



IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.20 of 2026(F)

1. Mr. Helcino A. Fernandes,
Son of Mr. Jose C. Fernandes,
Age 61 years, Indian National,
Residing at H. No.326,
Godinho Waddo,
Majorda, Salcete –Goa.

2. Mr. Frank Melroy Da Silva
Son of Mr. Jose Francisco Da Silva
Age 36 years,
R/o. H.no. 2A, Gonsua Betalbhatim,
Salcete – Goa.

3. Mr. Augustinho Shelton Da Silva
Son of Mr. Jose Francisca Da Silva
Age 27 years, Indian national,
R/o. H.no. 166/3, Addawaddo,
Majorda, Salcete – Goa.

4. Mr. Jose Francisco Da Silva
Son of late Antonio Da Silva
Age 64 years, Indian National,
R/o. H. no. 2A, Gonsua, Betalbatim,
Salcete – Goa.

...PETITIONERS

Versus

1. STATE,
Through Police Inspector,
Colva Police Station,
Colva, Salcete, Goa.

2. THE PUBLIC PROSECUTOR,
High Court of Bombay at Goa,

Porvorim-Goa.

3. Mr Menino Fernandes,
217, Pachecowaddo, Majorda,
Salcete, South Goa, Goa.

... RESPONDENTS

Mr Nigel da Costa Frias with Mr Kartik Panchal and Mr Savio Mesquita, Advocates for the Petitioner.

Mr S. Karpe, Additional Public Prosecutor with Ms Sonali Gaonkar, Advocate for Respondent Nos.1 and 2.

Mr Anacleto Viegas with Mr Mohammad Nadaf, Advocate for Respondent No.3.

CORAM : ASHISH S. CHAVAN, J.

Reserved on : 23rd APRIL 2026
Pronounced on : 29th APRIL 2026

JUDGMENT :

1. The Petitioners have invoked the inherent jurisdiction of this Court to quash and set aside the FIR No.79/2023 dated 14.11.2023 registered by Respondent No.1 against the Petitioners and the subsequent chargesheet arising therefrom bearing No.3/2024 filed before the Children's Court at Panaji for offences punishable under Sections 323, 506 of IPC and Section 8 of the Goa Children's Act, 2003 (the said Act) r/w Section 34 of IPC.

2. The Petitioners are arraigned in the aforesaid chargesheet as accused, whereas the Respondent No.3 is the father of the minor victim boy (victim) at whose instance the aforesaid proceedings are initiated.

3. The factual matrix germane to decide the issue arising before this Court is as under:

- (i) That the victim filed the complaint dated 11.11.2023, received by the Police on 13.11.2023, making allegations against the Petitioners. In the said complaint, the minor victim boy alleges that he was earlier assaulted and attacked by the Silva brothers on 21.10.2023.
- (ii) Narrating the incident of 11.11.2023, the victim alleges that he had gone to the beach to play football. When he came back to drink water, at that time, Helcino came towards him. He caught hold of his T-shirt and took his fist to the jaw of the victim and told him that he would break him like he broke his father Menino (Respondent No.3). Then Petitioner No.3 (Augustino) who was standing near Petitioner No.1 (Helcino) said that he would break the legs of the victim so that the victim would never play again. Petitioner No.2 said that he would suffocate the victim to death.
- (iii) Apprehending violence at the hands of the Petitioners (assailants) and perceiving that there was a threat to his life and limb, the Complainant filed the aforesaid complaint.
- (iv) Taking cognizance of the said complaint, the Respondent - Police Station filed FIR against Petitioner Nos.1 to 3. During the course of investigation, apart from recording statements and drawing of panchanamas, the Police obtained a Hurt certificate of the victim and recorded his statement under Section 164 of CrPC.

- (v) The statement of the victim under Section 164 of CrPC sets out the details of the incident of assault. The statement reflects that on 11.11.2023 at around 01.00 p.m., when the victim had finished his game of football and was drinking water in the sports shed, he was approached by the Petitioner No.1, who caught hold of the collar of the T-shirt of the victim and punched him near the throat area below the chin. The victim states that he was hurt and there was some swelling near his neck. Petitioner No.1 then gave some papers pertaining to water sports and threatened the victim, saying that if he does not give these papers to his father, then Petitioner No.1 would assault the victim in the same way as he had assaulted his father. The statement further reveals that thereafter Petitioner No.3 threatened the victim by saying that he would break his legs when he goes to play football on the beach. Thereafter, the other Petitioners also threatened him. The victim, in his statement, further narrates that there is a rivalry between his father and the Silva brothers with respect to water sports activity and hence the Petitioners are not on good terms with the victim and his family. He also states that this is the second occasion on which the Petitioners have assaulted the victim. Due to their fear, the victim states that he is unable to even step out of his house.
- (vi) The statement of one lady, who is a friend of the mother of the victim, forms part of the chargesheet. She states that on the day of the incident, she saw the victim playing football on the beach. While

she was talking with someone else, she heard a commotion and saw some people surrounding the victim near the shack shed and one of the persons caught hold of the victim's T-shirt collar and threatened that they would assault him. She further states that she, along with another lady, started walking towards the victim boy, but before they could reach the assailants, they went away. This lady does not identify the Petitioners as the assailants in her statement, however, there is another eyewitness, who is also a friend of the mother of the victim and has seen the aforesaid incident and identified two of the Petitioners as the assailants. Her statement also forms part of the chargesheet.

4. Heard Mr Nigel Da Costa Frias, Advocate for the Petitioners, Mr S. Karpe, learned Additional Public Prosecutor for Respondent Nos.1 and 2/State and Mr Anacleto Viegas, Advocate for Respondent No.3.

5. Rule. The rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

6. With the assistance of the learned Counsel for the parties, I have perused the records.

7. Although the Petition seeks quashing of the FIR and the subsequent chargesheet in its entirety, during the course of submissions, the learned Advocate for the Petitioner has restricted his arguments to the application of Section 8 of the Goa Children's Act, 2003. He would submit that, taking the

FIR and the chargesheet at face value, no offence is made out to attract the offence punishable under Section 8 of the said Act. The allegations against the Petitioners are that they caught hold of the T-shirt collar of the victim and punched him near his neck while abusing and threatening him. The contents of the chargesheet do not make out the ingredients necessary to attract the offence under Section 8 of the Goa Children's Act, 2003. According to him, the said provision pertains to serious offences involving child abuse. Placing reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Santosh Sabadev Khajnekar V/s. State of Goa***¹, the learned Advocate for the Petitioners has argued that the aforesaid incident is a solitary, isolated incident. There is no cruelty, exploitation or deliberate ill treatment. The legislative intent of the Goa Children's Act, 2003 cannot be to criminalise minor incidental acts arising out of simple quarrels. He has also placed reliance on several judgments of this Court namely, ***Suresh Narvekar V/s. State of Goa***², ***Sarvesh Vernekar V/s. State***³, ***Smita Khaunte V/s. State***⁴, ***Dinesh Gawas V/s. State***⁵, ***Priya Karekar V/s. Police Inspector, Panaji Town***⁶ and ***Dr. Vasudev Deshprabhu V/s. State***⁷.

8. Responding to the arguments of the Petitioners, learned Additional Public Prosecutor, Mr Karpe, strenuously submitted that Section 8 of the said Act provides for punishment for offence of child abuse. He invites the

¹ 2025 SCC OnLine SC 1828

² 2010 SCC OnLine Bom 2337

³ CRIR No.358/2023(F) decided on 24.07.2023

⁴ 2015 SCC OnLine Bom 5633

⁵ CRIA No.5/2019 decided on 11.11.2025

⁶ WPCR No.141/2016 decided on 20.02.2017

⁷ 2024 SCC OnLine Bom 688

attention of this Court to Section 2(m) of the said Act, which defines the offence of ‘child abuse’ as the maltreatment, whether habitual or not, of the child, which includes psychological and physical abuse amongst other ingredients. He would submit that the complaint of the victim, read with his statement under Section 164(5) of CrPC, clearly makes out two important aspects. *Firstly*, that the victim was earlier attacked and assaulted by the Silva brothers (Petitioner Nos.2 and 3) prior to the incident in question on 21.10.2023, for which he had sought legal redressal. Hence, it was argued that this was not an isolated solitary incident. The earlier assault was only by the D’Silva family, but the present assault was by the D’Silva family along with one of their friends. This clearly shows that there was an escalation by the Petitioners to put the victim in fear of losing his life and limb. *Secondly*, that the incident as narrated by the victim is not a reaction or fallout of any quarrel which has happened on the spur of the moment, but the sequence of events would suggest that there was a clear intention on the part of the Petitioners to physically assault and psychologically abuse and threaten the victim to put him under fear of further escalation of violence. Learned Additional Public Prosecutor would also submit that the ‘Hurt Certificate’ clearly reflects tenderness over the right side of the neck, which is in consonance with the allegation that one of the Petitioners punched the victim near the throat area on the neck. It was also canvassed by the learned Additional Public Prosecutor that the incident was unprovoked and intentional. The threats given by the Petitioners that they would kill the victim by choking wherever he is found and that he will be assaulted in the same way that his father was assaulted are

calculated to strike fear in the mind of the victim and hence the allegations in the FIR and the chargesheet would certainly be covered by the definition of 'child abuse' as set out in Section 2(m) of the said Act punishable under Section 8 (2).

9. Heard Mr Nigel Da Costa Frias, Advocate for the Petitioners, Mr Somnath Karpe Additional Public Prosecutor for Respondent Nos.1 and 2/State and Mr Anacleto Viegas, Advocate for Respondent No.3.

10. Rule. The rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

11. With the assistance of the learned Counsel for the parties, I have perused the records.

12. Appreciating the rival contentions, the question that arises for the determination of this Court is, firstly, whether the allegations in the FIR and the chargesheet taken at face value make out a case for attracting the ingredients of Section 2(m) of the said Act and secondly, as a logical corollary thereof, whether the aforesaid allegations prima facie make out a case for an offence punishable under Section 8(2) of the said Act.

13. Revisiting the facts of this case, and examining the complaint, the statement of the victim under 164 of CrPC and the statements of other witnesses, several important aspects come to the fore. The 164 statement of the victim is in consonance with the complaint. The allegations made by the victim against the Petitioners are clear and unambiguous. For a better appreciation, the

allegations can be divided into (a) physical assault by the Petitioners on the victim, (b) the abuses and threats given by the Petitioners to the victim, and (c) the psychological abuse of the victim at the hands of the Petitioners. It is pertinent to note that the incident narrated by the victim is not a solitary incident. He has made allegations of a prior incident of assault at the hands of Petitioners No.2 and 3, for which the victim had sought legal redressal. The threats that are allegedly given by the Petitioners are that the victim will be assaulted in the same way that his father was assaulted. To quote the complaint, “*he would break me like he broke my father*”. Here, it would be relevant to add that the 164 statement of the victim mentions about the background of animosity between the victim and the Petitioners No.2 to 4, (D’Silva family) with respect to water sports activities. The physical assault, as per the allegation of the victim, was that the Petitioners punched the victim near his throat on his neck, a fact which is corroborated by the Hurt Certificate. The Petitioner No.2 also held the neck of the victim and threatened that he would kill the victim by choking. The entire incident seems to be unprovoked and premeditated. There was no quarrel or argument between the Petitioners and the victim prior to the incident. It does not seem to be an assault on the spur of the moment. The allegation, taken at face value, clearly indicates that the intention of the Petitioners was to cause physical harm to the victim and, more importantly, put him under psychological pressure. The threats given by the Petitioners that they would kill the victim by choking him wherever he is found and that he will be assaulted in the same way that his father was assaulted, *prima facie*, seem to be calculated to strike

fear in the mind of the victim. Here, it would be relevant to reproduce Section 2(m) of the said Act :

2(m) “Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:—

(i) psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(ii) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(iii) unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death;”

From a perusal of the above provision, it is clear that physical abuse, psychological abuse, cruelty and maltreatment of a child come within the scope of the definition of Section 2(m). It is also evident that it is not necessary that the maltreatment envisaged in the aforesaid provision is habitual. On facts, the allegations as narrated aforesaid *prima facie* make out a case of physical and psychological abuse. The statement of the victim is corroborated by the statement of an eyewitness, a friend of the mother of the victim, who has also seen the incident and can corroborate the allegations. Thus, the offence defined by Section 2(m) and penalised by Section 8(2) of the said Act is *prima facie* made out from a holistic reading of the chargesheet.

14. Examining the various judgments cited at the Bar, both parties have relied on the pronouncement of the Hon’ble Supreme Court in the matter of *Santosh Sahadev Khajnekar* (supra), being the only judgment of the Hon’ble

Supreme Court relied upon by the parties. Both parties, in fact, have placed reliance on paragraph nos.13 to 15 of the aforesaid judgment. It may not be out of place to reproduce the aforesaid paragraphs, as under:

“13. On a bare perusal of the above provisions, it is evident that the offence of “child abuse” as provided under section 8 cannot be attracted to every trivial or isolated incident involving a child, but must necessarily co-relate with acts involving cruelty, exploitation, deliberate ill-treatment, or conduct intended to cause harm. The legislative intent is to protect children against serious forms of abuse and not to criminalise minor, incidental acts emanating during the course of simple quarrels.

14. The only allegation against the appellant as borne out from the statement of PW-3, the injured child is that the appellant hit him with the school bag belonging to his own son. Even if we accept the injured child’s version in entirety, it would still not be sufficient to hold the appellant guilty for the offence of “child abuse” punishable under Section 8 of the Act of 2003.

15. The offence of child abuse necessarily presupposes an intention to cause harm, cruelty, exploitation, or ill-treatment directed towards a child in a manner that exceeds a mere incidental or momentary act during a quarrel. A simple blow with a school bag, without any evidence of deliberate or sustained maltreatment, does not satisfy the essential ingredients of child abuse. To invoke the penal consequences of such a serious offence in the absence of clear intention or conduct indicative of abuse would amount to an unwarranted expansion of the provision.”

The facts in the case before the Hon’ble Supreme Court were that the accused was alleged to have casually hit the victim with the school bag of his son. The accused was before the Hon’ble Supreme Court against the concurrent findings of the special court and this Court convicting him, *inter alia*, for an

offence punishable under Section 8(2) of the said Act. It was in that context that the Hon'ble Supreme Court made the afore noted observations. The Hon'ble Supreme Court has observed that the offence of 'child abuse' necessarily presupposes an *intention* to cause harm, cruelty, exploitation, etc. It further holds that to invoke the penal consequences of such a serious offence in the absence of clear intention would amount to unwarranted expansion of the provision. The Hon'ble Supreme Court, while illustrating an incidental or momentary act during a quarrel, gives the example of the facts in the case, i.e. a simple blow with a school bag without any evidence of deliberate or sustained maltreatment. The aforesaid observations of the Hon'ble Supreme Court, in fact, apply squarely to the facts of the present case. As observed hereinbefore, the allegations clearly demonstrate, *prima facie*, that the act of verbal and psychological abuse coupled with physical assault was not a solitary incident. The incident itself was not a momentary act during a quarrel. It was neither trivial nor isolated and taking the allegations at face value, at this stage, the alleged incident seems to be aimed at creating psychological fear in the mind of the victim, the physical assault being only the means to create an atmosphere of fear in the mind of the victim.

15. Dealing with the judgments of this Court *in seriatim*, in the judgment of *Suresh Narvekar* (supra) by a coordinate Bench of this Court, the facts were that the minor children sustained burn injuries in an unfortunate incident involving bursting of fire crackers during a religious procession where one of the accused was driving the van, the fire crackers were stored in the rear part of the van which were burst by the other accused. They caught fire, and

consequently, the minor children in the van succumbed to their burn injuries. This Court was dealing with a challenge to the order framing charge for offence punishable under Section 8(2) of the said Act, where the emphasis was not on physical or psychological abuse but on the 'neglect' forming part of the ingredient of Section 8 of the said Act. It was in this context that this Court set aside the order of framing charge, giving a finding that the incident had taken place purely by accident and hence there was no intention to cause any harm to the children.

16. In the judgment of *Sarvesh Vernekar* (supra), a coordinate Bench of this Court was dealing with a challenge to the framing of a charge for an offence punishable under Section 8 of the said Act. The facts in that case were that some threatening words were used against the victim and hence this Court set aside the charge framed against the accused.

17. In the judgment of *Smita Khaunte* (supra), a Division Bench of this Court was dealing with the quashing of an FIR, *inter alia*, for an offence punishable under Section 8 of the said Act. The facts in that case were that the accused tried to attack the minor victim. Holding that since the offence was only that the accused attempted to attack the victim, this Court proceeded to quash the offence punishable under Section 8 of the said Act.

18. In the judgment of *Dinesh Gawas* (supra), a coordinate Bench of this Court, in its criminal appellate jurisdiction, was dealing with an Appeal against conviction, *inter alia*, arising out of an offence punishable under Section 8 of the said Act. The facts in this case were that the accused, the father

of a minor child, was angered by abuses given to his child by the victim and hence he chased the victim and assaulted him with a coconut leaf stalk. This judgment references the judgment of *Santosh Khajnekar* (supra) and acquits the accused for the offence punishable under Section 8 of the said Act. Observing that since bad words were used by the victim against the daughter of the accused, *as a reaction*, the accused assaulted the victim. Moreover, this was an *isolated incident* and there was *no animosity* otherwise between the accused and the victim.

19. In the judgment of *Priya Karekar* (supra), a Division Bench of this Court quashed the FIR against the accused for an offence punishable under Section 8 of the Act on the basis that the accused had verbally abused the victim and threatened him with dire consequences. This incident was a fallout of a quarrel which broke out between the occupant of a building, whose glass pane was broken by the victim and his friends while playing. It was in the context of these facts that this Court quashed the FIR for an offence punishable under Section 8 of the said Act.

20. In the judgment of *Dr. Vasudev Deshprabhu* (supra), a coordinate Bench of this Court dismissed the Appeal arising out of the conviction of the accused for offences punishable under Section 8 of the said Act, along with other offences. Here, the facts were that the accused insulted the minor boy and assaulted him with a hard wooden object and destroyed the said object in order to conceal the evidence. Considering the judgments of *Priya Karekar* (supra), *Suresh Narvekar* (supra) and *Smita Khaunte* (supra), this Court, in

the context of the definition of ‘child abuse’ set out in Section 2(m) of the said Act, observed as under:

“18. The term physical abuse includes assault of a child even on a solitary incident. It is not necessary that such physical abuse must be habitual or continuous. The definition itself makes it clear that child abuse refers to maltreatment, whether habitual or not. The words “or not” after the word “habitual” indicate that even a solitary incident of psychological or physical abuse or otherwise amounts to child abuse. The object of the Goa Children’s Act is to protect, promote and preserve the best interests of Children in Goa and to create a society that is proud to be child friendly. Thus, even physical abuse in the form of assault is included within the definition of child abuse as found in Section 2(m) of the Goa Children’s Act.....”

21. Save and except for the judgment of *Dr. Vasudev Deshprabhu* (supra), all other judgments delivered by this Court are distinguishable on facts. Moreover, this Court is exercising its inherent jurisdiction to examine whether the FIR and the chargesheet taken at face value, *prima facie*, make out a case for an offence punishable under Section 8 of the said Act. Needless to say, it is a settled position of law that the circumspection to be exercised by this Court in the exercise of its inherent jurisdiction to quash and set aside the chargesheet, either whole or in part, is higher than the revisional or appellate jurisdiction exercised by this Court.

22. As observed hereinabove, the FIR and the chargesheet, *prima facie*, clearly make out an offence punishable under Section 8(2) of the said Act and hence this Court is not inclined to interfere in its inherent jurisdiction to quash and set aside the aforesaid FIR No.79/2023 dated 14.11.2023, the

chargesheet bearing no.3/2024 and the consequent criminal proceedings arising therefrom. Resultantly, the Writ Petition deserves to be rejected.

23. The Criminal Writ Petition No.20/2026 is rejected. Rule is discharged. Registry to waive the office objections and number the Petition.

24. It is clarified that observations made by this Court shall not be construed as an expression of opinion on the guilt or otherwise of the Petitioners. The Trial Court shall not be influenced by any of the observations made hereinabove.

ASHISH S. CHAVAN, J.