

(2004) 12 KL CK 0001
In the High Court Of Kerala
Case No : Criminal M.C. No. 3004 of 2004

Abdul Vaheed

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 324, 88, 89

Citation : (2005) CriLJ 2054 : (2005) 1 ILR (Ker) 452 : (2005) 2 KLT 72 :
(2005) 2 RCR(Criminal) 374

Hon'ble Judges : J.M. James, J

Bench : Single Bench

Advocate : K. Abdul Jawad, for the Appellant; P. Deepthi, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.M. James, J.—When a school teacher, in this case, the Madrassa teacher, beats a student with a cane, who created commotion in the school or showed disobedience to the Rules, whether he could be proceeded against under the provisions of the I.P.C. is the question that is before me for consideration.

2. Petitioner is an Arabic teacher at Manikkal Madrassa, near Venjarammoodu. On 23.9.2003 evening, the petitioner beat one Sajad, a student learning Arabic, with a cane on his buttock. He cried. He was taken to his house in the evening by two persons. He complained to his father, the de facto complainant, that he has got pain. He was shown to a private hospital at Venjarammoodu. As pain subsisted, he was taken to the S.U.T. Hospital, Thiruvananthapuram. Though the Juma-at office bearers promised to pay him the treatment expenses, they failed. Hence, he made a complaint before Venjarammoodu Police Station on 1.11.2003, and the police registered Crime No. 391/2003 u/s 324 I.P.C. The matter is now pending before the Judicial First Class Magistrate Court-II, Attingal, as C.C. No. 1028/2003. Petitioner came up before this Court u/s 482 Cr.P.C. praying to quash

the said proceedings.

3. The reporting of instances, similar to the facts stated above, are rare. Often, when such instances are brought to the notice of the parents or others, they are not taken seriously, as a teacher has an implied consent or authority to maintain the school discipline and also to train a student basing on the Rules of a school. When a student do not behave properly or act according to the Rules of a school, and if the teacher chastise him, on a bona fide intention, by giving him a corporal punishment for improving his character and conduct, the Court has to ascertain whether the said act of the teacher was bonafide or not. If it is found that he had acted with a good intention, only to improve the student, it may not normally be brought under the penal provisions of the Code.

4. Sections 88 and 89 I.P.C. are the relevant provisions to the facts of this case and hence I reproduce them below:

"88. Act not intended to cause death, done by consent in good faith for person's benefit.-Nothing which is not intended to cause death, 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 any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

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:

Firstly 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."

5. The applicability of Sections 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 Vs. State of Madras and Another*, . 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 Cal. 32. 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 u/s 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 u/s 323 I.P.C., in view of the provisions of Section 88 I.P.C.

7. In the case at hand, Sajad informed to his parents that he was assaulted by the Arabic Master, petitioner herein. His statement has been recorded by the police as could be seen from Annexure A1. He stated that the petitioner has a cane with which he beat other students as well. The wound certificate produced before me by the prosecution was issued by the Assistant Professor of Paediatric Surgery, S.U.T. Hospital, Trivandrum. He noted, on examination, contused abrasions of the following nature:

"(1) 2 x 0.5 cms.

(2) 4 x 1 cm. on the left upper gluteal region.

(3) 4 x 0.5 cm. over the right gluteal region.

(4) 4 x 0.5 cm. over the latter aspect of left region,"

All injuries were tender. No bony fracture seen. Sajad, was therefore, treated in the O.P. on 26.9.2003.

8. The facts on record show that the petitioner has got a cane to inflict corporal punishments on the erring students of Madrassa. He does it on a bona fide intention to improve the students, on maintaining discipline and making them to adhere to the Madrassa standards. He has got no intention to inflict any harm to the students. The injuries, as noted above, had been inflicted on the buttock. That itself show, the petitioner has got only an intention to inflict some pain on the student, a 10 year old boy, so, that he behaves himself well to the prescribed regulations of Madrassa. 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 metis rea so as to inflict an injury u/s 324 I.P.C.

9. Therefore, accepting the principles contained in M. Natesan's case supra, I am of the opinion that the petitioner has acted within the exception conferred on him, u/s 88 of I.P.C. Hence, I hold that this is a fit case to be quashed u/s 482 Cr. P.C., and I do so.

In the result, Crl. M.C. is allowed. Proceedings pending against the petitioner as C.C. No. 1088/2003 on the file of the Judicial First Class Magistrate Court-II, Attingal, is hereby quashed.