



Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.49/2025**

Devidas Monu Gawas, Age 48 years,
Occupation: - Driver, Married, Indian National,
Residing at H. No.: 29, New Colony, Bhuipall,
Honda, Sattari, North Goa, Goa - 403530. ... PETITIONER

Versus

1. The State of Goa, Through Police Inspector,
Valpoi Police Station, Valpoi, Sattari, North
Goa, (30a.

2. The State of Goa thr. Ld. Public Prosecutor,
2nd Floor, High Court of Goa Complex,
Porvorim, Bardez, Goa.

3. Rupa Laxman Shinde, H. No.: 28, New
Colony, Bhuipal, Honda, Sattari, Goa -403530. ... RESPONDENTS

Mr Vedraj Toraskar, Advocate for the Petitioner.
Mr S. Karpe, APP for Respondents No.1 and 2.
Mr Om D'Costa, Advocate U/LAS for Respondent No.3.

**CORAM: BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.**

DATED: 16th SEPTEMBER 2025

JUDGMENT : (Per Ashish S. Chavan, J.)

1. By way of the present Petition, the Petitioner has sought quashing of the FIR No.56/2023 and the Charge-sheet No.28/2024 filed against him premised on a Complaint lodged by Respondent No.3 (original complainant) before the Valpoi Police Station accusing him of committing offences punishable under Section 323 of the Indian Penal Code and Section 8(2) of the Goa Children's Act, 2003.

2. Heard Mr Vedraj Toraskar for the Petitioner, Mr S. Karpe, learned Additional Public Prosecutor for Respondents No.1 and 2 and Mr Om D'Costa for Respondent No.3.

3. Rule. Rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties.

4. The contention of the Petitioner in essence is that the FIR, Charge-sheet and the documents annexed to the Charge-sheet, read as a whole, do not attribute commission of any cognizable offence and that the FIR and the subsequent Charge-sheet constitutes gross abuse of the process of law. The Petitioner contends that the Hurt Certificate dated 31.10.2023 does not disclose any injury marks appearing on the body of the victim child and hence no offence as alleged in the FIR and the Charge-sheet is made out, even at a prima facie stage.

He has therefore invoked the inherent jurisdiction of this Court to quash and set aside the FIR and the consequent Charge-sheet qua the Petitioner.

5. Learned APP Mr S. Karpe representing the State opposed the prayers in the Petition.

6. By our Order dated 06.08.2025, we had issued notice to Respondent No.3 i.e. the original complainant. On 10.09.2025 the Respondent No.3 was present in person and sought assistance through legal aid. At her request, we requested Mr Om D'Costa to assist and represent her.

7. Adverting to the facts of the case, the criminal law is set in motion by virtue of a written Complaint filed by Respondent No.3 on 31.10.2023 to the Valpoi Police Station. In the said

Complaint the Respondent No.3 states that on 29.10.2023 at around 12.30 hrs. when she returned back from her work, her son told her that at around 9.30 hrs. when he was playing along with his friends at the roadside of the locality with a wooden stick, by mistake the stick touched the back-side of one Swift car. The driver of the said vehicle (the Petitioner) immediately came out and started beating her son with a stick. She further states that initially she decided not to register any criminal case but later on she decided to file a Complaint, as she apprehended that since the accused was their neighbour, there was a possibility that he may again try to assault her son.

8. Acting upon the complaint of Respondent No.3, Valpoi Police Station registered FIR No.56/2023 dated 31.10.2023 against the solitary accused i.e. the Petitioner for offences punishable under Section 323 of the Indian Penal Code and Section 8(2) of the Goa Children's Act, 2003. During the course of investigation, the police obtained Hurt Certificate of the victim boy dated 31.10.2023, conducted scene of offence panchanama and recorded statement of the victim under Section 164 of the Criminal Procedure Code.

The investigation was concluded and the FIR culminated in the Final Report (Charge-sheet) filed by the Valpoi Police Station in the Goa Children's Court for the State of Goa at Panaji on 27.05.2024.

9. The issue before us is whether continuation of the proceedings against the Petitioner would amount to an abuse of

law and whether the FIR, Charge-sheet and its annexures, cumulatively taken, not adverting to the defence, if any, of the accused would fall squarely within the exception carved out and the parameters set out in the landmark judgment of the Hon'ble Supreme Court in *State of Haryana v/s. Bhajan Lal* reported in *1992 SUPP (1) SCC 335*.

10. In the Complaint, the mother alleged that the Petitioner assaulted the victim with a stick. In the statement of the victim recorded under Section 164 of the Criminal Procedure Code dated 02.11.2023, he state that inadvertently while playing, the wooden stick in his hand touched the vehicle of “Kaka” (the Petitioner herein), after which the Petitioner came down from the car, pulled out one stick from the wooden fencing and assaulted the victim eleven times on his legs with the stick.

The police have recorded the statement of the father of the victim. However, it does not assume any significance since he is not an eye witness to the incident and his narration is essentially in the nature of hear-say.

11. We note that in order to attract the offence of Section 323 of the Indian Penal Code there must be a factual foundation, for the act of “*hurt*” as defined under Section 319 of the Indian Penal Code, being bodily pain, disease or infirmity caused to any person. By its very definition “*child abuse*” as defined by Section 2(m) of the Goa Children’s Act, 2003 refers to the maltreatment of a child including but not limited to his psychological and physical abuse, neglect, cruelty, etc. or any act, by deeds or words

which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being, unreasonable deprivation of his basic needs, etc.

Although, the victim alleged that he was assaulted on his legs eleven times by the Petitioner with a stick, the hurt certificate forming part of the Charge-sheet records that there are no external injuries on the body of the victim.

The hurt certificate also records “*movements of both legs normal*”. Moreover, neither the statement of the victim nor the statement of his mother stated that the victim was in any kind of bodily pain due to the assault with the stick by the Petitioner. This fact goes to the root of the matter since “*hurt*” as defined in Section 319 of the Indian Penal Code and “*child abuse*” as defined under Section 2(m) of the Goa Children’s Act, 2003 cannot be made out, even at a prima facie stage, taking the contents of the FIR and the Charge-sheet to be the gospel truth.

12. In the absence of any evidence, disclosing a case against the Petitioner as alleged by the prosecution, it would be in the interest of justice that the proceedings are quashed and set aside, since no fruitful purpose would be served by subjecting the Petitioner to the rigours of a trial.

In the wake of the aforesaid facts and circumstances, we deem it appropriate to quash and set aside the impugned FIR No.56/2023 and the subsequent Charge-sheet bearing

No.28/2024 pending before the Children's Court for the State of Goa at Panaji.

13. The Petition is allowed in the aforesaid terms with no order as to costs.

14. We record our appreciation for Mr Om D'Costa who has rendered his assistance and direct the Goa State Legal Services Authority to adequately quantify his fees as per rules.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.