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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.30 OF 2019

Ms. Rekha @ Vidhila Faldessai,
d/o Vithal Parab,
aged 49 years,
Occupation: Teacher,
r/o General Pool Quarters,
Bldg. No. C-1-6,
Near Sub Jail, Headland,
Sada, Mormugao, Goa.

... Appellant.

Versus

State
Through PP
Hon'ble High Court of Bombay
at Panaji, Goa.

... Respondent.

Mr Arun de Sa with Mr Kyle D'Souza, Advocates for the
Appellant.

Mr Pravin Faldessai, Additional Public Prosecutor for the
Respondent.

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON: 27 January, 2023

PRONOUNCED ON: 02 February, 2023

JUDGMENT:

Appellant/Accused preferred present appeal thereby
challenging judgment and conviction in Special Case No.132/2015
dated 16.04.2019 passed by the learned Children's Court for the State
of Goa at Panaji. The Appellant was found guilty for the offence
punishable under Section 324 of IPC and for the offence punishable

under Section 2(m)(i) punishable under Section 8(2) of Goa Children's Act, 2003. The Appellant was sentenced to pay fine of ₹10,000/- in connection with the offence punishable under Section 324 of IPC and in default to undergo simple imprisonment for a term of 6 months.

2. The Appellant/Accused was sentenced to undergo simple imprisonment for one day and to pay fine of ₹1,00,000/-, in default to undergo simple imprisonment for one year for the offence punishable under Section 8(2) of Goa Children's Act, 2003.

3. The appeal was admitted on 14.06.2019 and after the records and proceedings were received along with the paper-book, the matter was taken up for final disposal.

4. Heard Mr Arun de Sa appearing with Mr Kyle D'Souza for the Appellant and Mr Pravin Faldessai, Additional Public Prosecutor for the Respondent.

5. With the assistance of the learned Counsel for the respective parties, I perused entire record and more specifically the Judgment which is impugned in the present appeal.

6. Mr De Sa submitted that Appellant was working as a teacher in the school and being a teacher, she was having every authority to correct a student who is committing mistakes or even not maintaining discipline. The victims in the present matter were the students in the school and if the teacher tries to correct them for their mistakes and in order to discipline them, cannot be construed as offence under the IPC or under the Goa Children's Act for the

simple reason that there is no such *mens rea*. She submitted that the victim consumed the water from the bottle of another student and therefore, Appellant being the teacher of the class tried to correct the victim by saying that she should bring sufficient water for herself in her own bottle and should not consume the water from the bottles of other students, cannot be construed as an offence at all. He would submit that the parents when admitting their child to the school gives authority to the teachers and the principal of the school to act in accordance for maintaining discipline and to correct the child if required. He would submit that even if some physical force is used which is not going to cause any harm or injury to the child or even insult, only with an intention to correct such child for the mistake committed, would not constitute an offence and that too under IPC or under Goa Children's Act. The only intention of the teacher is to maintain discipline and to inculcate good habits in a child/student so that such student would be an asset to the society in future. A disciplined student would always be an asset to the society and in such circumstances, even if the teacher is acting in harsh manner at times, would not constitute any offence, as such action of the teacher would be considered as reasonable for the time being in order to correct the child or the student. Such act would constitute as done by consent in good faith for the child's benefit and with the consent of the guardian.

7. Mr De Sa then would submit that the circumstances in the present matter are peculiar which clearly goes to show that alleged

stick or ruler used by the Accused to assault the victim is not at all recovered. No specific injuries are found on the person of the victims.

8. Per contra, Mr Faldessai fairly submitted that the acts of a teacher in the school and for the purpose of keeping discipline amongst the students, would not constitute any offence. However, he would submit that if there is any physical abuse on the part of such teacher with a grudge in mind against a particular student, such act would certainly fall within the parameters of Section 8(2) of Goa Children's Act as well as Section 323 or 324 of IPC as the case may be. He submitted that reasonability has to be concluded on the basis of facts of each and every case. In the present matter, both the victims disclosed that they were assaulted with a stick on their hands. Therefore, deposition of both the victims has to be evaluated in the light of the matter in hand. He submitted that there is no discretion with the Children's Court or with this Court with regard to reduction of fine as provided under Section 8(2) of Goa Children's Act.

9. In rejoinder, the learned Counsel Mr De Sa would submit that the definition of physical, psychological abuse as found in Section 2(m) of Goa Children's Act is too vague and such definition cannot be strictly applied to a matter more specifically of the one in hand. If a teacher is put behind bars for such trivial act and that too for keeping discipline amongst the students or to correct a child for mistakes, would be a disaster. A teacher will not be able to control the class in proper manner. The very purpose of the school and the teaching would suffer.

10. The learned Counsel Mr De Sa placed reliance on the following decisions:-

- a. *Emperor vs. G.B. Ghatge (Original Accused) and Abdul Jaffar Ismail Shaikh (Original Complainant)*¹,
- b. *Ganesh Chandra Saha vs. Jiw Raj Somani*²,
- c. *K.A. Abdul Vahid vs. State of Kerala*³,
- d. *Mr. Santosh Sahadev Khajnekar vs. State & Anr.*⁴,
- e. *Sunil Kumar Sen vs. State of M.P.*⁵, and
- f. *Rajan @ Raju vs. Sub-Inspector of Police and Ors.*⁶.

11. The rival contentions fall for determination of this Court as under:-

- a. Whether the alleged act of scolding and correcting a student by a teacher would constitute an offence.
- b. Whether the Prosecution succeeded in proving that the Accused assaulted both the victims with a ruler/stick thereby causing injuries.

12. In order to effectively adjudicate the matter on the basis of submissions of the learned Counsel, charge framed against the Accused reads thus:-

“That on 28.03.2014, at about 11.00 hours, at Government Primary School, Headland, Sada, you have

1 AIR 1949 Bom 226

2 AIR 1965 Cal 32

3 2005 Cri.L.J. 2054

4 CRIA 10/2017

5 2018 SCC OnLine MP 378

6 2019 1 Crimes(HC) 260

voluntarily caused hurt to two minor victim girls, aged 5 years and 10 months and 8 years and 10 months, respectively, except in the case provided for by Section 334 of I.P.C., by assaulting them by means of stick, which instrument, if used as a weapon of offence, is likely to cause death. Thereby you have committed an offence punishable under Section 324 of I.P.C.

At the same place, time and date, you have caused 'child abuse' to the two minor girls, aged 5 years and 10 months and 8 years and 10 months, respectively, by means of your aforesaid act, causing 'physical and psychological abuse' to them. Thereby you have committed an offence under Section 2(m)(i), punishable under Section 8(2) of the Goa Children's Act, 2003."

13. Prosecution examined in all seven witnesses to prove the charges. Statement of the Appellant/Accused was then recorded under Section 313 Cr.PC. wherein she denied about the said incident. No witness was examined in defence. The learned Children's Court vide its impugned Judgment dated 16.04.2019 framed two points and answered them in affirmative. Accordingly, Appellant/Accused was convicted and sentenced as disclosed earlier. PW1 is the sister of PW2. Both were studying in Government Primary School wherein Accused was the teacher. PW1 and PW2 are claiming to be the victims.

14. PW1 claimed that at the relevant time, she along with her sister/PW2 were studying in Government Primary School and on the day of incident, PW2 finished the water from her water bottle and therefore, she drank water from the bottle of other student. Accused, therefore, scolded PW2 and that too during interval time.

15. PW1 claimed that when she heard the cry of PW2, her teacher told her to go and check as to what happened. Accordingly, she went to the classroom of PW2 and came to know about the incident. Accused questioned PW1 as to why her sister/PW2 did not bring sufficient water in the bottle. PW1 then informed Accused that since her sister consumed the water from her bottle and thereafter she drank water from the bottle of other student. Upon which Accused beat PW1 with a stick on her hand. Accused also beat PW2 with the same stick. Thereafter, PW1 returned to the classroom. After school was over, she went home and informed her father, who approached the Mormugao Police Station and accordingly, they lodged complaint. PW1 and PW2 were then referred for medical examination and then they were taken to the school for conducting panchanama of the scene of offence.

16. During cross examination, PW1 clearly admitted that she did not witness the Accused assaulting PW2 but she only heard her crying. She then claimed that Accused beat her with the stick on her hand twice. While beating, Accused questioned PW1 as to why she came to see her sister and told her to go back to her class. She was unable to answer the suggestion that she was beaten by the Accused as she left her class and came to classroom of PW2. She denied the fact that she along with PW2 and her father visited the house of Accused before going to the police station.

17. PW2, the younger sister of PW1 deposed that Accused was her teacher. On the day of incident, she finished the water from her bottle and therefore, she drank water from the bottle of her friend.

On seeing this, Accused teacher scolded her and beat with ruler on her hands, legs and back. She started crying loudly. By that time, it was recess time and the other teacher hearing her cry, told PW1 to go and check. Accordingly, PW1 came to her classroom. Accused asked PW1 as to why she had not brought sufficient water in the bottle. PW1 then told Accused that she finished the water from her bottle and therefore, she drank water from the bottle of another student. Accused then beat PW1 with a ruler on her hand. PW1 cried and returned back to her classroom.

18. PW2 then deposed that she vomited thereafter. After the school was over, they went home and told their father about the incident. Then they approached the police and lodged the complaint.

19. PW2 in the cross examination showed her ignorance that her friend complained to the teacher/Accused and that is why Accused scolded her. She specifically admitted that sometimes she used to finish water from her bottle and therefore, Accused had told her to bring sufficient water for the day. She then admitted that she was questioned by the Accused as to why she drank water from the bottle of her friend. This witness clearly admitted that she consumed water from the bottle of another student after she finished water from her bottle. On seeing this, Accused scolded her for not bringing sufficient water in her own bottle.

20. PW3 Nayan Naik is another teacher in the same school. She was the teacher of the class wherein PW1 was studying. This witness deposed that on the day of the incident, one girl came to her class and called PW1 stating that she was called by the Accused.

Accordingly, she allowed PW1 to go to the said class. PW3 then deposed that after some time, PW1 returned to the class crying and told her that she was assaulted by the Accused with a stick. She then deposed that after the mid-day meal when the teachers were sitting in the staff room, she asked the Accused as to why she assaulted PW1 with a stick. Accused told her that she did not assault, but called PW1 as her younger sister/PW2 had vomited in the class and had not brought drinking water with her. During cross examination, PW3 admitted of stating to the police that the teachers in the said school do not use stick while teaching in the classroom and that she had not seen the Accused using any stick.

21. Hurt certificates are produced on record at Exh. 20 colly dated 28.03.2014. However, the doctor is not examined to prove that any injuries were caused specifically with the wooden stick or ruler as the case may be.

22. PW4 Rushikesh Patil was the PSI attached to Mormugao Police Station who only filed the charge-sheet.

23. PW5 Shailesh Narvekar deposed that he registered the complaint filed by complainant/PW7 against the Accused vide Crime No. 15/2014 under Section 324 of IPC and Section 8 of Goa Children's Act. He conducted scene of offence panchanama on 04.04.2014 in presence of two pancha witnesses. At this stage, it is necessary to note that PW1-the victim, specifically deposed that after both of them were referred for medical examination by the police, they were taken to the school where they showed the place of assault. It is thus clear that both the victims and the complainant

along with the police proceeded to the school and the said class to show the scene of offence, that too on the day of registering complaint dated 28.03.2014. Conducting scene of offence panchanama on 04.04.2014 was therefore not properly explained. Admittedly, nothing was attached from the scene of offence during panchanama on 04.04.2014 or even on the day when police visited the school along with both the victims and the complainant on 28.03.2014. This is necessary to note as the allegations against Accused is the use of ruler or stick for assault. No such weapon was found and attached by the police.

24. During cross examination, PW5/I.O. Admitted that search of the premises for the stick was conducted but not found. He also admitted that the teachers told him that no stick was ever used by any teacher in the school. He then admitted that both the victims were sent for medical examination on the day of complaint itself and the reports show no injuries.

25. PW6 is the pancha witness who deposed that on 04.04.2014, he acted as a pancha for conducting scene of offence panchanama at Sada, Vasco near the Government School. He deposed that one person/complainant was present along with one Redkar being the In-charge of the said school. They proceeded along with PW5 in the classroom and searched for the stick but failed to find it. He deposed that they were taken to the classroom by the police and the search was taken but nothing else was done in their presence. This statement of PW6 shows that victims were not present at the time of

so-called panchanama of the scene of offence. Complainant was present, however, no such stick as alleged was found.

26. The last witness examined by the Prosecution is the complainant himself who is the father of PW1 and PW2. He deposed that on that day during noon time, he was at his home. PW1 and PW2 came from school. Clothes of PW2 were soiled as she had vomited. He inquired with PW1 and PW2 as to what had happened. PW1 and PW2 informed that Rekha teacher assaulted PW2 at the first instance and then also assaulted PW1 with a stick.

27. PW7/complainant then deposed that he immediately went to the school along with PW1 and PW2, however, by that time the school was closed. He along with PW1 and PW2 then went to the house of Rekha teacher i.e. the Accused. The daughter of Accused informed them that the Accused had gone to bank. Therefore, he along with PW1 and PW2 went to the police station to lodge the complaint.

28. PW7 categorically stated in the chief examination itself that after lodging complaint, police conducted panchanama in the school and at that time, he along with PW1, PW2 and the principal of the school were present and PW1 and PW2 showed the place of offence to the police. The search of the classroom was conducted, however, no stick was found therein. Some photographs were clicked which he identified at Exh.26 colly.

29. With this evidence, the learned Trial Court found that the Prosecution has succeeded in proving charges levelled against the Accused.

30. As rightly pointed out by Mr De Sa, the learned Counsel for the Appellant, evidence of PW1 and PW2 and that of PW7 cannot be believed as they are contradicting each other on material particulars. He submitted that no incident of physical assault ever happened in the school and that too by the Accused. Scolding a school student for committing mistakes and even some punishment given to maintain discipline would not constitute offence.

31. As the entire evidence has been discussed above, one thing is clear that PW1 who is the elder sister claimed initially that she was in her own classroom and she heard the cry of her sister/PW2. Accordingly, her class-teacher told her to go and see what happened. When she came to the classroom of PW2, she was told about the incident. The Accused questioned her as to why PW2 failed to bring sufficient water in her bottle. The Accused further told her that PW2 finished the water from her bottle and then she consumed water from the bottle of other student. Such incident as narrated by PW1 and even if the teacher scolded her sister PW2 on the above aspect, would not in any manner constitute an offence.

32. PW1 then deposed that Accused then beat her with a stick on her hand. PW1 categorically stated that Accused also beat her sister/PW2 with the same stick. However, during cross examination, she admitted of not seeing the Accused assaulting PW2. Therefore,

PW1 is clearly trying to improvise and exaggerate the facts. No assault in her presence on PW2 had taken place.

33. PW2 in her deposition again tried to improvise and claimed that Accused scolded her and beat with a ruler on her hands, legs and back. PW1 and PW7 nowhere stated that Accused beat PW2 with a ruler on her hands, legs and back. According to PW1, PW2 and PW7, they along with police and panchas visited the school on the day of alleged offence and inspected the class in order to find the ruler or stick. However, PW6 who was the pancha witness for the scene of offence panchanama claimed that he visited the school only on 04.04.2014 and at that time PW7 was present. Similarly, PW5 the Investigating Officer nowhere disclosed that he visited the school along with PW1, PW2 and PW7 on the day of registration of offence but categorically claimed that they visited the school only on 04.04.2014 for conducting scene of offence panchanama.

34. The school teachers including PW3 Nayan disclosed that no ruler or stick is used by any teacher including Accused in the school. Therefore, there is a serious doubt about the use of any ruler or stick by the Accused on that particular day. The depositions of PW1 and PW2 are contrary on material aspects. PW2 claimed that she was assaulted in her own class by the Accused and only when she started crying loudly, her sister/PW1 came to her class to inquire as to what happened. Thus, it is clear that when the assault took place on PW2 as alleged, PW1 was not present in the said classroom but she was present in her own classroom.

35. One thing is admitted by both these witnesses/victims that PW2 consumed water from her water bottle and thereafter she also consumed some water from the bottle of another student. Only on seeing this, Accused scolded PW2 and told her to bring sufficient water for herself in her water bottle. This incident is quite normal in a primary school. In order to discipline the students and to inculcate good habits, the teacher is bound to act accordingly and sometimes be a bit harsh.

36. As far as use of ruler or stick by the Accused is concerned, the same has not been sufficiently established. PW1 and PW2 though claimed that they were assaulted with a stick, no such stick was found on the day of incident or when the panchanama was conducted on 04.04.2014. The Investigating Officer is completely silent about the visit of the school on the day of registering the offence and that too along with PW1, PW2 and PW7.

37. It seems that PW2 consumed water from the bottle of another student which is certainly against the discipline of the school and bound to receive complaints from the parents of other students. In such circumstances, the Accused being a teacher is bound to act accordingly. In order to maintain discipline in her own class, sometimes, she has to use reasonable force if the students are not able to understand the instructions and are repeatedly committing such mistakes.

38. PW2 admitted that she used to consume water from the bottles of other students. This fact clearly goes to show that PW2 was not maintaining proper discipline and in such circumstances, if a teacher

is even using some harsh words or even reasonable force to correct a child, would not in any manner amount to an offence.

39. Section 89 of IPC reads thus:-

“89. Act done in good faith for benefit of child or insane person, by or by consent of guardian.—Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person:

Provisos—Provided—

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.”

40. The students are admitted in the school for not only the purpose of teaching but also to learn other aspects of life which include discipline. The purpose of the school is not only to teach the

academic subjects, but to prepare such student in all aspects of life so that in future he would be a person of good behaviour and nature. The teachers are respected in the society at the most. They are the backbone of our education system. If the teachers are under fear of such allegations for trivial matters and more specifically while correcting children, it would be difficult for conducting schools thereby giving proper education and more specifically maintaining discipline. A civilized society needs civilized young generation which would respect each other and would be considered as a future generation of the nation.

41. PW1 and PW2 were admittedly below 12 years of age at the relevant time and therefore, provisions of Section 89 of IPC would stand attracted along with the provisions of Section 88 of IPC.

42. In the case of *Emperor* (supra), though the matter refers to Bombay Children's Act, 1924 in which corporal punishment on the pupil by a teacher though by inflicting moderate punishment was permissible, the ratio laid down therein with regard to the relationship of the teacher and students qua Section 89 of IPC and the provisions of Guardians and Wards Act are discussed. It is observed that the right of any parent, teacher or other person having lawful control or charge of a child is not taken away while inflicting moderate punishment that too only to correct such child. It further observed that when a child is sent by its parent or its guardian to a school, the parent or guardian must be held to have given an implied consent to its being under the discipline and control of the school authorities and to the infliction of such reasonable punishment as

may be necessary for the purposes of school discipline or for correcting the child. The distinction between a moderate punishment and the assault as contemplated under Section 323 IPC or a physical assault under Section 2(m) of Goa Children's Act has to be understood in the facts and circumstances of each case. Only because teacher scolded a student or even inflicted some reasonable punishment, would not in any manner constitute offence as it has to be kept in mind that such measures were taken by the teacher only and only for the purpose of maintaining the discipline of the school and to correct a child who is misbehaving or committing mischief which is detrimental to the discipline of the school and affecting other students. If one student who is carrying out such mischief, is given a free hand and not punished or scolded, would spoil the atmosphere in the class and the school and other students would also tend to behave in such manner.

43. In the case of *Ganesh Chandra Saha* (supra), the Calcutta High Court observed in para 8 as under:-

“9. The English law recognises that a School master may inflict corporal punishment on a pupil for purposes of correction or for enforcing School discipline. The English law also recognises that while the child is at School, the school master is in the position of a parent, that the parental authority is delegated to the School master and the School master represents the parent for the purposes of correction (vide (1) Regina v. Hopley, (1860) 2 F. & F. 202 and (2) Cleary v. Booth, (1893) 1 Q.B. 465). The Rangoon High Court has held in (3) King Emperor v. Maung Ba Thaung (A.I.R. 1926 Rangoon 107) that the school master can inflict reasonable corporal punishment. In that case a School master was prosecuted

under Section 323 of the Penal Code, 1860 for beating a boy of the School with a cane. It was held that the School master had committed no offence, in view of Section 89 of the Penal Code, 1860 because the school master acted bonafide in the interest of school discipline.”

44. In the case of *K.A. Abdul Vahid* (supra), Kerala High Court after referring to Sections 88 and 89 of IPC observed in paras 5 and 6 as under:-

“5. The applicability of Section 88 and 89, I.P.C. and administering of corporal punishments on students by the teachers for their benefit, came up for consideration in M. Natesan v. State of Madras, AIR 1962 Madras 216 : (1962 (1) Cri LJ 727. It was a case where a boy of 15 years was sent with the progress report to get the signature of his parents in it. But he returned it with a thumb impression of another person, stating that the said thumb impression was that of his mother, which was proved to be wrong. The teacher got agitated and he beat the boy on his right palm with a stick. He did not cry. He, therefore, beat him again, asking him why he did not cry. This resulted in causing three injuries, two superficial and one contusion. The Madras High Court laid down the principle of law at paragraph 5 as follows:-

"5. It cannot be denied that having regard to the peculiar position of a school teacher he must in the nature of things have authority to enforce discipline and correct a pupil put in his charge. To deny that authority would amount to a denial of all that is desirable and necessary for the welfare, discipline and education of the pupil concerned. It can therefore be assumed that when a parent entrusts a child to a teacher, he on his behalf impliedly consents for the teacher to exercise over the pupil such authority. Of course, the person of the pupil is certainly protected by the penal provisions of the

Indian Penal Code. But the same code has recognised exceptions in the form of Sections 88 and 89. Where a teacher exceeds the authority and inflicts such harm to the pupil as may be considered to be unreasonable and immoderate, he would naturally lose the benefit of the exceptions. Whether he is entitled to the benefit of the exceptions or not in a given case will depend upon the particular nature, extent and severity of the punishment inflicted."

6. A similar situation in respect of a 13 year old student came up for consideration before the Honourable Calcutta High Court, in *Ganesh Chandra Saha v. Jiw Raj Somani*, AIR 1985 Calcutta 32 : (1965 (1) Cri LJ 24). It was a case where a student lost his book and it was found to be stolen by another person of the school, by name Samshi of Class VII. Petitioner was the Headmaster of the school. He beat the said student, Samshi, who committed theft of the book, with a cane and also gave him some fists and blows. He was charged for the offence under Section 323, I.P.C. The Magistrate found him guilty and sentenced him to pay a fine of Rs. 15,000/- with default sentence. This was challenged before the High Court of Calcutta. The wound certificate showed that Samshi had some minor injuries, but one tooth was found loose, which could have been caused because of the blow inflicted on the student. Discussing on this aspect and also accepting the principle of law, recognised in England and Schools therein, the Honourable Calcutta High Court observed thus:

"(8)..... When a boy is sent by his parent or guardian to a School, the parent or the guardian must be said to have given an implied consent to his being under the discipline and control of the School authorities and to the infliction of such reasonable punishment as may be necessary for the purposes of School discipline or for correcting him. Then again when a boy over 12 years of age himself goes to a school it should be presumed that he gives an implied

consent to subject himself to the discipline and control of the School authorities and to receive such reasonable and moderate corporal punishment as may be necessary for his correction or for maintaining School discipline. Under the Indian Penal Code consent can be given by a child not under 12 years of age (vide Section 90 of the Indian Penal Code). The action of the petitioner in administering corporal punishment to the complainant is, therefore, covered by Section 88 of the Indian Penal Code."

Therefore, the Court came to the conclusion that the Headmaster did not commit any offence under Section 323 I.P.C., in view of the provisions of Section 88, I.P.C."

45. In the case of *Rajan @ Raju* (supra), Kerala High Court discussed that when a student is sent by his parent or guardian to a school, the parent or guardian must be deemed to have given an implied consent to the child being under the discipline and control of the school authorities and to the infliction of such reasonable punishment as may be necessary for the purpose of school discipline or for correcting him. While dealing so, it is observed in para No.11 as under:-

"The precedents cited by the petitioner were all rendered prior to the advent of the JJ Act, 2000. However, the principles laid down can be applied to the instant case as well. In the cited cases, their Lordships have taken a view that when a student is sent by his parent or guardian to a school, the parent or guardian must be deemed to have given an implied consent to the child being under the discipline and control of the school authorities and to the infliction of such reasonable punishment as may be necessary for the purposes of school discipline or for correcting him. The courts have taken the view that the school teacher, in view of his peculiar position, must in the nature of things, have authority to enforce discipline

and correct a pupil, who is put in his charge. The courts have also taken the view that it can be assumed that when a parent entrust a child to a teacher, he on his behalf impliedly consents for the teacher to exercise over the student such authority. However, the nature and gravity of the corporal punishment inflicted by the teacher would determine as to whether he can be proceeded under the penal provisions. If the teacher, out of unbridled fury, excitement or rage, inflicts injuries which are of such a nature as to cause unreasonable physical suffering or harm to the child, the same cannot be condoned on any ground or on the principle of express or implied consent.”

46. In the case of ***Lalita Kumari vs. Government of Uttar Pradesh and Others***⁷, the Supreme Court has observed in para 119 as under:-

“Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the

⁷ (2014) 2 SCC 1

information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.”

47. In the conclusions starting from para No.120, the Supreme Court has observed in para No.120.6 as under:-

“120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:-

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

48. The above observations of the Supreme Court clearly goes to show that the cases mentioned therein are only illustrative and not exhaustive of all conditions which may warrant preliminary inquiry. Keeping in mind the above observations of the Apex Court and the provisions of Goa Children's Act, the issue has to be considered with the aims and objects of the said Act.

49. A special procedure is provided under the Children's Act in regard to the violations as provided in Sections 3, 4 and 5 for which a competent authority is empowered under Section 15 to inquire into and if satisfied, refer the matter to any authority including police. Section 24(3) of the said Act specifically provides that offences under Sections 3, 4 and 5 and clause (c) of Sub-Section 5 of Section 7 are required to be taken cognizance of and tried by the competent authority only. Section 30(3) of the said Act wherein it is provided that the powers of competent authority and special officers under the said Act shall not fall within the jurisdiction of Children's Court.

50. In order to properly understand the above submissions, the above provisions are quoted below for ready reference:-

“3. Rights of the Child.— (1) The State shall ensure that children are protected from child abuse, sexual offences, child trafficking, child prostitution and violation of their rights against exploitation and that they are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.

(2) []

(3) The State shall promote with special care the educational interests of children from the weaker sections of society including the Scheduled Castes and Scheduled Tribes.

(4) The State shall regard the raising of the level of nutrition and the standard of living as well as the improvement of public health as among its primary duties.

(5) The provisions of the Convention of the Rights of the Child as acceded to by the Government of India

are hereby declared to be part of the law of the land and it shall be the duty and responsibility of the State Government to respect and ensure that the Rights of the Child as declared and enumerated in the Convention, are protected and guaranteed to every child within the territory of Goa.

(6) For the proper implementation of the Rights of the Child included in the Convention and to prevent any discrimination, exploitation or abuse of the child on any ground, government shall take adequate measures;

(7) All the authorities, whether public or private, shall, while undertaking any action concerning children, take the best interest of the child as the primary consideration.

(8) The provisions of the Convention on the Rights of the Child are taken as rights of the child in Goa and are legally enforceable, except where they pertain to the central government or to any other authority which is outside the purview of the state government provided that nothing in this section shall restrain the government from specifying higher standards for children.

4. Education.— *(1) That State shall endeavor to promote holistic education. Universal application of joyful learning processes should be ensured.*

(2) The State accepts the concept of zero rejection for children. No child shall therefore be denied admission to any school on any ground including that the name of the father is not available; the absence of relevant documentation; the child is suffering from HIV or AIDS; belongs to marginalized communities; suffers from any illness or that the child is differently abled.

(3) Counseling facilities by trained personnel shall be provided to the child in all schools;

(4) All schools shall preferably include child rights and gender justice in their curriculum and at least 48 hours

of instruction every year shall be exclusively devoted to teaching and discussing all matters related to these. The duties of the child should also be discussed during these sessions. This will apply to all students from Standard V and above.

(5) The school curriculum shall preferably also include health awareness including malaria, AIDS, personal hygiene, nutrition, family life education, communicable diseases, alcoholism, substance abuse, sexuality education, etc. irrespective of the stream of education. This will apply to all students from Standard V and above.

(6) Health applied education towards holistic health shall be preferably included in all schools with, among other things, yoga, pranayama and meditation, in the physical education curriculum. This will apply to all students.

(7) All schools shall have mechanism such as School Parliament to foster participatory democratic processes. This will apply to all students from Standard VIII and above.

(8) The Government shall strive to work towards the goal of universal elementary education and eradication of child illiteracy within a period of seven years from the commencement of this Act. The State shall prepare a comprehensive Plan of Action for achieving this which may include provision for alternate schooling including non-formal education, vocational and livelihood-skills training, and shall create the necessary infrastructure and an enabling environment in order to realise the goal.

(9) The State shall lay down guidelines for early childhood care and education and for all pre-school educational institutions for children, including registration and regulation of standards.

(10) Every school shall have safe drinking water, toilet facilities and adequate physical infrastructure including barrier free access.

(11) Every school shall be equipped with appropriate and adequate teaching aids.

(12) Corporal punishment is banned in all schools.

(13) The State shall, in the manner prescribed, provide support to all children with disabilities and challenges.

(14) A participatory evaluation and learning process rather than the exam system based on learning by rote and ensuring that all children have attained minimum levels of learning should be evolved.

(15) Any contravention or non-adherence of the provisions of this section shall be dealt with by the Competent Authority only and shall be punishable with a fine which may extend to Rs. 50,000/-.

5. Health & Nutrition.— *(1) Mandatory immunisation with MMR vaccine in children, Rubella vaccine in adolescent in girls and Hepatitis B vaccine in infancy should be introduced in a phased manner as part of the on going free Immunisation programme of the State.*

(2) The State shall endeavour to make possible Maternity leave of 6 months in all sectors of employment including for adoptive mothers and single parents.

(3) Creches and day care centers for infants and children of working mothers in all sectors of employment may be set up at the work site or close to the same, in cities and villages, to the maximum extent of available resources.

(4) The State should ensure the creation and maintenance of comprehensive Health cards inclusive of growth and developmental, immunisation and other records for all infants and children including those in crèches, homes and schools, and migrant children.

(5) The State shall seek to provide for palliative and terminal care for infants and children with life threatening and terminal illnesses like cancer and HIV/AIDS.

(6) That State shall take effective steps so that parents do not transmit the HIV virus to their child.

(7) It shall be the duty of all individuals, organizations, institutions etc., to keep their immediate environment clean and free of garbage, faeces, and other items harmful to children. Non-observance of the provisions of this sub-section will carry a penalty which may range from Rs. 100/- to Rs. 1000/-.

(8) The State shall strive to reach higher standards for children by protecting them from malaria and from all avoidable illness and diseases.

(9) Special provisions shall be made for the treatment, education and integration of all children with leprosy.

(10) Special attention shall be given to issues of substance psycho-social well being drug and alcohol abuse in children.

(11) No medical institution or clinic or hospital or nursing home shall reject admission or treatment of a child or pregnant mother who has any illness or disease or ailment which has a social stigma attached with it, such as Leprosy, AIDS, etc.

(12) Any contravention or non-adherence of the provisions of this section, except for sub-section (7), shall be dealt with by the Competent Authority only and shall be punishable with a fine which may extend to Rs. 50,000/-.

for all forms of domestic labour, a fine of Rs. 50,000/- (Rupees fifty thousand only) for the person employing the domestic child labour;”

15. Powers of the [Competent Authority, Director and Special Officer].— (1) If the Competent Authority

or Director or Special Officer, as the case may be, is satisfied, whether upon information received or otherwise or in any other fit case, of the violation of the rights of a child, he shall issue a notice, requiring the person or persons who the Competent Authority or Director or Special Officer, as the case may be, deems to be responsible for the violation to appear before him and to show cause why action should not be taken against him and take one or more of the following steps, within a period as may be fixed in the notice, and not exceeding sixty days in any case:—

(a) to dismiss the representation or petition;

(b) direct the person or persons to take such steps as may be necessary in the best interests of the child;

(c) [omitted]

(d) refer the matter to any other authority including the Police;”

24.(3) - *Only the Children’s Court shall take cognizance of all offences under this Act which are punishable with imprisonment of either description and of any term. Offences under sections 3, 4, 5 and clause (c) of sub-section (5) of section 7 may be taken cognizance of and tried by the Competent Authority.*

30.(3) - *The powers of the Competent Authority and the Special Officers under this Act shall not fall within the jurisdiction of the Children’s Court.”*

51. Section 2(b) provides a definition with regard to a “care giver” who is a person, who is responsible for looking after the well being of the child. This person may be a staff member of any residential facility for children, an employee of an educational institution, a nursery, creche, a clinic, a hospital, a sports club, a recreational

facility or an employee of any facility which provides services to the children which also includes teacher.

52. Whenever any allegations are made with regard to corporal punishment in the school, which is banned as per Section 4(12) of the said Act, the procedure is to approach a competent authority as provided in Section 4(15) quoted above. The matter in hand clearly goes to show that allegations were made against the Appellant in connection with corporal punishment in the school. In such circumstances, the rights of the child and specifically violation/contravention of such rights of a child in a school are found in Section 14 which reads thus:-

“14. Violation, Contravention and Penalties.— (1) The following shall be deemed to be contraventions of the Rights of the Child:—

(a) non-adherence to or contravention of the provisions of sections 3, 4 and 5 of this Act and the rules made thereunder.

(b) If the Competent Authority is satisfied, after considering the facts and for reasons to be recorded in writing, that any act of omission or commission constitutes a non-adherence to or contravention of any of the provisions of this Act including those in Section 3.

(2) There shall be a Competent Authority which for the purpose of this Act shall be the Secretary to the Government in charge of the Department of Women and Child Development.

(3) The Competent Authority shall have the power to impose penalties for any contravention ranging from Rs. 100/- to Rs. 50,000/- on every occasion.

(4) If such fine is imposed on any Government servant for violation of the rights of a child, the fine so imposed shall be paid by the defaulting employee or recovered from his salary or wages.

(5) The decision of the Competent Authority as to whether an action or inaction constitutes a violation of the rights of the child shall be final and binding.

(6) [omitted]

(7) The Government may authorize Special Officers to entertain representations or petitions regarding contravention of or non-adherence to the rights of a child. The Special Officer may refer the petitioner to the police or may call for information from any person in Goa regarding such alleged contravention or non-adherence and may conduct inquiry into the representation or petition. The Special Officer shall submit his report on each violation, with recommendations and justifications for the same, to the Competent Authority through the Director.

(8) The Competent Authority may take action under the provisions of this Act in any case of a child.

(9) Any person may give information as regards contravention of any provision of this Act or the rules made there-under to a Special Officer, Labour Inspector or to the Director or to a Police Officer-in-charge of a Police Station.”

53. Perusal of above Section 14 shows that non-adherence to or contravention of provisions of Sections 3, 4, and 5 of the said Act and the Rules made thereunder are required to be dealt with as provided under the said above provision by approaching the competent authority as defined in Section 2(i) which reads thus:-

“2.(i) “Competent authority” means the Secretary to the Government in charge of the Department of Women and Child Development;”

54. On receipt of such complaint regarding contravention or violation of rights of a child in a school or other institutions such as staff member of any residential facility for children, an employee of an educational institution, a nursery, creche, a clinic, a hospital, a sports club, a recreational facility or an employee of any facility which provides services to the children, as provided in Sections 3, 4 and 5 and if the competent authority is satisfied on considering facts and for reasons to be recorded in writing that any act of omission or commission constitute a non-adherence to or contraventions of any of the provisions of said Act including those mentioned in Section 3, shall have power to impose penalties for any contravention ranging from ₹100/- to ₹50,000/- on every occasion, amongst others.

55. Similarly, the powers of competent authority are elaborately discussed in Section 15 as quoted earlier which include the decision of the competent authority upon information received of the violation of rights of a child, to issue notice requiring the person or persons who are deemed to be responsible for such violation, to appear before the competent authority and show cause why action should not be taken against him and to take one or more of the steps within a period not exceeding 60 days in any case. Such steps includes rejection/dismissal of the representation or petition of violation of child rights, directing the person or persons to take such steps as may be necessary in the best interest of the child, to refer the matter to any authority including police, etc.

56. Sub-Section 2 of Section 15 casts a duty on the in-charge of a police station within whose area such violation is reported, to provide all possible assistance to the competent authority including removing of a child from such institution and the officer-in-charge of the police station shall be answerable and responsible for non-compliance of the requisition made by the competent authority. Similarly, when the competent authority issues notice under Sub-Section 1 of Section 15 to any person who is deemed to be responsible for violation of the child rights in such institution fails to comply with the direction contained in the show-cause notice, the competent authority is entitled to take cognizance of such failure on the part of alleged violator which shall be cognizable offence punishable with simple imprisonment for a term which may extend to 30 days or with fine which may extend to ₹5000/- or with both. Thus, the competent authority is empowered even to take recourse for failure to comply with these directions and to punish the person for non-adherence to the notice with simple imprisonment which may extend to 30 days with fine or with both. Sections 16 and 17 of the Act provide penalty for prevention of the entry of the competent authority or the in-charge of the police station and in case of adverse orders, remedy to file appeal is also provided in Section 18 of the Act.

57. Section 20 of the said Act provide cognizance of offences and reads thus:-

“20. Cognizance of offences.— No cognizance of any offence under this Act shall be taken except,—

(a) on a complaint made by the child victim or his or her parent(s), and in their absence, his or her guardians or close relatives, or police or the Competent Authority or the Director or a Special Officer or Labour Inspector or any authority or Officer authorized in this behalf by the Government; or

(b) on a report or charge-sheet made by the police.”

58. This Section specifically deals with the powers of the competent authority to take cognizance of offences on a complaint made by the victim child or his parents or in their absence, by his or her guardian or even close relative. Section 21 deals with compounding of offences wherein it is provided that any offence punishable with fine only under the Act may either before or after institution of the proceedings be compounded by such officer or authorities and for such amount as the Government may by notification in the Official Gazette specify in that behalf.

59. Thus, on a combined and co-joint reading of above provisions and more specifically the violations of child rights provided under Sections 3, 4 and 5 wherein penalty is only by way of fine and jurisdiction to entertain such violations is with the competent authority, the provision of Section 30(3) as quoted above restrict the jurisdiction of Children's Court. It provides that the powers of the competent authority and the special officers under this Act shall not fall within the jurisdiction of the Children's Court. Similarly, Section 24(3) as quoted above specifically provide that jurisdiction and powers of Children's Court to take cognizance of the offences under the said Act are with regard to all offences which are punishable with imprisonment of either description and of any term. It further

provides that offences under Section 3, 4 and 5 and Clause (c) of Sub-Section 5 of Section 7 may be taken cognizance of and tried by the competent authority.

60. In the present matter, the offence as alleged against Accused/Appellant is basically coming within the purview of Section 4(12) of Goa Children's Act wherein corporal punishment is banned in all schools. Admittedly, there is no definition of corporal punishment found in the said Act. Therefore, we have to fall back with the dictionary meaning. As per Black's Law Dictionary, corporal punishment is physical punishment as distinguished from pecuniary punishment or a fine; any kind of punishment of or inflicted on the body. In the light of above, when such incident happened in the school, though it is prohibited under Section 4(12), the procedure which has been provided under the Act as discussed above and more specifically in Section 14, needs to be followed. Thus, even if a complaint is directly filed with the police authorities in connection with any corporal punishment inflicted on a child in school, the observations of the Apex Court in the case of *Lalita Kumari* (supra) and as referred in para nos. 46 and 47 above, need to be followed. The proper procedure would be to approach the competent authority who after conducting necessary inquiry as contemplated under Section 14, take necessary action and if it is of the opinion that FIR needs to be registered, inform the police accordingly.

61. Thus, the purpose of Goa Children's Act is mainly to protect the child from any abuse including physical, psychological or otherwise, but also gives the specific procedure with regard to the institutions

including schools wherein the child remains in custody of such staff or the employees of the schools, etc. In these circumstances, it is also the duty of the investigating agency i.e. the police to conduct a preliminary inquiry or direct the complainant to approach competent authority i.e. Directorate of Women's and Child Development whenever there are allegations regarding corporal punishment and more specifically during the school hours. If such procedure is followed, it would avoid and restrict the matters which are directly filed before the Children's Court specifically with regard to such allegations of physical abuse by the teacher only with an intent to correct a child and to discipline.

62. The matter in hand clearly goes to show that first of all there is no conclusive evidence to prove that the accused used any stick or ruler to assault PW1 and PW2. Secondly, depositions of PW1 and PW2 are contrary to each other on material aspects. Both these witnesses tried to improvise only to cover their own mistakes and mischief in the school, which normally a child is intending to do. To my mind, the present matter is squarely attracted under the provisions of Section 89 of IPC as even if it is considered that the teacher/accused used some physical force, it was only to correct the child, with no malafide or other intentions.

63. Having said so, the punishment imposed on the Appellant/Accused needs to be quashed and set aside.

64. Hence, the order:-

a. Appeal is allowed.

- b. Impugned Judgment and Conviction under Section 324 of IPC and Section 2(m)(i) punishable under Section 8(2) of the Goa Children's Act, 2003, stands quashed and set aside.
- c. Accused stands acquitted of all the charges.
- d. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.

JOSE
FRANCISCO
DSOUZA

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