Co-ordinate Bench, having considered the scope and effect of Section 115 of the Mental Healthcare Act, 2017, held that continuation of criminal proceedings against a person who attempts to commit suicide, in circumstances attracting the statutory presumption of severe stress, would amount to an abuse of the process of Court. He submits that the same principle applies to the

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petitioner and that the proceedings against her are liable to be quashed.

6.9. He relies upon the decision of the Hon'ble Apex Court in ***P Rathinam vs. Union of India*** [AIR 1994 SC 1844], more particularly paragraphs 109, 110 and 111 thereof, which are reproduced hereunder for easy reference;

> ***109.*** *On the basis of what has been held and noted above, we state that Section 309 of the Penal Code deserves to be effaced from the statute book to humanise our penal laws. It is a cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Then an act of suicide cannot be said to be against religion, morality or public policy, and an act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the persons concerned is not called for.*
>
> ***110.*** *We, therefore, hold that Section 309 violates Article 21, and so, it is void. May it be said that the view taken by us would advance not only the cause of humanisation, which is a need of the day, but of globalisation also, as by effacing Section 309, we would be attuning this part of our criminal law to the global wavelength.*
>
> ***111.*** *The writ petitions stand allowed by declaring Section 309 of the Penal Code as unconstitutional and hence void. The proceedings in GR Case No. 177 of 1984 (State v. Nagbhushan Patnaik) pending in the Court of*

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Sub-Judge, Gunpur in the District of Koraput, Orissa stands quashed.

6.10. By relying on ***P Rathinam's*** case, his submission is that the Hon'ble Apex Court had categorically stated that Section 309 of the Penal Code deserves to be effaced from the statute book to humanize the penal laws by holding that it was cruel and irrational provision; and may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide.

6.11. He relies upon the decision of the Hon'ble Kerala High Court in ***Simi C.N. v. State of Kerala***, [2022 SCC OnLine Ker 2184], more particularly paragraphs 8, 9, 10 and 11 thereof, which are reproduced hereunder for easy reference:

> ***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 1970-1971 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*

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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 [(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 [2019 SCC OnLine Ori 217], 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 [2019 SCC*

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OnLine HP 2619] 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 [2020 SCC OnLine Del 733] 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 Penal Code, 1860 (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

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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*

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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.

6.12. By relying on ***Simi C. N's*** case, his submission is that the Hon'ble Kerala High Court considered other decisions of the Orissa High Court and Himachal Pradesh High Court and quashed proceedings under Section 309 in view of Section 115 of the MHC Act.

6.13. Lastly, he submits that Section 309 of the IPC, does not find a place in the Bharatiya Nyaya Sanhita, 2023 which came into force on 01.07.2024. Thus, the recommendation of the Hon'ble Apex Court in ***P Rathinam's*** case has been given effect to by the Parliament while introducing the BNS. This aspect would have to be taken into consideration by this Court, so as to quash the proceedings under Section 309 of the IPC against the Petitioner.

7. Sri.Ranjith Kumar.N., learned HCGP, would support the order passed by the trial Court.

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8. Heard Sri.Tarunn Surana, learned counsel for the Petitioner, and Sri. Ranjith Kumar.N., learned HCGP for Respondent-State. Perused papers.

9. The points that would arise for determination are:

i. Whether the introduction of Section 115 would negate or efface the offence under Section 309 of the IPC?

ii. Whether the presumption under Section 115 of the Mental Health Care Act is required to be considered at the time of filing of the charge sheet or at the time when an application for discharge is filed before the trial Court?

iii. Whether the impugned order passed by the trial Court in C.C No. 2422 of 2023 suffers from any infirmity requiring interference at the hands of this Court?

iv. What order?

10. This Court answers the above points as follows:

11. **Answer to Point No.1: *Whether the introduction of Section 115 would negate or efface the offence under Section 309 of the IPC?***

11.1. Section 309 of the IPC is reproduced hereunder for easy reference;

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309. Attempt to commit suicide.—

Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

11.2. A plain reading of Section 309 indicates that the provision penalises a person who attempts to commit suicide and does an act towards the commission of that act. It contemplates an attempt which does not result in the person's death. The provision must, however, be read in the light of the subsequent enactment of Section 115 of the MHC Act, 2017, which specifically addresses the circumstances of a person who attempts to commit suicide.

11.3. Section 115(1) of the MHC Act, 2017 begins with a non-obstante clause referring specifically to Section 309 of the IPC. It provides that a 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 IPC. The expression "shall be presumed" is mandatory. Once the fact of an attempt to commit suicide is established, the presumption of severe stress must be drawn.

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The person concerned is not required, in the first instance, to independently establish severe stress by producing medical evidence. The burden of establishing the contrary rests upon the prosecution.

11.4. Section 115 places the burden of rebutting the presumption upon the prosecution, the provision removes the element of culpability which attaches to an attempt to commit suicide under Section 309 of the IPC and requires a person who attempts suicide to be regarded as a victim of circumstances, rather than as an offender, in the absence of proof to the contrary. The legislative approach is to treat such a person as one in need of care, treatment and rehabilitation, rather than penal sanctions.

11.5. The MHC Act, 2017, has been brought into force with the object and purpose of providing mental healthcare and services to persons with mental illness and protecting, promoting and fulfilling their rights during the delivery of such care and services. Section 115 gives effect to that object in the specific context of an attempt to commit suicide. The presumption contained

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in the provision is not a matter of discretion for the Investigating Officer or the Court. It must be given effect to unless the prosecution establishes material to rebut it.

11.6. Sub-section (2) of Section 115 imposes a duty upon the appropriate Government to provide care, treatment and rehabilitation to a person who has severe stress and has attempted to commit suicide, with a view to reducing the risk of recurrence. This obligation is consistent with, and reinforces, the protection under sub-section (1). The two provisions reflect a legislative choice to address attempted suicide primarily through care, treatment and rehabilitation, rather than through penal consequences. The statutory protection under sub-section (1) cannot be reduced to a mere mitigating circumstance to be considered at the stage of sentence. It expressly provides that, so long as the presumption remains unrebutted, the person shall not be tried and punished under the IPC.

11.7. It is, therefore, necessary to distinguish between the continued existence of Section 309

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in the IPC and its applicability to a person protected by Section 115 of the MHC Act, 2017. Section 115 does not repeal or efface Section 309 from the statute book. It qualifies the operation of that provision by creating a mandatory and rebuttable presumption of severe stress and expressly prohibiting the trial and punishment of a person under the IPC while that presumption remains unrebutted. Thus, in the absence of material establishing the contrary, a person who has attempted to commit suicide cannot be subjected to trial or punishment under Section 309 of the IPC.

11.8. Accordingly, Point No.1 is answered by holding that Section 115 of the MHC Act, 2017 does not repeal or efface Section 309 of the IPC, but it displaces the operation of Section 309 in respect of a person who has attempted to commit suicide and is presumed to be under severe stress, unless the prosecution rebuts that presumption.

12. **<u>Answer to Point No.2:</u>** ***Whether the presumption under Section 115 of the Mental Healthcare Act is required to be considered at the time of filing of the charge sheet or at the***

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time when an application for discharge is filed before the trial Court?

12.1. Section 100 of the MHC Act, 2017 reads as under:

> ***100.*** *(1) Every officer in-charge of a police station shall have a duty––*
>
> *(a) to take under protection any person found wandering at large within the limits of the police station whom the officer has reason to believe has mental illness and is incapable of taking care of himself; or*
>
> *(b) to take under protection any person within the limits of the police station whom the officer has reason to believe to be a risk to himself or others by reason of mental illness.*
>
> *(2) The officer in-charge of a police station shall inform the person who has been taken into protection under sub-section (1), the grounds for taking him into such protection or his nominated representative, if in the opinion of the officer such person has difficulty in understanding those grounds.*
>
> *(3) Every person taken into protection under sub-section (1) shall be taken to the nearest public health establishment as soon as possible but not later than twenty-four hours from the time of being taken into protection, for assessment of the person's healthcare needs.*
>
> *(4) No person taken into protection under sub-section (1) shall be detained in the police lock up or prison in any circumstances.*
>
> *(5) The medical officer in-charge of the public health establishment shall be responsible for arranging the assessment of the person and the needs of the person with mental illness will be*

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addressed as per other provisions of this Act as applicable in the particular circumstances.

(6) The medical officer or mental health professional in-charge of the public mental health establishment if on assessment of the person finds that such person does not have a mental illness of a nature or degree requiring admission to the mental health establishment, he shall inform his assessment to the police officer who had taken the person into protection and the police officer shall take the person to the person's residence or in case of homeless persons, to a Government establishment for homeless persons.

(7) In case of a person with mental illness who is homeless or found wandering in the community, a First Information Report of a missing person shall be lodged at the concerned police station and the station house officer shall have a duty to trace the family of such person and inform the family about the whereabouts of the person.

12.2. Section 100 of the MHC Act, 2017 casts specific duties upon the officer in-charge of a police station in the circumstances set out therein. It requires the police officer to take a person under protection where the statutory conditions are satisfied and to ensure that the person is taken to a public health establishment for assessment.

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12.3. Though the provision does not specifically deal with a person who has attempted to commit suicide, it reflects the protective approach adopted by the legislature towards persons who may be suffering from mental illness and may pose a risk to themselves or others.

12.4. The presumption of severe stress under Section 115, however, operates independently. It is not necessary for a person who has attempted to commit suicide to first establish that he or she suffers from a diagnosed mental illness or to satisfy the conditions stipulated under Section 100. Once an attempt to commit suicide is established, the presumption under Section 115 must be given effect to.

12.5. The Investigating Officer, therefore, must consider the statutory presumption at the stage of investigation itself. The presumption cannot be ignored on the ground that the person concerned has not produced medical evidence of severe stress. The burden of establishing the contrary rests upon the prosecution. The Investigating Officer is required to examine the circumstances in which the attempt is alleged

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to have been made and collect material, if any, which may rebut the presumption. The decision to file a charge sheet under Section 309 of the IPC must be taken after giving effect to Section 115 and considering whether the material collected establishes the contrary.

12.6. This does not mean that registration of an FIR or investigation is prohibited in every case where an attempt to commit suicide is alleged. The investigation may be necessary to ascertain the circumstances of the incident and whether any material exists to rebut the statutory presumption. However, the investigation and the decision to prosecute must proceed in accordance with the mandate of Section 115.

12.7. Insofar as the jurisdiction of the Magistrate is concerned, Section 239 of the Cr.P.C. reads as under:

> ***239. When accused shall be discharged.***
>
> *If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be*

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groundless, he shall discharge the accused, and record his reasons for so doing.

12.8. A perusal of Section 239 indicates that the Magistrate is required to consider the police report and the documents accompanying it, hear the prosecution and the accused and determine whether the charge is groundless. While undertaking this exercise in a prosecution under Section 309 of the IPC, the Magistrate cannot overlook the statutory presumption under Section 115 of the MHC Act, 2017.

12.9. The Magistrate must examine whether the material placed by the prosecution contains anything capable of rebutting the presumption of severe stress. The statutory burden cannot be shifted to the accused by requiring her to establish, at the stage of discharge, that she was suffering from severe stress.

12.10. Thus, the obligation to give effect to Section 115 arises at both stages. The Investigating Officer must take the presumption into account while conducting the investigation and deciding whether to file a charge sheet under Section 309 of the IPC.

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12.11. If a charge sheet is nevertheless filed, the Magistrate must independently consider the statutory presumption while deciding an application for discharge under Section 239 of the Cr.P.C. If the prosecution material does not contain anything capable of rebutting the presumption, the charge under Section 309 would be groundless and the accused would be entitled to discharge.

12.12. Accordingly, Point No.2 is answered by holding that the presumption under Section 115 of the MHC Act, 2017 is required to be considered by the Investigating Officer during the course of investigation and while deciding whether to file a charge sheet under Section 309 of the IPC. The Magistrate is equally required to consider the said presumption while deciding an application for discharge under Section 239 of the Cr.P.C.

13. **Answer to Point No.3:** ***Whether the impugned order passed by the trial Court in C.C No. 2422 of 2023 suffers from any infirmity requiring interference at the hands of this Court?***

13.1. In the present case, the allegation against the petitioner is that, on 12.10.2022, while posted

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as shift-in-charge at Mallya Gate, she fired one round from her service pistol at her own abdomen. The petitioner sustained serious injuries and underwent major surgery. The incident is thus one of an attempt by the petitioner to take her own life.

13.2. The circumstances leading to the incident assume significance while considering the statutory presumption under Section 115 of the MHC Act, 2017. The petitioner was married in 2015 and had been unable to conceive for several years. She was informed that she had a blocked fallopian tube and that the condition would affect her ability to conceive. She consulted doctors at Kolkata, Jaipur and Mumbai and underwent IVF treatment between 2020 and 2022. Despite these efforts, she was unsuccessful.

13.3. The fact that the petitioner fired at her own abdomen is particularly relevant when considered in the background of this medical history. The abdomen was the part of her body which she associated with her inability to conceive. The site of the gunshot injury,

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therefore, cannot be viewed in isolation from the medical condition and the treatment she had undergone. It lends support to the petitioner's explanation that the act arose out of the severe personal distress caused by her inability to conceive. The fact that she directed the firearm at herself, and specifically at the part of her body which she associated with her infertility, is a circumstance consistent with the statutory presumption of severe stress under Section 115.

13.4. The petitioner suffered serious injuries as a result of the gunshot and was required to undergo major surgery and prolonged hospitalisation. These circumstances also have to be considered in their proper context. The material placed before this Court does not indicate that the petitioner fired the weapon with an intention to threaten, coerce or compel any other person, or that she intended to cause harm to anyone other than herself. The allegation is that she attempted to take her own life in the circumstances stated above.

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13.5. The fact that the petitioner was on duty and used her service firearm is a relevant circumstance. However, neither the use of a service firearm nor the fact that the petitioner was on duty, by itself, rebuts the presumption of severe stress. On the contrary, the circumstances surrounding the incident, including the location of the injury and the petitioner's medical history, lend support to the inference that the act was connected with her personal distress. The prosecution has not placed any material capable of rebutting the statutory presumption.

13.6. The learned Magistrate, while considering the petitioner's application for discharge under Section 239 of the Cr.P.C., was required to examine the material on record in the light of Section 115 of the MHC Act, 2017. The impugned order dated 26.12.2024 does not consider the effect of the statutory presumption or examine whether the prosecution material contains anything capable of rebutting it. It also does not consider the circumstances in which the petitioner sustained the gunshot injury, including the medical history relied upon by her.

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13.7. The failure to consider the mandate of Section 115 goes to the root of the matter. Once the statutory presumption is applied, and in the absence of material placed by the prosecution to rebut it, the charge under Section 309 of the IPC cannot be sustained. The petitioner is, therefore, entitled to be discharged from the said offence.

13.8. Accordingly, Point No.3 is answered in the affirmative. The impugned order dated 26.12.2024 passed by the learned JMFC II, Mangaluru, in C.C. No.2422 of 2023 suffers from an infirmity warranting interference by this Court.

GENERAL DIRECTIONS

13.9. Before parting, this Court considers it necessary to address the mental health and overall well-being of personnel serving in the police and other security forces. The present case concerns a Sub-Inspector in the CISF who, by virtue of her official duties, had access to a service firearm which she used in an attempt to take her own life.

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13.10. Personnel serving in these forces are also human beings. They have families, relationships, responsibilities and personal problems. They experience grief, anxiety, financial difficulties, marital discord, illness in the family and other difficulties common to human life. Wearing a uniform or undergoing rigorous training does not make them immune to such problems. The expectation that they must remain available for duty at all times and discharge their responsibilities, come rain or shine, irrespective of their personal circumstances or mental condition, requires a change in institutional thinking. Discipline and dedication are essential, but they cannot be demanded at the cost of ignoring the basic human needs of personnel.

13.11. The responsibility of an organisation does not end with assigning duties and expecting them to be performed. It must also take reasonable steps to look after the physical and mental well-being of its personnel. The nature of their duties, difficult postings, prolonged separation from families, irregular working hours and operational pressures may compound personal

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difficulties. Personnel must have an environment in which they can seek assistance without stigma or fear of adverse consequences. Their need for counselling, treatment, family support, rest or temporary relief from particular duties must be recognised and addressed.

13.12. At the same time, mental health is directly connected with operational readiness and public safety, particularly in the case of personnel entrusted with firearms. The authorities must have appropriate systems for assessing the mental health and fitness of such personnel, both before entrusting firearms and periodically thereafter, with provision for reassessment whenever circumstances so warrant. Suitable procedures must also exist for regulating access to firearms where a genuine safety concern arises, while ensuring that such preventive measures do not become punitive or result in automatic exclusion from service.

13.13. The concerned organisations must ensure that accessible and confidential counselling, professional mental health care and timely

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treatment are available to personnel at all levels, including those posted in remote and difficult locations. Commanding and supervisory officers must be sensitised to recognise signs of distress and facilitate appropriate assistance. Personnel who undergo treatment or experience mental health difficulties must also receive suitable support for rehabilitation and return to duty, based on professional assessment.

13.14. The welfare of personnel and the security of the public are not competing considerations. A force which looks after the mental and physical well-being of its personnel is better equipped to maintain discipline, operational readiness and public safety. Personnel entrusted with protecting the lives and safety of others must themselves be provided care, support and reasonable assistance when they face personal or mental health difficulties.

13.15. The concerned authorities are, therefore, called upon to examine their existing policies and take appropriate steps to strengthen the mental health and welfare measures for personnel serving in the armed forces, police and other

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security organisations, while also ensuring the safe and responsible use of firearms.

13.16. The Registry shall forward a copy of this order to the Director General, CISF; the Director General of Police, Karnataka; and the heads of other State organisations having personnel entrusted with firearms, for their information and consideration.

14. **Answer to point No.4: What order?**

In view of the above, this Court passes the following:

ORDER

i. Criminal petition is ***allowed.***

ii. The order dated 26.12.2024 in the Criminal Case bearing No.2422 of 2023 passed by Judicial Magistrate First Class II (JMFC), Mangalore is set aside.

iii. Consequently, the application filed by the Petitioner under Section 239 read with Section 115 of the MHC Act, 2017 is allowed.

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iv. The Petitioner is discharged from the offence under Section 309 of the IPC in CC No.2422 of 2023.

This Court has been assisted by Ms. Harshada R.B., Law Clerk, in reviewing this judgment.

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(SURAJ GOVINDARAJ)
JUDGE

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List No.: 1 Sl No.: 61