IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 24TH DAY OF JANUARY 2022 / 4TH MAGHA, 1943

CRL.REV.PET NO. 819 OF 2015

AGAINST THE ORDER IN SC 692/2014 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT, ERNAKULAM

REVISION PETITIONER/ACCUSED:

JAYA
AGED 48 YEARS
W/O.ANIL KUMAR, RESIDING AT BLAVATH HOUSE,
PALLAMTHURUTH KARA, PARAVUR VILLAGE,
ERNAKULAM-683 513.

BY ADVS.
SRI.T.K.SASINDRAN
SRI.T.S.SHYAM PRASANTH

STATE/COMPLAINANT/RESPONDENT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682030.

2. STATION HOUSE OFFICER
VADAKKEKARA POLICE STATION, ERNAKULAM-683 522.

3. ANANDU P.H.
AGED 15 YEARS
REPRESENTED BY FATHER HARI P.A., RESIDING AT POKKATHUPARAMBIL HOUSE, KOOTTUKAD, CHENDAMANGALAM VILLAGE, ERNAKULAM-683 512.

4 HARI P.A.
AGED 46 YEARS
S/O.ANANTHAN, POKKATHUPARAMBIL HOUSE, KOOTTUKAD,
CHENDAMANGALAM VILLAGE, ERNAKULAM-683 512.

BY ADV SRI.K.I.SAGEER

OTHER PRESENT:

SRI SANGEETHA RAJ-PP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05.01.2022, THE COURT ON 24.01.2022 PASSED THE FOLLOWING:

C.R.

O R D E R

Dated this the 24th day of January, 2022

This Criminal revision petition has been filed by the sole accused in SC No.692/2014 on the file of the Additional Sessions Court, Ernakulam (for short, the Court below) u/s 397 r/w 401 of the Code of Criminal Procedure (for short, Cr.P.C.) challenging Annexure A4 charge framed against her.

2. The revision petitioner/accused was the class teacher of the Standard VI in DDS High School, Karimbadam, Paravur. The de facto complainant/3rd respondent was a student in the same class. The 4th respondent is his father. The prosecution case in short is that on 27/6/2011 at about 11.00 a.m., at the class room, the revision petitioner, due to enmity towards 3rd respondent for the delay in taking out textbook and with the intention to cause hurt, attempted to beat him with a cane on the top of his right elbow, but when he suddenly turned his face up, the butt of the same touched his right eye corneal causing abrasion and, thus, committed the offences punishable u/s 324 of the Indian Penal

Code (for short, the IPC) and S.23 of Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, the JJ Act).

3. The revision petitioner appeared at the Court below. She was released on bail. She argued for discharge u/s 227 of Cr.P.C. on the ground that there was no sufficient ground to proceed against her. The Court below upon consideration of the records of the case and after hearing the submission of the revision petitioner and the prosecution formed the opinion that there was ground for presuming that the revision petitioner has committed the offence and, accordingly, framed charge against her u/s 324 of the IPC and S.23 of the JJ Act. Challenging the same, the revision petitioner preferred this revision.

4. Heard both sides and perused the records.

5. The learned counsel for the revision petitioner submitted that a close reading of the FIR, FIS, statement of the witnesses and the documents on record would reveal that there are no sufficient ground for proceeding against the revision petitioner. The counsel further submitted that there is not even a *prima facie* case, even after the final report, is made out by the prosecution, for accusing the revision petitioner with the offence

u/s 324 of IPC and S.23 of JJ Act. The court below ought to have discharged the revision petitioner u/s 227 of Cr.P.C., submitted the counsel.

6. Chapter XVIII of the Code lays down the procedure for trial before the Court of Sessions, pursuant to an order of commitment under S.209 of the Code. S.227 contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under S. 228. It provides that upon consideration of the record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the Court is expected, nay bound to decide, whether there is 'sufficient ground' to proceed against the accused and as a consequence thereof, either discharge the accused or proceed to frame charge against him.

7. It is trite that the words 'not sufficient ground for proceeding against the accused' appearing in the Section postulate exercise of judicial mind on the part of the Court to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing

this fact, the Court has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. A prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the Court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. At the stage of consideration of an application for discharge, the Court is required to consider whether there are sufficient grounds to proceed against the accused. The Court is not to examine and assess in detail the materials on record produced by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. By and large, however, if two views are equally possible and the Court is satisfied that the evidence

produced before it gives rise to suspicion only as distinguished from grave suspicion, the Court will be fully within its right to discharge the accused. At this stage, the Court is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible. [***State of Bihar v. Ramesh Singh*** 1977 (4) SCC 39; ***Union of India v. Prafulla Kumar Samal and Anr*** 1979 (3) SCC 4; ***Dilawar Babu v. State of Maharashtra***, AIR 2002 SC 564; ***Sajjan Kumar v. CBI,*** 2010 (9) SCC 368; ***State v. A. Arun Kumar,*** 2015 (2) SCC 417; ***Mauvin Godinho and Others v. State of Goa***, AIR 2018 SC 749; and ***State by the Inspector of Police, Chennai v. S. Selvi and Another***, AIR 2018 SC 81].

8. In ***Sajjan Kumar*** (supra), the Apex Court on consideration of the various decisions about the scope of S. 227 and S.228 of the Code, laid down the following principles:

> *i) The Judge while considering the question of framing the charges under S.227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon*

the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of S.227 and S.228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it

> *cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*
>
> *vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.*"

9. The principle that can be culled out from the law well settled by a catena of judicial precedents is that, if evidence, which the prosecution proposed to adduce to prove the guilt of the accused, even if fully accepted, before it is challenged in cross examination or rebutted by defence evidence, if any, cannot show that the accused has committed the offence, then there will be no sufficient ground for proceeding with the trial.

10. The revision petitioner fairly conceded that she being the class teacher tried to bring the noisy class into silence and discipline by making cane sound, beating it on the table. According to her, when all the students sat silently and properly, the 3rd respondent alone was sitting under the bench looking for something. Seeing this, she with *bonafide* intention to call the attention of the 3rd respondent to the class, without the intention

to beat him or cause hurt to him, tried to touch his right hand elbow portion with the cane. Simultaneously, the 3rd respondent looked upwards and the cane-butt touched his right eye corneal portion gently. It was contended that the revision petitioner was only performing her duty in the class room in its right spirit and she had no intention at all to cause hurt to the 3rd respondent when she attempted to bring his attention to the class and teaching and it was done in good faith for his benefit. It was further urged that she never crossed the limit and exercised her authority reasonably and lawfully as warranted on occasion when the class room became a pandemonium.

11. Parents at home and teachers at school are most important influences in one's life. Parents give birth to a child whereas teachers mould that child's personality and provide a better future. Children have the right to clean environment at home, school or wherever they are. Safe and secure childhood is the right of every child. Paddling children or inflicting disproportionate corporal punishment on them either by a parent or a teacher is, no doubt, forbidden. Article 19 of the Convention on the Rights of the Child, 1989 (for short "UNCRC") adopted by

the United Nations provides for measures to protect children against all forms of physical abuse and imposes an obligation on member states to protect children from all forms of physical or mental violence, injury or abuse. India ratified the UNCRC in 1992. Under the Right of Children to Free and Compulsory Education Act, 2009 (for short "RCFCE Act") corporal punishment is violative of the right of the child to education, as well as the right to life with dignity. According to Section 17 of the RCFCE Act, no child shall be subjected to physical punishment or mental harassment. However, parents, teachers and other persons in *loco parentis* are entitled as a disciplinary measure to apply a reasonable degree of force to their children or pupil old enough to understand the purpose to which the act was done. Hurt of a less serious crime is not forbidden when inflicted in the reasonable chastisement of a child by a parent or by a school teacher to whom the parent has delegated or is deemed to have delegated his authority. But, if the punishment imposed is given out of spite or for some other non disciplinary reason or if the force is unreasonable or immoderate, it is unlawful [***Rajan v. Sub Inspector of Police*** (2019(1) KLT 119)]. Classroom discipline is

very important for effective teaching and learning. Thus, a teacher who without malicious intention administers a moderate and reasonable force to a pupil to enforce discipline in class room/school cannot be exposed to criminal prosecution or fastened with penal liability.

12. Now, let me examine whether specific offences charged against the revision petitioner - S.324 of IPC and S.23 of the JJ Act - have been attracted or not. S.324 of IPC deals with "voluntarily causing hurt by dangerous weapons or means". It is evident from the Seizure Mahazar [Annexure A2(7)] that the revision petitioner used ordinary cane of 68 cm. length and 1½ cm circumference. The cane used by the revision petitioner is generally used by a class teacher in ordinary course to control noisy class so as to maintain discipline. It cannot be considered as a dangerous weapon. A cane with any loaded iron top etc. alone is a dangerous weapon, as rightly argued by the learned counsel for the revision petitioner. In order to attract S.324 of IPC, hurt by means of dangerous weapon should be caused voluntarily. The word 'voluntarily' u/s 39 of IPC reads as follows:

*"**39**. "Voluntarily" A person is said to cause an effect*

> *"voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.*"

Thus, to constitute an offence of voluntarily causing hurt, there must be complete correspondence between the result and the intention or the knowledge or belief of the person who caused the said hurt. S.23 of the JJ Act will be attracted when unnecessary mental or physical suffering is caused by a person in charge of control over the child by assaulting, abandoning, exposing or wilfully neglecting the child or by causing such act to be done.

13. The case records would disclose that the revision petitioner had no intention at all to cause hurt to the 3rd respondent. The alleged incident happened when she attempted to bring his attention to the class. Annexure A2 consist of the statement of two students in the same class viz., Sreejith and Naveen who sat next to the 3rd respondent in the same bench. Their statements [Annexure A2(7) and (8)] would clearly show that when the revision petitioner attempted to touch with cane on the right elbow of the defacto complainant to make him sit on the bench properly and to attend the class, the 3rd respondent who

was searching for school bag kept on the floor suddenly raised face and at that time, the top of the cane happened to touch the right eye. In these circumstances, it can never be said that the revision petitioner had the intention or reason to believe to cause hurt to her student, the 3rd respondent. In ***Amal and Another v. State of Kerala and Another*** (2020 (4) KHC 781), this Court held that it is not the scheme and spirit of S.23 of the JJ Act that every doing of an act by person in charge or control of the juvenile, which affects the body and mind of the child would constitute an offence punishable u/s 23, despite it lacks criminal intention. It was further held that when an act was done as part of enforcing discipline of the school and it was done without any intention of causing mental harassment to the student, it cannot be said that the offence u/s 23 is made out.

14. The 'assault' as defined under Section 351 of IPC is nothing more than a threat of violence exhibiting an intention to use criminal force and the ability and intention to carry out the threat into execution. The prosecution records did not disclose that the revision petitioner did make or express any words or gesture to threaten the 3rd respondent. It appears that the cane

accidentally touched on the right eye corneal of the 3rd respondent in the circumstance mentioned above. The prosecution does not have a case that the degree of punishment inflicted by the revision petitioner was administered for the gratification of passion or rage or that it was immoderate or unreasonable. None of the charge witnesses stated that the 3rd respondent did cry. There is no material on record to show that the revision petitioner caused any mental strain to the 3rd respondent.

15. The learned counsel for the revision petitioner would rely on a decision of this Court in ***Abdul Vaheed v. State of Kerala*** (2005 (2) KLT 72). It was held that when a teacher in the course of teaching beats a student *bonafide* to maintain discipline, no criminal offence is committed as he acted in good faith. Again this Court in ***Nirmala K v. State of Kerala and Another*** (2019 (5) KHC 912) held that a school teacher, who is having disciplinary control over a pupil, which is for his or her own betterment and future welfare, has intrinsic and inherent power to enforce discipline to shape up the character and ordinary growth of the pupil and so long as the process of penal

measure like caning the student is proportionate and reasonable, as is understood in the common state of affairs of that nature, the same cannot be said to be an offence. Recently, ***Prameela Fergod v. State of Kerala*** (2021 (6) KLT 845) took the view that the nature and gravity of the corporal punishment inflicted by the teacher would determine as to whether he/she can be prosecuted under the penal provisions.

16. As stated already, the case records would show that when all students were attending the class, the 3rd respondent alone was searching for his school bag kept on the floor. It was to draw his attention to the class, the revision petitioner attempted to touch on his right elbow with cane to make him sit properly. The 3rd respondent raised his face upwards and then the cane accidentally touched his right eye softly. There was no bleeding or pain. He was immediately taken to Taluk Hospital, North Paravur and first aid treatment was given and he was allowed to go to his house on that day along with his mother who was present in the hospital. However, again on the next day at 11.30 p.m. he was voluntarily brought to Taluk Hospital, North Paravur by his parents. Annexure A3 wound certificate would show that the 3rd

respondent was admitted as insisted for admission. It would further show that there was redness on the right eye and corneal abrasion. The injury sustained was trivial in nature.

For the reasons stated above, I am of the view that the act of the revision petitioner cannot be said to be with malicious intention to cause hurt on the 3rd respondent. On the contrary, facts disclose that she exercised her authority reasonably and in good faith. The prosecution allegations, even if admitted as true in its entirety, would not make out offence either under S.324 of IPC or under S.23 of the JJ Act. Hence, there is no sufficient ground for proceeding against the revision petitioner. The Court below went wrong in framing charge against her. The revision petitioner is accordingly discharged. The Criminal Revision Petition, accordingly, stands allowed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

APPENDIX

REVISION PETITIONER'S EXHIBITS

ANNEXURE A1	TRUE COPY OF THE FIRST INFORMATION REPORT NO.548 DATED 28.6.2011 OF THE VADAKKEKARA POLICE STATION.
ANNEXURE A2	TRUE COPY OF THE CHARGE SHEET IN CRIME NO.548/2011
ANNEXURE A3	TRUE COPY OF WOUND CERTIFICATE DATED 28.6.2011.
ANNEXURE A4	TRUE COPY OF THE CHARGE FRAMED BY THE HON'BLE ADDL.DISTRICT AND SESSIONS JUDGE, ERNAKULAM DATED 29.5.2015 IN SC692/2014 IN CRIME NO.548/2011 OF VADAKKEKARA POLICE STATION.
ANNEXURE A5	TRUE COPY OF THE DECISION IN 2005 (2) KLT 72 ABDUL VAHEED V. STATE OF KERALA.