

(2020) 06 SHI CK 0302
In the High Court Of Himachal Pradesh
Case No : CRMMO No. 331 Of 2018

Ambika S. Nagal

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 10-06-2020

Acts Referred:

Indian Penal Code, 1860 — Section 88, 89, 90, 306, 323
Juvenile Justice (Care And Protection Of Children) Act, 2000 — Section 2(k), 2(l),
2(12), 4, 6, 8, 23, 24, 25, 27, 54
Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 2(13), 2(19),
2(20), 2(21), 2(27), 2(40), 2(41), 2(46), 2(57), 75, 82, 86, 86(2), 86(3)

Citation : (2020) 06 SHI CK 0302

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Amit Kumar Sharma, Rajesh Prakash, Desh Raj Thakur, Shiv Pal
Manhans, R.P. Singh, Raju Ram Rahi, Gaurav Sharma

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. On 24.9.2012 at about 4.25 p.m., after receiving a telephonic call in Police Post, Sanjauli, that near Nav Bahar at Kala Dhaank (Cliff), adjacent to Durga Gas Agency, two school girls had fallen, Assistant Sub Inspector, Incharge Police Chowki, rushed to the spot alongwith Police officials and found blood spread on the spot as by that time both the girls had been taken to Indira Gandhi Medical College & Hospital, Shimla (IGMC). On arriving at IGMC, it came to knowledge of the police that the girls had been declared dead.

2. On 28.9.2012, on the basis of complaint received from parents/guardians of 12 years old deceased girls, FIR No.164/2012 dated 30.9.2012 was registered, under Section 306 of the Indian Penal Code (for short 'IPC'), against the Mathematics Teacher (Petitioner) and Principal of the School, for abetting the girls to commit suicide.

3. After completion of investigation, as per Challan presented in the Court, no case under Section 306 IPC against the Principal as well as the petitioner was made out. However, it was concluded by the Investigating Officer that there was evidence on record that Class Teacher (petitioner) had slapped deceased girls (two slaps to each deceased girl) and, thus, she had committed an offence under Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 2000 Act) and Section 323 IPC, for causing unnecessary mental and physical suffering to girls by assault. Challan was presented before the concerned Magistrate, wherein, at the time of consideration of charge, Judicial Magistrate 1st Class (for short 'JMIC') has passed impugned order dated 20.6.2018, concluding that prima facie a case under Section 23 of 2000 Act and Section 323 IPC is made out against the accused (petitioner), but instead of putting Notice of Accusation or framing charge, the JMIC has come to the conclusion that the jurisdiction to deal with the matter under Section 23 of 2000 Act is with Juvenile Justice Board (for short 'Board') and, therefore, the JMIC has directed the petitioner to appear before the Board on date mentioned in order.

4. Being aggrieved and dissatisfied with the impugned order passed by the JMIC, petitioner, by way of instant petition, has approached this Court on two counts.

5. Firstly, it is contended on behalf of the petitioner that the JMIC has wrongly relegated the petitioner to the Board as she is not a juvenile or child in conflict with law but is an adult against whom the Board has no power to proceed.

6. Secondly, on the ground that no case is made out for prosecuting the petitioner (Class Teacher) under Section 23 of 2000 Act and Section 323 IPC, as ingredients for commission of offence under Section 23 of 2000 Act are not existing and further that in view of Sections 88 & 89 IPC, petitioner is protected from being prosecuted not only under Section 323 IPC but also Section 23 of 2000 Act.

7. In present case, at the time of commission of alleged offence 2000 Act was in force, which has now been replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as '2015 Act'). For determining the issue raised on behalf of the petitioner with respect to jurisdiction, provisions of 2000 Act shall be relevant, however, for deciding the issue to avoid further litigation on this issue under the 2015 Act, corresponding provisions of 2015 Act are also being referred in the discussion hereinafter.

8. Relevant provisions of 2000 Act, necessary to be referred, are as under:

2(k) "Juvenile" or "child" means a person who has not completed eighteenth year of age.

2(l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.

4. Juvenile Justice Board.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, 9 "within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district", one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act.

6. Powers of Juvenile Justice Board.- (1) Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act creating to juvenile in conflict with law.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

23. Punishment for cruelty to juvenile or child.-Whoever, having the actual charge of or control over, juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

27. Special offence .- The offence punishable under Sections 23, 24, 25 and 26 shall be cognizable.

54. Procedure in inquiries, appeals and revision proceedings.- (1) Save as otherwise expressly provided by this Act, a competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trials in summons cases.

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

9. Corresponding/related similar provisions under 2015 Act are as under:

2(12) "child" means a person who has not completed eighteen years of age.

2(13) "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

2(20) "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the

Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.

2(21) "child care institution" means Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services.

2(24) "corporal punishment" means the subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child.

4. Juvenile Justice Board

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

8. Powers, functions and responsibilities of the Board.

(1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

75. Punishment for cruelty to child

Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

PROVIDED that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

PROVIDED FURTHER that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

PROVIDED ALSO that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable

with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.

82. Corporal punishment

(1) 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.

(2) If a person employed in an institution referred to in sub-section (1), is convicted of an offence under that sub-section, such person shall also be liable for dismissal from service, and shall also be debarred from working directly with children thereafter.

(3) In case, where any corporal punishment is reported in an institution referred to in sub-section

(1) and the management of such institution does not cooperate with any inquiry or comply with the orders of the Committee or the Board or court or State Government, the person in-charge of the management of the institution shall be liable for punishment with imprisonment for a term not less than three years and shall also be liable to fine which may extend to one lakh rupees.

86. Classification of offences and designated court

(1) Where an offence under this Act is punishable with imprisonment for a term more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Children's Court.

(2) Where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Magistrate of First Class.

(3) Where an offence, under this Act, is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable, bailable and triable by any Magistrate.

10. In 2000 Act, word "juvenile" or "child" has been defined in Section 2(k) and Section 2(l) deals with definition of "juvenile in conflict with law". In 2000 Act, in Section 2(k), "juvenile" or "child" means a person who has not completed 18 years of age and Section 2(l) provides that "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence, whereas in 2015 Act, in Section 2(12) definition of "child" is the same as that of "juvenile" or "child" in 2000 Act, and "juvenile in conflict with law" (Section 2(l) of 2000 Act) and "child in conflict with law" (Section 2(13) of 2015 Act), in both the Acts, have been defined identically. In both the Acts, Section 4 provides constitution of "Juvenile Justice Board" by the Government for exercising the powers and discharging its

functions in relation to juveniles/children in conflict with law under the 2000 Act/2015 Act. In 2000 Act, Section 6 provides that Juvenile Justice Board was having powers to deal exclusively with all proceedings under the Act relating to Juvenile in conflict with law. In 2015 Act, Section 8 provides that the Juvenile Justice Board shall have the power to deal exclusively with all the proceedings under the Act relating to children in conflict with law in the area of jurisdiction of such Board.

11. Section 27 of 2000 Act provides that offence punishable under Section 23 of said Act shall be cognizable, meaning thereby a Police Officer can arrest the accused without warrant. Section 54 of 2000 Act, mandates to follow, as far as may be, the procedure laid down in Code of Criminal Procedure in inquiries, appeals and revision proceedings, as prescribed in this Section.

12. Section 86 of 2015 Act classifies the offence with designation of Court, wherein the offence is triable and it specifically provides that where offence is punishable with imprisonment for a term more than seven years, then such offence shall be cognizable, non-bailable and triable by Children's Court. "Children's Court" has been defined in Section 2(20) of 2015 Act, which is either Court of Sessions or a Special Court or equivalent thereto. In Section 86(2) of 2015 Act, offence punishable with imprisonment for a term of three years and above, but not more than seven years, has been made cognizable, non-bailable and triable by Magistrate of 1st Class, whereas under Section 86(3) of the said Act, an offence punishable with imprisonment of less than three years or with fine only shall be non-cognizable, bailable and triable by any Magistrate. No such corresponding provision is available in the 2000 Act.

13. From the aforesaid provisions of law, it is evidently clear that Juvenile Justice Boards constituted for conducting the proceedings against juvenile or child in conflict with law but not any other person who has committed the offence under these Acts, and for trying such offender who is not child or juvenile under the Acts, there is no provision, like Section 86 of 2015 Act, in 2000 Act. Therefore, for offences under 2000 Act, such person shall be tried by the Courts as prescribed in Code of Criminal Procedure and for commission of offences under 2015 Act, such person shall be tried by the Court as prescribed under Section 86 of said Act

14. It is also a matter of fact that Juvenile Justice Board has no power to award imprisonment even for a single day. Whereas, a person, not juvenile or child under the Acts, guilty of commission of offence can be punished for imprisonment for the period as provided in various Sections of these Acts.

15. In view of the above discussion, it is held that relegation of the petitioner to Juvenile Justice Board by JMJC is illegal and contrary to the law of the land.

16. For deciding second issue, apart from Sections 75 and 82 of 2015 Act, provisions of Sections 88 and 89 of IPC shall also be necessary to be referred, which read as under:

"88. Act not intended to cause death, done by consent in good faith for persons 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 -

First.- That this exception shall not extend to the intentional causing of death, or to the attempting 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."

17. To substantiate his plea on second point, learned counsel for the petitioner has referred the following pronouncements of various High Courts:

1. Sankunni v. Venkataramani, AIR 1922 Mad 200;
2. G.B. Ghatge v. Emperor, AIR 1949 Bom 226;
3. M. Natesan v. State of Madras & another, AIR 1962 Mad 216;
4. Ganesh Chandra Saha v. Jiw Raj Somani, AIR 1965 Cal 32;
5. Abdul Vaheed v. State of Kerala, 2005 CriLJ 2054;
6. Vinod S. Panicker v. Sub Inspector of Police, 2013 CriLJ 833;
7. Joseph v. State of Karala, 2014(3) RCR (Criminal) 825; and
8. Khalid L.K. v. Sub Inspector of Police & others, 2015 (4) RCR(Cri) 247.

18. In Sankunni case, Madras High Court has concluded that for purposes of

correction, the school Master may inflict a moderate and reasonable corporal punishment. Applying this principle, Division Bench of Bombay High Court in G.B. Ghatge case has held as under:

"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 purpose of school discipline or for correcting the child."

19. Relying upon aforesaid pronouncements, Madras High Court in M. Natesan case has observed as under:

"[3] Apart from that, it appears to be recognised that a person in the position of a teacher or a college principal will for the purpose of enforcing discipline and correction have authority to impose corporal punishment with impunity provided the corporal punishment inflicted is moderate and reasonable.....

.....

The above principle applicable in respect of children under 12 years of age will also be applicable in the case of children over 12 and when a child over 12 comes to school it may be assumed that the child gives an implied consent to subject itself to the discipline and control of the school authorities and to receive reasonable and moderate corporal punishment as may be necessary for its correction or for maintaining school discipline."

20. In M. Natensan case, referring provisions of Section 88 and 89, Madras High Court has observed as under:

"[4] The protection accorded by section 89 of the Indian Penal Code is no doubt limited to a child under 12 years of age. Section 88 of the same Code contains no such limitation. That section affords protection to a person who in good faith and for the benefit of the person concerned does something to him with his consent expressed or implied which causes harm. The Bombay case appears to extent not only the principle contained in section 89 to a child above the age of 12 years but also considers that the protection under section 88 would equally be available to a school teacher provided of course the act done by him by way of a punishment is moderate and reasonable.

[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 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 section 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."

21. In Ganesh Chandra Saha case, the Calcutta High Court, has held as under:

"[5] Under Section 89 of the Indian Penal Code, nothing, which has been done, in good faith for the benefit of a person under 12 years of age 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 to that person. Here, in this case, the complainant gave his age as 13 years at the time he gave evidence i.e., on July 12, 1962. It would not, therefore, be safe to hold that at the time of the incident he was under 12 years of age. Obviously, therefore, Section 89 of the Indian Penal Code is not attracted to the facts of this case.

[6] Under Section 88 of the Indian Penal Code, nothing which is not intended to cause death, is an offence by reason of any harm which it may cause to any person for whose benefit it is done in good faith, and who has given consent, whether express or implied, to suffer that harm. From the facts it cannot be said that the beating was intended to cause death. The complainant, a boy of very tender age, was found to have stolen a book of another student in the school. Beating was, clearly enough, for correcting him so that he may no more commit theft in future. The beating must, therefore, be said to have been for the benefit of the complainant.

[7] Mr. Sinha, who appears for the complainant, submits that from the nature of the injuries it should be said that the action of the petitioner was not in good faith. There were some strokes with a cane and there were some fists and blows too; from the medical evidence it appears that there were 5 ecchymosis but all of them were of minor nature. One tooth was found loose and that could have been caused by some blow. But from this it cannot be said that the action of the petitioner was mala fide i.e., not in good faith. The motive for the beating is very relevant for determining if it was in good faith. There is no doubt that the petitioner's motive was to correct the complainant for his future good and to maintain discipline in the school. Mr. Sinha refers to a circular issued by the Board of Secondary Education. This circular does not totally prohibit corporal punishment but directs the Head Master to exercise proper restraint when inflicting corporal punishment. Corporal punishment, according to this circular should be administered to inflict pain only without any bodily injury. There has, however, been some bodily injury in this case. But merely because the petitioner exceeded the limits prescribed by the administrative circular of the Board of Secondary Education, it cannot be said that the petitioner has deprived himself of the protection given to him under Section 88 of the Indian Penal Code, because the circular of the Board of Secondary Education cannot and does not override

the provisions of the Penal Code. The mere fact that he exceeded the limits prescribed by the circular of the Board of Secondary Education does not -prove that the petitioner did not act in good faith. I have no doubt that the petitioner acted in good faith.

[8] There is no material from which it can be said that there was express consent of the complainant or his guardian to suffer such beating. I have, however, no doubt that implied consent to suffer such beating should be presumed from the fact that the complainant was sent to the school for his education. 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.

[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 *Regina v. Hopley*, (1860) 2 F and F. 202 and *Cleary v. Booth*, (1893) 1 QB 465). The Rangoon High Court has held in *Emperor v. Maung Ba Thaung*, AIR 1926 Rang, 107 that the school master can inflict reasonable corporal punishment. In that case a School master was prosecuted under Section 323 of the Indian Penal Code 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 Indian Penal Code because the school master acted bona fide in the interest of school discipline."

22. Kerala High Court in *Abdul Vaheed* case, relying upon pronouncements of Madras High Court in *M. Natesan* case, Calcutta High Court in *Ganesh Chandra Saha* case, has held that when a school Teacher beats a student with a cane, who created commotion in the school or showed disobedience to the rules and where act of the Teacher is done in good faith for benefit of student, subject to exceptions provided under Section 89 IPC, such teacher could not be proceeded against under the provisions of IPC, in view of provisions of Sections 88 and 89 of IPC. It is further held that where a Teacher exceeds the authority and inflicts such harm to the student as may be considered to be unreasonable and

immoderate, he would naturally lose the benefit of exceptions provided under Sections 88 and 89 of IPC.

23. Referring Vinod S. Paricker, Joseph and Khalid cases, it has been canvassed that in order to attract Section 23 of the 2000 Act, ingredients of provisions of this Section must be present for proceeding against the accused for commission of the offence under this Section and it is further contended that contents to attract the ingredients for commission of offence under this Section are missing in present case.

24. I am in agreement with the exposition of law pronounced in aforesaid decisions.

25. It is also noticeable that in 2015 Act, under Section 82, corporal punishment to a child has also been made an offence but under this Section any person incharge of or employed in 'Child Care Institution' only, who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable for punishment. No such corresponding provision was there under 2000 Act. "Child Care Institution" has been defined in Section 2(21) of 2015 Act, wherein "Children's Home", "open shelter", "observation home", "special home", "place of safety", "Specialized Adoption Agency" and a "fit facility" recognized under this Act, defined under Sections 2(19), 2(41), 2(40), 2(56), 2(46), 2(57) and 2(27) of this Act respectively. In these definitions, "schools" are not included.

26. In present case, even if prosecution story, as mentioned in the challan, is taken to be true as it is, then also it is case of prosecution that two students (deceased girls) studying in 6th class were gossiping by exchanging paper-slips to each other and on complaining by third girl, they were enquired are reprimanded by the class Teacher (petitioner) who was teaching them at that time and during this episode both the girls were slapped twice by the class Teacher to restrain them from indulging in indiscipline in the class.

27. For attracting punishment for cruelty to juvenile or child, under Section 23 of 2000 Act (corresponding Section 75 of 2015 Act), necessary ingredient is to cause or likely to cause to juvenile or child unnecessary mental or physical suffering by assaulting, abandoning, exposing or willfully neglecting the juvenile or child or procuring a juvenile or child for commission of these acts.

28. From the facts brought on record in the challan, I do not find that slapping twice a student for indiscipline may be considered as an assault causing or likely to cause unnecessary mental or physical suffering to them. Therefore, no case under Section 23 of 2000 Act is made out. Otherwise also for provisions of General Exceptions contained in Sections 88 and 89 of IPC, petitioner is protected, as her act, in the given facts and circumstances, cannot be termed as unreasonable and immoderate so as to disentitle her from benefit of these exceptions. Similarly, for aforesaid discussion, petitioner is also not liable to be prosecuted under Section 323 IPC.

29. At this stage, as pointed out by Kerala High Court in Abdul Vaheed case, it would be appropriate to observe that the act of Teacher on the student in imposition of corporal punishment, depends upon the circumstances of each case and if a Teacher out of fury or excitement inflicts such injuries on the child which are harmful to a tender-age student and the express or implied authority granted by the parents of that student, does not confer any right on such a Teacher to inflict such punishment. There cannot be a general principle for all situations. Act of a Teacher has to be appreciated and assessed, depending upon the circumstances placed before the Court in each case. It is also duty of the Teachers to have a restrained and controlled imposition of punishments on the students under their care and charge, and unwieldy, uncontrolled and emotional attacks or actions on their part cannot be accepted.

30. The action of petitioner in present case, considering the material on record, appears to be bonafide and, thus, she is entitled for benefit of Exceptions.

31. In view of above discussion, the petition is allowed and consequently FIR No.164 dated 30.9.2012, registered at Police Station Dhalli, District Shimla, Himachal Pradesh, is quashed and the proceedings arising thereto, pending in the trial Court, are set aside.

Petition stands disposed of. Pending application, if any, also stands disposed of.