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**(1994) 09 BOM CK 0020**

**In the Bombay High Court**

**Case No : Criminal Application No. 2245 of 1995**

Rev. Father Jerome D'Souza

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

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**Date of Decision :** 23-09-1994

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 323, 336, 337

**Citation :** (1995) 2 BomCR 283

**Hon'ble Judges :** M.S. Rane, J

**Bench :** Single Bench

**Advocate :** O.J. Menejes and R. S. Tripathi, for the Appellant; B.R. Patil, Assistant Public Prosecutor for the respondent No. 1 and M.H. Parera and M.R. Irani for the respondent No. 2, for the Respondent

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## Judgement

M.S. Rane, J.—The matter herein is peculiar one. Considering its factual aspects and bearing in mind interest of all those involved therein, the same is, with the consent of all the parties, being disposed of at its there should itself.

2. The applicant herein is the Principal of St. Teresa High School, 24th Road, Bandra, Bombay. Master Rubin, the son of the 2nd respondent is the student in the said school.

3. 2nd respondent, on 14th October, 1991 lodged a complaint at Khar Police Station against the applicant under sections 323, 336 and 337 of I.P.C., which came to be registered by the Khar Police Station as C.R. No. 617 of 1991. After investigation said Police Station submitted report before the Metropolitan Magistrate, 9th Court at Bandra vide Court Case No. 45/P of 1991. The applicant in this petition is seeking the writ from this Court for quashing the proceedings in the said criminal case.

4. The account of the unfortunate episode culminating to the 2nd respondent lodging the complaint briefly runs as under:

i. On 14th October, 1991, Master Rubin, son of respondent No. 2 went to the said

School. There ensued quarrel between Master Rubin and his classmate Master Rajesh in the School. The incident was it seems, reported to the petitioner and as Principal, he punished both Master Rubin and Master Rajesh. However punishment inflicted was of unusual nature. In that, it is stated that the petitioner forced and made both the boys to eat "leaves of Neem Tree". As far as Rubin is concerned, when he refused to eat, the petitioner thrust the leaves in his (i.e. Rubin's) mouth and also slapped him.

ii. After some time, Master Rubin had a pain in his stomach and also had a vomiting. Dr. Halmej, one of the teachers in School, examined said Rubin and gave him some Tablets.

iii. Master Rubin reported the incident to his father- the respondent No. 2, who then took the matter to the Police as stated earlier.

5. This petition is filed on 15th September, 1994 and when moved for ad-interim relief, this Court ordered issuance of notice upon respondents and in response thereto, parties are before this Court.

6. Mr. Menezes, the learned Counsel appearing for the petitioner at the initial stage itself made it plain to the Court that the petitioner had no any grudge or bias or any vengeance to wreak against the said son of the 2nd respondent, but as the Principal of the School, in good fair, in order to enforce the discipline in the school, has inflicted the punishment. Mr. Menezes, the learned Counsel stated that the petitioner had no any oblique motive in inflicting the punishment. He further made it clear that the petitioner expresses his sincere regret and tenders unconditional apology over the unfortunate happenings, causing annoyance to the 2nd respondent as a father of said Rubin. He further stated that the petitioner or any one in the School has not caused any harassment to said Rubin as also another son of the 2nd respondent Master Joel, who is also studying in the said School, and it is assured that nothing will be done out of vengeance against the interest of both the sons of the 2nd respondent who are students of the said School. Learned Counsel requested that the matter be not carried further.

7. The above suggestion was made in the open Court in presence of 2nd respondent and his Advocate. The Court inquired from the 2nd respondent and his Advocate about their response. It is heartening to note that the 2nd respondent made it clear that he had no desire or intention to pursue matter further but he was and is very much concerned being father, about his sons and their well being. He expressed that he felt very much over the kind of punishment inflicted to his son. Lastly respondent No. 2 indicated that in view of what is stated, before the Court by and on behalf of the petitioner through his Counsel, he is agreeable for compounding the said case before the Metropolitan Magistrate's Court. The Court accepts and records as to whatever stated by and on behalf of the petitioner and the 2nd respondent. This Court also feels that it would not be in interest of any one to carry the matter of such nature too far.

The interest of a child requires cordiality and proper understanding so also report between the parent and Teacher, since both have to play very vital roles in respective fields in moulding and shaping its development and progress. It is heartening to note that both the parties have agreed to most reasonable and suitable solution to draw the curtain over the matter.

8. In view of what is stated hereinabove, it is agreed by both the Counsel for the applicant and 2nd respondent that on the next day of hearing, a joint application will be presented before the concerned Magistrate seeking his permission for compounding the offences. The learned Magistrate on presentation of such application shall forthwith pass the appropriate order.

9. Before parting I wish to add and clarify and while it is true that the Principal of the School or College must have authority to enforce discipline that correct a pupil, the punishment to be inflicted should be moderate and reasonable. Regard must be had to the nature of misconduct, the circumstances in which the pupil misbehaved, his age, general conduct and past record, his family background and such psychological aspects of a child which would need consideration. In any event punishment need not be disproportionate to the misconduct. Should not be unduly harsh and coercive but approach should be of inculcate and reformative. The pupil by reason of his physical and mental immaturity needs different treatment. I would only quote what the United Nations Convention on the Rights of the Child, 1989 in its Article 28(2) lays down:

"State Parties shall take all appropriate measures to ensure that School discipline is administered in manner consistent with the child human dignity and in conformity with the present Convention."(underline mine)

It is important to note that recently enacted Juvenile Justice Act, 1986, embodies the basic feature of the said Convention. It is essential that in the treatment of Juvenile delinquents at all level and their punishment method are tuned up to the changed trend, bearing in mind interest of a child as a paramount consideration. 10 With the above observation, this application stands disposed of. No order as to costs. C.C. expedited. Order accordingly.