2024:KER:48062

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 24TH DAY OF JUNE 2024 / 3RD ASHADHA, 1946

CRL.MC NO. 6506 OF 2019

CRIME NO.690/2018 OF KODANADU POLICE STATION IN C.C.NO.602/2018 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-III, PERUMBAVOOR.

PETITIONER/ACCUSED:

JOMI,

BY ADV SHIBU VARGHESE

RESPONDENTS/STATE, VICTIM AND INFORMANT:

1 STATE OF KERALA
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
KODANADU POLICE STATION, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN PIN-682 031

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3 THE CHAIRPERSON,
CHILD WELFARE COMMITTEE, ERNAKULAM,
GOVT. CHILDREN'S HOME,
KAKKANAD, ERNAKULAM PIN-682 030

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R1 SRI.RENJIT GEORGE, SENIOR PUBLIC PROSECUTOR

ADV.K.N.GOVINDANKUTTY MENON

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.06.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

' C.R.'

ORDER

Dated this the 24th day of June, 2024

This is a petition filed by the petitioner under Section 482 of the Code of Criminal Procedure seeking quashment of Annexure C Final Report in Crime No.690/2018 of Kodanadu Police Station, which is now pending as C.C. No.602/2018 on the files of the Judicial First Class Magistrate Court-III, Perumbavoor against him.

2. Heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel for the defacto complainant.

3. The sum and substance of the prosecution allegation is that the victim aged 13 years, who was studying in 8th Standard was beaten by the accused, when she secured less marks in a test paper conducted by the accused, who is the English Teacher and the Principal of St.Joseph School,

Thottuva, where the minor girl was studying. Recording the statement of the victim, crime was registered alleging commission of offence punishable under Section 324 of the Indian Penal Code as well as Section 82 of Juvenile Justice Act ('JJ Act' for short, hereinafter).

4. The learned counsel for the petitioner would submit that the offence under Section 82 of the JJ Act would not attract in the present case, since Section 82 deals with corporal punishment imposed by any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child.

5. According to the learned counsel, as per the definition provided under Section 2(21) of the JJ Act, Child Care Institution is defined as "Children's Home, Open Shelter, Observation Home, Special Home, Place of Safety, Specialised Adoption Agency (SAA) and a Fit Facility recognised under this

Act for providing care and protection to children, who are in need of such services" and the same would not include school apart from the institutions specifically referred in the Section. Therefore, offence under Section 82 of the JJ Act would not attract.

6. When the learned counsel is asked why Section 75 of the JJ Act would not attract, he submitted that imposing some lesser punishment as part of discipline acting on the implied authority given by the parents to guide the student with bonafide intention would not constitute an offence under Section 75 of the JJ Act. Be it so, no offence under Section 324 of IPC also would attract. He has placed decisions of this Court reported in **K.A. Abdul Vahid v. State of Kerala** [2005 (2) KLT 72] and **Rajan @ Raju, S/o.Choyi v. The Sub Inspector of Police, Feroke Police Station and others** [2019 (1) KLT 119] in support of this contention.

7. In **K.A. Abdul Vahid's case** (supra), this Court in paragraph No.8 observed that when a child is sent to Madrassa or a school, the parents of the said child give an implied authority to the master or the class teacher or Headmaster/Headmistress to enforce discipline and correct the students who commit errors in front of him or her or in the classes. If a corporal punishment is given by any of them, in the process of maintaining such discipline, and also to make him/her adhere to the prescribed standards of the school, which are necessary for the upliftment and development of the child, including the development of his character and conduct in and outside the school, so that he is trained to be aware of the good qualities of a citizen, it cannot be said to be an act intended to injure the student. In such a situation, if no intentional injury is caused, considering the age of the student, it cannot be said that the said school teacher has inflicted

injury to harm him. But again, the act of the teacher on the student, in imposing corporal punishment, depends upon the circumstances of each case. If a teacher out of fury and excitement, inflicts injuries which is harmful to the health of a tender aged student, it cannot be accepted as a right conferred on such a teacher to inflict such punishment, because of the express or implied authority granted by the parents of that student. Therefore, there cannot be any generalised pattern of principle in such situations. The acts of a teacher has to be appreciated and assessed depending upon the circumstances that are placed before the Court, in each case. It is the duty of the teachers to have a restrained and controlled imposition of punishments on the pupils under their care and charge. Unwieldy, uncontrolled and emotional attacks or actions on their part cannot be accepted. However, in this case, a Madrassa teacher, petitioner herein, gave beatings on the

gluteal region, only to make him to adhere the standards of Madrassa. Therefore, it was done with the bona fide intention. I do not find that the petitioner had any mens rea so as to inflict an injury under Section 324 I.P.C.

8. In **Rajan @ Raju's case** (supra), this Court in Paragraph No.11 observed that 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.

9. The learned Public Prosecutor pointed out that going by the facts of the case, offences punishable Section 324 IPC as well as Section 75 of the JJ Act would attract and

therefore the quashment prayer is liable to fail.

10. Going by the prosecution allegations, a student studying in 8th Standard was beaten by the Principal and English Teacher of the School when she failed to secure fair marks in a test paper conducted by the Teacher. Though there is allegation of beating, no serious injuries sustained. Therefore, it has to be held that the teacher had no malafide intention while beating the accused or his intention was to guide the student by alerting her to the necessity of studying well and securing high marks in the subject. If teachers being roped into under the provisions of the JJ Act for devicing simple and least onerous corrective measures to keep the discipline of the School or the Educational Institution the discipline of the School or the Institution would be in peril. At the same time, when the teacher exceeds his authority beyond the limit and causes serious injuries or physical assault of

similar nature definitely the penal provisions of JJ Act would squarely apply. Viewing so, it could not be held that the petitioner herein committed offence under Section 75 of the JJ Act.

11. Retorting to Section 82 of the JJ Act, the same provides that any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or with both. As per Section 2(21) of the JJ Act, Child Care Institution is defined as "Children's Home, Open Shelter, Observation Home, Special Home, Place of Safety, Specialised Adoption Agency (SAA) and a Fit Facility recognised under this Act for providing care and protection to children, who are in need of such services. Since

Section 2(21) of the JJ Act does not include a school, it could not be held that Section 82 of the JJ Act would attract in the present case since offence under Section 82 of the JJ Act would apply specifically to child care institution dealt under Section 2(21) of the JJ Act. Coming to Section 324 of the IPC, the same would not attract since there is nothing available in the prosecution records to suggest that the accused beat the student with malafide intention so as to cause hurt to her.

In that view of the matter, this petition stands allowed. All further proceedings pursuant to Annexure C Final Report in Crime No.690/2018 of Kodanadu Police Station, which is now C.C. No.602/2018 pending before the Judicial First Class Magistrate Court-III, Perumbavoor against the petitioner stand hereby quashed.

Sd/-
A. BADHARUDEEN
JUDGE

bpr

APPENDIX OF CRL.MC 6506/2019

PETITIONER'S ANNEXURES

ANNEXURE A	**CERTIFIED COPY OF FIS OF THE VICTIM IN IN CRIME NO. 690/2018 OF KODANADU POLICE STATION IN C.C NO 602/2018 BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT III, PERUMBAVOOR**
ANNEXURE B	**CERTIFIED COPY OF FIR OF CRIME NO. 690/2018 (KODANADU PS) IN CC NO. 602/2018 BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT III, PERUMBAVOOR**
ANNEXURE C	**CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 690/2018 OF KODANADU POLICE STATION FILED BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT III, PERUMBAVOOR AS CC NO.602/2018**