

No.D5-71919/2019/PHQ
Police Headquarters,
Thiruvananthapuram
Dated. 17-04-2020

Circular. 15/2020/PHQ

Sub : Section 115 of the Mental Health Care Act, 2017, when constitutes a bar for registering a case U/s. 309 of IPC - Compliance with the provisions of the Mental Health Care Act, 2017 - Instructions - reg.

Ref : 1. The Mental Health Care Act, 2017 (Central Act 10 of 2017).
2. PHQ Circular No. 03/2010 dtd 11/01/2010.
3. PHQ Circular No. 04/2009 dtd 09/01/2009.
4. PHQ Circular No. 24/1993 dtd 19/10/1993.

The Police are expected to easily most accessible, interactive and dynamic organisation of any society. They discharge multifarious roles, functions and duties in the society. This is evident from the functions of the Police as provided U/s. 4 of the Kerala Police Act, 2011. The first and foremost duty of the Police is to enforce the law impartially and to protect the life, liberty, property, human rights and dignity of all persons in accordance with the law. The Police has also a duty to protect the safety and welfare of the community when dealing with persons with mental illness who pose a threat or danger to the community or to themselves. At the same time, the protection for citizens with disabilities who cannot care for themselves, such as those who are acutely mentally ill, is also an important function of the Police.

The Police shall not interact with a mentally ill person in the same way as they interact with an anti-social or criminal. They should be alert, cautious and at the same time kind and pleasing in interacting with mentally ill persons. A person who seems to be mentally ill to a mental health professional may not seem so to a police officer, as they are continuously dealing with many kinds of persons like pedestrians, victims, suspected offenders, accused etc., without being aware of the mental illness in anyone of them. Power of observation and understanding of a deeper level are required for police officers in dealing with mentally ill persons. It is to be remembered that even the slightest delay of the Police in initiating action can land a mentally ill person, especially women, to greatest dangers, as they are susceptible to abuse by anti-social elements in society.

In all cases where the Police are dealing with mentally ill persons, the Police must develop an effective working partnership between law enforcement and the mental health system. A clear understanding of the provisions in the Mental Healthcare Act, 2017 (Central Act 10 of 2017) as regards to the duties of the Police

in relation to a mentally ill person, is also highly essential for discharging duties effectively with regard to such persons.

The Mental Health Care Act, 2017, came into force on 29-05-2018. The Act recognises the rights and dignity of the mental health care patient. Section 100 of the Act details the duties of police officers in respect of persons with mental illness as follows:

Sec. 100. Duties of police officers in respect of persons with mental illness.-

(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 twentyfour 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 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.

Attention is invited to Sec. 100 (7) of the Act under which the Police is bound to register a missing person FIR and the SHO's duty to trace the family of such person and to inform the family about the whereabouts of the person. If the Police fail to register FIRs, especially in the case of persons belonging to other States, it will become an extremely difficult task to trace their families. Hence, all Officers are instructed to strictly comply the mandate under section 100(7) of the Mental Health Care Act, 2017.

U/s. 115(1) of the Act, "attempt to commit suicide", which is presently a punishable offence u/s. 309 of the Indian Penal Code, 1860, has been partially decriminalised. Section 115 (1) of the Act reads as follows:-

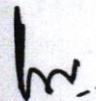
Sec. 115. Presumption of severe stress in case of attempt to commit suicide:-

(1) Notwithstanding anything contained in Sec.309 of the IPC, 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.

The words occurring in Sec.115 (1) of the Act, namely, "unless proved otherwise" "and shall not be tried and punished under the said Code", make it clear that there is no legal bar in registering a case. Further, it is to be remembered that inquiry and report by Police is mandatory even in cases of suicide u/s. 174 (1) of the CrPC, 1973. After registering the case and after complying with the procedure u/s. 174 (1) CrPC, if it is convinced on investigation that the person who attempted to commit suicide was under 'severe stress' prior to such attempt, then the Police is bound to file final report in the nature of a "Further Action Dropped/May be Discharged/Acquitted u/s 115(1) of the Mental Health Care Act, 2017" before the Court concerned. What is prohibited u/s. 115(1) is trial and punishment and there is no prohibition on the registration of a case and investigation in cases of attempt to commit suicide. If the suicide is due to reasons other than "severe stress", then case is to be further investigated, and in such cases, attempt to commit suicide is still punishable as a cognizable offence u/s. 309 IPC.

All Officers are directed to comply with the above instructions and the provisions in the Mental Health Care Act, 2017.



Loknath Behera IPS
State Police Chief

To : All Officers in List 'D' (upto SHO level).

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