

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO.84 OF 2015
WITH
CRIMINAL REVISION APPLICATION NO.05 OF 2016

CRIMINAL REVISION APPLICATION NO.84 OF 2015

Mrs. Nasreen Shaikh Anwar,
W/O late Shaikh Anwar Shaikh Kadar,
Aged 64 years,
Occupation: Housewife/Senior Citizen,
R/O H.No.22/300, A1 Kadar Bungalow,
Machado's Cove,
Dona Paula, Tiswadi, Goa. Petitioners

v e r s u s

State of Goa,
Through the P.I.,
Panaji Police Station Respondent.

CRIMINAL REVISION APPLICATION NO.05 OF 2016

Mr. Tabrez Shaikh Anwar,
W/O late Shaikh Anwar Shaikh Kadar,
Aged 37 years,
Occupation: Housewife/Senior Citizen,
R/O H.No.22/300, A1 Kadar Bungalow,
Machado's Cove,
Dona Paula, Tiswadi, Goa. Petitioners

v e r s u s

State of Goa,
Through the P.I.,
Panaji Police Station Respondent.

Shri Nigel Da Costa Frias, Advocate for the Petitioner.

Shri Mahesh Amonkar, Additional Government Advocate for the
Respondent/State.

Mr. Aldrin Monteiro, Advocate for the Interventor

**CORAM: C. V. BHADANG, J.
RESERVED ON 31ST MARCH, 2016.
PRONOUNCED ON 3rd APRIL, 2016.**

JUDGMENT:

Both these Revision applications arise out of the order dated 23/7/2005 passed by the learned Children's Court, Panaji in Special Case No.42/2013. They involve common and connected questions of law and facts, as such, these criminal revisions applications are been disposed of finally by common judgment.

2. The brief facts are that the original complainant, Mrs. Aysha Rayhan is the daughter of the petitioner Mrs. Nasreen Shaikh (Accused no.1) and the sister of Mr. Tabrez Anwar (Accused no.2). There appears to be a dispute between the complainant on one hand and the petitioners/accused on the other, regarding the residential house. The incident in question has occurred on 29/1/2013, at about 11.30 a.m. at the house of the complainant. As per the complaint lodged, it was claimed by the complainant that his brother Tabrez Anwar had sent three labourers to her house. It was claimed that the accused no.1 hit 9 years old son of the complainant, by name Arman Rehan with a slap on his ear and pushed him. The accused no.1 also assaulted the complainant with the help of three labourers at the instigation of accused no.2. It was claimed that on that day, the minor

son Arman was sick and had not gone to school. After the completion of the investigation a charge sheet was filed against the petitioners which is registered as Special Case No.42/2013 and is pending before the learned Children's Court at Panaji. By the impugned order, the learned Children's Court has directed framing of charge against the petitioners for the offences punishable under sections 323 r/w section 34 of I.P.C and under section 2(m)(i) punishable under section 8(2) of the Goa Children's Act, 2003 (the Act, for short). The petitioners, however, have been discharged for the offence punishable under section 506 of I.P.C.

3. I have heard Shri D'Costa, the learned counsel for the petitioners and Mr. Amonkar the learned Additional Public Prosecutor of the respondent/State. I have also heard Mr. Monteiro, the learned advocate for the complaint who sought intervention.

4. It is submitted by the learned counsel for the petitioners that no case of an offence under section 8(2) (m) (i) of the Goa Children's Act is made out. The learned counsel has referred to the meaning of the word "abuse" in order to show that no case of intentional abuse of the child is made out. He has also placed reliance on the following decisions of this Court in :

- (i) **Criminal Writ Petition No.107 of 2015 dated 14/12/2015 in the case of "Mr. P. Ravi Vs. Police**

Inspector and anr.”

**(ii) Criminal Writ Petition No.4 of 2010 dated 28/1/2010
in the case of “Mr. Suresh Narvekar Vs. State of Goa”
and**

**(iii) “Shri Mohit Chari, S/O Subhas Chari & anr.Vs. State
Through P.P.” reported on [2012] 0 Supreme (Mah)
1102.**

Reliance has also been placed on the decision of **“Krishna Kumar Mishra Vs. State of Rajasthan**, reported in [1998] 1 0 Supreme (Raj) 119. He submits that no case of framing of charge is made out.

5. The learned Additional Public Prosecutor and the learned counsel for the Intervenor has supported the impugned order.

6. It is submitted by the learned Addl. Public Prosecutor that the parties are closely related and the victim boy was a little over 9 years of age, on the date of the incident, his date of birth being 9/1/2003. It is submitted that the petitioners/accused were knowing the child being closely related and thus the act of slapping the child would amount to physical and psychological abuse which is covered

under section 2(m)(i), which is punishable under section 8(2) of the Goa Children's Act. He submitted that the case cited arose in circumstances which are clearly distinguishable.

7. I have considered the rival circumstances and the submissions made.

8. At the stage of framing of charge, the Magistrate is only required to look into the material produced by the prosecution in order to find out whether prima facie case for framing of charge is made out. Detailed appreciation of the evidence/material is not envisaged at that stage. At the out set, it is necessary to mention that there is sufficient material in so far as the charge under section 323 r/w section 34 of I.P.C is concerned. Apart from the complainant there are statements of one neighbour by name Pairba and his wife Prema, who is working as a house maid with the complainant, who have stated about the incident. There is also sufficient material to prima facie gather common intention. The material issue is about the offence under section 2(m)(i) r/w section 8(2) of the Children's Act.

9. The Children's Act is enacted with the object to "protect, promote and preserve the best interest of the children in Goa and to create a society that is proud to be child friendly". Section 2(m) defines "child abuse" which refers to the maltreatment, whether habitual or

not, of the child and includes psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment.

10. There is no manner of dispute that the child in this case was less than 18 years of age and would come within the ambit of a "child", as defined in the Act.

11. The question is whether prima facie at this stage there is enough material to frame a charge for the offence punishable under section 2(m)(i) r/w section 8(2) of the Act. In Black's Law Dictionary, (Ninth Edition) "child abuse" is defined as under:

"abuse" means (i) to damage (a thing) (ii) to depart from legal or reasonable use in dealing with (a person or thing); to misuse. (iii) To injure (a person) physically or mentally".

12. It can thus be seen that abuse includes causing physical or mental injury to a person and child abuse would include physical harm inflicted on a child. Coming back to the present case, prima facie there is material to show that while the complainant was being assaulted, the child went, to intervene in which the petitioner/accused no.1 is alleged to have assaulted him with a slap on his ear and pushed him.

The medical report of the child shows that the child had complained of pain in the ear. The medical report further shows a blunt trauma of less than 24 hours duration. Thus prima facie it cannot be accepted that no case of an offence under section 2(m)(i) r/w section 8(2) of the Act is made out.

13. The case of **Mr. P. Ravi (supra)** proceeds on a concession on behalf of the State. That apart, the incident in that case occurred on account of a dispute over a property in which there was an assault and obstruction and there were complaints and counter complaints lodge. In so far as the offence under section 8 of the Children's Act is concerned, it was in respect of an assault on Master Jason Rodrigues, who was aged 17 years. This Court found in the peculiar circumstances of the case found that only because one of the persons allegedly assaulted was aged 17 of age, an offence under said section 8 of the Act cannot be said to have been made out. The circumstances in that case indicated that there was no reason for the assailant to have known the age of the child, (who was on the verge of 18 years where he would have ceased to be a child). The facts in the present case are clearly distinguishable when the minor was not only known but closely related to the petitioner and was a little over 9 years of age on the date of the incident.

14. The case of **Suresh Narvekar (supra)** also turned on its

own peculiar facts where no intention to cause harm or injury to minor could have been attributed.

15. The case of **Krishna Kumar Mishra (supra)** involved challenge to the order of framing of charge under section 306, in which it was held that the prosecution has to establish prima facie in such a case that the accused has abetted commission of suicide by the victim by inspiring him to commit suicide. The facts in the said case are clearly distinguishable.

16. The case of **Mohit Chari (supra)** would also be distinguishable as it involved a charge of kidnapping. In that case, it has been held in para 26 of the judgment that section 8(1) of the Children's Act provides that all children should be assured of safe environment in which he/she will not be abused in any way and his/her development will be nurtured. This Court found that Section 8(1) of the Goa Children's Act is not a punishing section and thus, the conviction of the accused under section 8(1) of the Act was found to be not sustainable in law.

In the present case, the impugned order would show that in addition to section 323 r/w 34 of I.P.C the charge is directed to be framed under section 2 (m) (i) which is punishable under section 8(2) of the Goa Children's Act. It may be mentioned that as per the

amendment, by Act 20/2005 "child abuse" has been made punishable as per section 8(2) of the Act. Thus, the case of **Mohit Chari** cannot come to the aid of the petitioners.

17. I have carefully gone through the impugned order and I do not find that it exhibits exercise of jurisdiction with material irregularity so as to warrant interference.

18. In the result, Revisions Applications are dismissed.

19. The Children's Court will not be influenced by any of the observations made herein at the trial.

C. V. BHADANG, J.

Ap/-