Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 73 of 2023

Date of Order: 31.01.2024

Smti Sane Concieta B. Sangma Vs. State of Meghalaya & 4 Ors.

Coram:

Hon'ble Mr. B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. V.G.K. Kynta, Sr. Adv. with
Mr. H. Wanshong, Adv.

For the Respondent(s) : Mr. K.P. Bhattacharjee, GA, (R.1-4)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

J U D G M E N T & O R D E R

This criminal petition under Section 401 r/w Section 482 of the Criminal Procedure Code, 1973 has been filed by the petitioner for setting aside and quashing of the order dated 14.01.2022 and order dated 23.05.2023 passed by the Judicial Magistrate First Class, West Garo Hills District, Tura in GR No. 59 of 2021 arising out of the Tura Women PS Case No. 17(04)2019 under Section 323 IPC r/w Section 75/82 of the

Juvenile Justice (Care and Protection of Children) Act, 2015 and also the order dated 23.06.2022 passed by the District and Sessions Judge, Tura in Crl. Rev. No. 02/2022. The petitioner also prayed for quashing of the entire proceeding of the GR No. 59 of 2021.

1. The brief fact of the case is that the petitioner is a co-founder of Aeroville Higher Secondary School, Tura and is holding the post of Headmistress in the said school since the year 1995. In addition to teaching Economics in class X, the petitioner also teaches Grammar to the students of class I and II of the school. The petitioner is well known and respected in the society especially by virtue of being a good educationist and even the State government recognizes the services of the petitioner as a pioneer in the field of education. On 25.04.2019, a written complaint was filed before the Officer In-charge, Tura Women Police Station, West Garo Hills against the petitioner by the respondent No.5 alleging that her daughter aged about 7(seven) years studying in class II of Aeroville Higher Secondary School, Tura, was physically abused by the petitioner on 24.04.2019 in the school premises. On the basis of the written complaint, the Tura Women PS Case No. 17(04)2019 under Section 323 IPC r/w Section 75/82 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short JJ Act) was registered and investigated into. On the completion of the investigation, a charge sheet under the aforesaid section of law was filed on 28.10.2020 and the learned trial court took cognizance of the matter on 14.01.2022. At the trial, a prayer for discharge was made on behalf of the petitioner but the learned trial court after hearing the parties, by impugned order dated

14.01.2022 declined to entertain the prayer of the petitioner and ordered for framing of charges. The said order was challenged by the petitioner before the court of the Sessions Judge, Tura, in Crl. Rev. No. 02/2022 and the learned Sessions Judge by the impugned order dated 23.06.2022 held that Section 82 of the JJ Act is not attracted in the matter and modified the order dated 14.01.2022 to that extent. Inspite of passing of the order dated 23.06.2022 by the Sessions Judge, Tura, the learned trial court vide impugned order dated 23.05.2023 again directed for framing of charges against the petitioner under Section 323 IPC and Section 75 and 82(1) of the JJ Act. Being aggrieved, the petitioner preferred this criminal petition before this Court challenging all the aforementioned impugned orders and also for quashing and setting aside of the entire proceeding of the GR Case No. 59/2021 pending before the trial court.

2. Mr. V.G.K. Kynta, learned Sr. counsel appearing for the petitioner submits that in terms of Section 1(4) of the JJ Act, the provisions of that Act shall apply only to the matters concerning "Children in need of Care and Protection" and "Children in Conflict with Law" and going by the defination of the terms "Children in need of Care and Protection" and "Children in Conflict with Law" as provided in Section 2(13) and 2(14) of the JJ Act, the child in question in the present case would not come under the purview of the said Act. The learned Sr. counsel contends that none of the aforesaid provisions of the JJ Act, even in their widest possible interpretation, can include the child in question in the present case within the periphery of the ambit of Section 75 of the Act and consequently, no trial for any offence can proceed against the

petitioner in the instant case. It is also the submission of the learned Sr. counsel that taking of cognizance of an offence under Section 323 IPC vide order dated 14.01.2022 by the trial court on the basis of the charge sheet dated 28.10.2020 is clearly barred under Section 468 Cr.PC and the trial thus vitiated being illegal and without jurisdiction. It is also contended that no further proceeding under Section 323 IPC r/w Section 75 JJ Act, can continue as the period for taking cognizance of an offence under Section 323 IPC has lapsed at the end of one year of the registration of the FIR dated 25.04.2019.

3. The learned Sr. counsel for the petitioner next refers to Section 88 and 89 IPC and submits that where a teacher in course of imparting education subjects a child to corporal punishment bonafide with the aim to discipline the child, it is implied that the teacher is given consent by the parent to enforce discipline for the welfare of the child and in such a case, a teacher cannot be said to have committed any offence punishable under law. He submits that in addition to the special exemptions carved out by the said provisions of Section 88 and 89 IPC, a teacher is also protected from criminal action by application of common law principle of "*loco parentis*". To buttress his argument, the learned Sr. counsel places reliance on a judgment dated 18.02.2020 of the High Court of Kerela rendered in **Crl. MC. No. 5388 of 2019 (C),** *Mathew E.T vs. State of Kerela & Ors*. and submits that the Legislature has not made the act of corporal punishment punishable where it is inflicted by a teacher. Relying on the propositions laid down in the aforesaid judgment, he submits that when the Legislature has exempted a teacher from the purview of Section

82 of the JJ Act, such teacher cannot be otherwise roped in within the contours of Section 75 of the Act. The learned Sr. counsel submits that the legal infirmities and basic jurisdictional issues in the instant matter are prima facie borne out of the record of the case and not result of any factual dispute being raised on behalf of the petitioner. He contends that further continuation of the trial against the petitioner would result in abuse of process of law and prays for setting aside and quashing of all the impugned orders and also the entire proceedings of the case.

4. On the other hand, Mr. K.P. Bhattacharjee, learned GA submits that in view of Section 17(1) of the Right of Children to Free and Compulsory Education Act, 2009, no child should be treated with any corporal punishment. He places on record a copy of the notification No. EDN/RTE.222/2011/40 dated 31st October 2011 issued by the Government of Meghalaya and submits that it is specifically provided therein that no child shall be subjected to any physical punishment and mental harassment in any school. He further refers to Section 2(12) of the JJ Act and submits that any person who has not completed the age of 18 years is regarded as "child" and would definitely come under the purview of the JJ Act. He contends that the FIR and the charge sheet in the instant matter prima facie disclose about the role of the petitioner in treating the victim child with physical abuse and whether the action of the petitioner was in good faith or not is a subject matter of evidence which can only be revealed at the stage of the trial of the case. The learned GA places reliance on a decision of the High Court of Delhi reported in **2001 (57) DRJ 456(DB),** *Parents Forum for Meaningful Education & Anr. vs.*

Union of India and Anr. and contends that children cannot be subjected to corporal punishment and the State cannot be a silent spectator of violation of any of the norms of child welfare. He also submits that there is no merit in the present criminal petition and prays for dismissal of the same.

5. The respondent No.5, the complainant, has not entered appearance before this Court inspite of service of due notice upon her.

6. From the contentions raised on behalf of the petitioner, it is apparent that the petitioner's case is based upon the notion that by virtue of provisions contained in Section 1(4), 2(13) and 2(14) of the JJ Act, the victim child in question will not come under the purview of the JJ Act and for the same reason, the petitioner cannot be charged under Section 75 of the said Act. The law in this point stands clarified by the judgment of the Apex Court reported in **(2017) 7 SCC 578**, *Exploitation of Children in Orphanages in State of Tamil Nadu, In Re. Vs. Union of India and Ors.* Paragraph 64 of the said judgment lays down: -

> *"64. Even though a child in need of care and protection is defined in Section 2(14) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "the JJ Act") the definition does not specifically include some categories of children. Consequently, we are of the view that since the JJ Act is intended for the benefit of children and is intended to protect and foster their rights, the definition of a child in need of care and protection must be given a broad interpretation. It would be unfortunate if certain categories of children are left out of the definition, even though they need as much care and protection as categories of children specifically enlisted in the definition. Beneficial legislations of the kind that we are dealing with demand an expansive view to be taken by the Courts and all concerned."*

7. Read in the above light, there remains no iota of doubt that the Legislature has never intended to exclude any category of child from the purview of the JJ Act. The defination of a "*child in need of care and protection*" given in Section 2(14) of the JJ Act should be given a broad and purposeful interpretation, it ought not to be treated as exhaustive but illustrative and furthering the requirement of social justice. It is well settled that a provision of a statute be interpreted to meet the purpose and purport it needs to serve and therefore, it is clear that any person who has not completed eighteen years of age would come under the purview of the JJ Act. The petitioner, as such, cannot claim any immunity from being prosecuted under the law in the event of contravention of provision of Section 75 of the JJ Act.

8. In so far as the contention of the petitioner basing on Section 88 and 89 IPC is concerned, it appears to be recognized that a person in the position of a teacher shall for the purpose of enforcing discipline and correction has some authority to impose corporal punishment with impunity provided the corporal punishment inflicted is moderate and reasonable. But when the teacher covered by Section 88 IPC exceeds the authority and inflicts such harm as is unreasonable and immoderate, he has no protection under law. Section 89 IPC opens with the word, "*nothing which is done with good faith for the benefit of the person*". So, condition precedent for invocation of Section 89 IPC is that the act complained of must be for the benefit of the child. The applicability of Section 88 and 89 IPC and administering of corporal punishment of students by teachers came up for consideration in *M. Natesan Vs. State of*

Madras reported in **AIR 1962 Madras 216** wherein it was held by Madras High Court that: -

> *" 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 Penal Code, 1860. But the same Code has recognised exceptions in the form of ss. 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."*

9. What transpires from the above view is that it is the severity of punishment or injury which makes the distinction between corporal punishment and cruelty to a child. Since the case of the petitioner is not based on any factual assertion or dispute, it cannot be said at this stage that the act complained of falls under which category of offence. Whether the petitioner is entitled to the benefit of the exceptions as provided by Section 88 and 89 IPC will depend upon the particular nature, extent and severity of the punishment inflicted to the victim child in the present case

and hence a subject matter of evidence. Resultantly, reference to the provision of Section 88 and 89 IPC at this stage is of no help to the petitioner.

10. The proposition of law laid down in the case of *Mathew E.T* (supra) relied on by the petitioner is based on the facts and circumstances of that case. In the said case, the Madras High Court took into consideration the allegations made in the FIR and on a scrutiny of the same, came to a finding that the allegation in the FIR cannot be said to one involving intentional use of force in order to commit an offence to cause injury and such an act should predominantly be seen as an act on the part of the teacher to correct the pupil, which inherent power has been conferred by general law on the teacher by the well-known common law principle of "*loco parentis*". It was also held that such an act of the petitioner/accused would not constitute an offence as envisaged in Section 75 of the JJ Act. The action complained of in the said case was considered to be "*corporal punishment*" as per Section 2(24) of the JJ Act and as the said action stood excluded by the Parliament from the purview of Section 82, it was held that the petitioner/accused cannot be otherwise roped in within the contours of Section 75 of the JJ Act. However, in the said judgment, it was also observed that if the so-called penal measure taken by a teacher grossly exceeds the permissible proportion of a penal measure that can be taken by a teacher for disciplining the pupil and the act otherwise discloses serious offence, then of course, it might stand in a different footing and being matters of question of facts, will have to be assessed in the matrix of the facts and circumstances of each case.

11. Further, a bare reading of provisions of Section 17(1) of the Right of Children to Free and Compulsory Education Act, 2009 and Section 82 of the JJ Act make it clear that the present days, corporal punishment is not recognized by law. The notion that a child has to be physically punished to maintain discipline stands replaced by the operation of basic human rights of a child and instead of corporal punishment, correctional methods are recognized in law. 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 pupils old enough to understand its purpose, but if the punishment is given out of spite or for some other non-disciplinary reason or if the degree of force is unreasonable, it is unlawful. The above understanding would also be in consonance with the National Charter for Children, 2003 adopted by the Govt. of India vide Resolution No. 6-15/98-C.W., dated 9th February, 2004, issued by Ministry of Human Resource Development. The clauses 9(a) and 9(b) thereof stipulate as follows: -

> "*9. (a) All children have a right to be protected against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation, violence and degrading treatment.*
>
> *(b) The State shall take legal action against those committing such violations against children even if they be legal guardians of such children*."

Thus, it is crystal clear that a teacher or a parent or even a

guardian or any other person in "*loco parentis*" has no absolute protection from criminal action by application of common law principle of "*loco parentis*". Though the Indian Penal Code (IPC) has recognized some exceptions in the form of Section 88 and 89 of the Code, the same would not apply in case where the injury inflicted causes harm to the pupil as may be considered to be unreasonable and immoderate. Since in the present case the petitioner has not based her case on any factual assertion or dispute, the severity of the allegations made against her can only be determined at the trial.

12. Coming next to the plea of limitation raised by the petitioner on the basis of Section 468 Cr.PC, it is seen that the petitioner has been put to face the trial under Section 323 IPC and also for an offence under Section 75 of the JJ Act. Section 468 (3) Cr.PC provides that the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with more severe punishment. The punishment prescribed in Section 75 JJ Act is imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both. The period of limitation prescribed for such an offence is three years as per Section 468(2)(c) Cr.PC. In the present case, the FIR was filed on 25.04.2019 and the trial court took cognizance of the matter on 14.01.2022, well within the period of three years prescribed by Section 468(2)(c) Cr.PC. In such a situation, by applying the mandate of law contained in Section 468 (3) Cr.PC, it cannot be said that the taking of cognizance of the matter by the trial court was barred by law and hence, the plea of limitation raised by the petitioner has no merit.

13. For what has been discussed above, the petitioner has failed to make out a case for interference with the impugned order dated 23.06.2022 passed by the Sessions Judge, Tura in Crl. Rev. No. 02/2022. Consequently, the prayer for quashing and setting aside of the entire proceeding of GR No. 59 of 2021 arising out of Tura Women PS Case No. 17(04)2019 also stands rejected. The impugned order dated 14.01.2022 of the trial court of the Judicial Magistrate First Class, Tura, merges with the order dated 23.06.2022 of the Sessions Judge and hence, needs no interference by this Court. However, the impugned order dated 23.05.2023 passed by the learned trial court stands interfered to the extent it directs for framing of charges against the petitioner under Section 82(1) of the JJ Act in contradiction of the order dated 23.06.2022 of the Sessions Judge. The learned trial court of Judicial Magistrate First Class, West Garo Hills, Tura, shall now proceed to frame charges against the petitioner in terms of the order dated 23.06.2022 of the Sessions Judge and shall complete the trial expeditiously without any further delay in accordance with law.

14. With the aforesaid direction this criminal petition stands disposed of.

Judge

Meghalaya
31.01.2024
"N. Swer, Stenographer Gr II. "