2025:KER:47533

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 27TH DAY OF JUNE 2025 / 6TH ASHADHA, 1947

CRL.MC NO. 8067 OF 2024

CRIME NO.1375/2023 OF SULTHAN BATHERY POLICE STATION, WAYANAD

AGAINST THE ORDER/JUDGMENT DATED IN CP NO.37 OF 2024 OF JUDICIAL MAGISTRATE OF FIRST CLASS, SULTHANBATHERY

PETITIONER/ACCUSED:

1 XXXXXXXXXX
XXXXXXXXXX

BY ADVS.
SRI.P.JINISH PAUL
SMT.SNEHA V.

RESPONDENTS/STATE AND DE-FACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.

2 XXXXXXXXXX
XXXXXXXXXX

BY ADV.C.N.PRABHAKARAN, SR.PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27.06.2025, ALONG WITH CRL.MC.9017/2024 AND 10077/2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 27TH DAY OF JUNE 2025/6TH ASHADHA, 1947

CRL.MC NO. 9017 OF 2024

CRIME NO.1521/2024 OF KODUNGALLUR POLICE STATION, THRISSUR

PETITIONER/ACCUSED:

SHEENA
AGED 49 YEARS
W/O T.V.SHAJI, ENGLISH TEACHER,
PHONIEX SCHOOL METHALA, KODUNGALLUR
RESIDING AT THAYYATHAZHATH HOUSE, T.K.S.PURAM DESOM,
METHALA VILLAGE, KODUNGALLUR TALUK,
KODUNGALLUR POST, THRISSUR, PIN – 680669.

BY ADVS.
SRI.P.M.ABDUL JALEEL (KODUNGALLUR)
SRI.K.SHAMEER MOHAMMED
SRI.K.N.MUHAMMED THANVEER
SRI.ALTHAF AHMED ABDU

RESPONDENTS/COMPLAINANT/STATE AND DEFACTO COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

2 **STATION HOUSE OFFICER**
KODUNGALLUR POLICE STATION,
KODUNGALLUR,
THRISSUR, PIN – 680644.

3 RINSILA
KOTTAYATH VEETTIL, ANCHAPALAM DESOM,
METHALA VILLAGE, KODUNGALLUR TALUK,
KODUNGALLUR POST, THRISSUR DISTRICT, PIN - 680644.

BY ADVS.
SRI.MANSOOR.B.H.
SRI.C.K.RAPHEEQUE
SRI.K.B.NIDHINKUMAR
SMT.SAKEENA BEEGUM
SRI.C.N.PRABHAKARAN, SR.PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27.06.2025, ALONG WITH CRL.MC.NOS.8067/2024 AND 10077/2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

2025:KER:47533

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 27TH DAY OF JUNE 2025 / 6TH ASHADHA, 1947

CRL.MC NO. 10077 OF 2024

CRIME NO.148/2023 OF NORTH PARAVUR POLICE STATION, ERNAKULAM AGAINST THE ORDER/JUDGMENT DATED IN SC NO.1929 OF 2023 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

PETITIONER/ACCUSED:

RAJU K K
AGED 57 YEARS
S/O KANDAYAN, KADEPPARAMBIL (H),
NAYARAMBALAM VILLAGE, NAYARAMBALAM P.O,
ERNAKULAM DISTRICT, PIN – 682509.

BY ADVS.
SRI.T.N.SURESH
SRI.YEDU KRISHNA S.
SMT.MEDHA MARIA MATHEW
SMT.AISWARYA UNNIKRISHNAN

RESPONDENTS/COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

2 **XXX**
XXX, PIN – 683516

BY ADVS.
SRI.SUDEEP ARAVIND PANICKER
SRI.A.S.DILEEP
SRI.P.BINOD
SRI.K.Y.SUDHEENDRAN
SMT.SUSEELA DILEEP
SRI.K.N.HARISHANKAR
SMT.MAYA M.N, PUBLIC PROSECUTOR
SRI.C.N.PRABHAKARAN, SR.PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27.06.2025, ALONG WITH CRL.MC.Nos.8067/2024 AND 9017/2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

'C.R.'

COMMON ORDER

Dated this the 27th day of June, 2025

'Spare the rod, Spoil the child'

The culpability component in the context of offence under the Bharatiya Nyaya Sanhita, 2023 ('B.N.S.', for short), and also the Juvenile Justice (Care and Protection of Children) Act, 2015 ('J.J. Act', for short), when a teacher canes a student in order to discipline him/her is the subject matter of these three Criminal Miscellaneous Cases, for which reason, the three cases are heard and disposed of by this Common Order.

2. Crl.M.C.No.8067/2024

Petitioner herein is the accused in Crime No.1375/2023 of Sulthan Bathery Police Station. She seeks to quash Annexure-A1 F.I.R. and also Annexure-A2 final report in

the said crime. The prosecution would allege that the petitioner/accused had caned the victim, aged 9 years, due to his poor performance in the dictation conducted by the petitioner, besides publishing his mark list with zero marks in the WhatsApp group, causing physical and mental agony to the victim, thus committing the offences under Section 324 of the Penal Code and Section 75 of the J.J. Act.

3. Crl.M.C.No.9017/2024

The petitioner/accused seeks to quash Crime No.1521/2024 of Kodungallur Police Station. The prosecution would allege that the petitioner caned a student, aged six years, for not being attentive in the class, thus committing the offences under Section 118(1) of the B.N.S. and also under Section 75 of the J.J. Act.

4. Crl.M.C.No.10077/2024

The petitioner herein seeks to quash Crime No.148/2023 of

North Paravur Police Station. The prosecution would allege that the petitioner/accused had beaten the victim, aged 9 years, using a P.V.C. pipe repeatedly on her thighs, during the dance practice session in connection with the Annual Day celebrations, thus committing the offences under Section 324 of the Penal Code and Section 75 of the J.J.Act.

5. All the petitioners relies on various judgments of this Court in ***Sindhu Sivadas v. State of Kerala*** [2024 KLT OnLine 2559], ***Shyju v. State of Kerala*** [2024 KLT OnLine 1761], ***Jayasree Asokan and Another v. State of Kerala and Others*** [2024 KLT OnLine 1958] and ***Jomi v. State of Kerala and Others*** [2024 KLT OnLine 1741] to buttress their arguments.

6. Having regard to the issues involved, this Court deemed fit and proper to appoint an Amicus and accordingly **Adv.Jacob P.Alex** was appointed as the Amicus Curiae.

7. Heard the learned Amicus; Counsel for the petitioners, the learned Senior Public Prosecutor, and also the learned counsel for respondent no.3 in Crl.M.C.No.9017/2024 and respondent no.2 in Crl.M.C.No.10077/2024 (the respective defacto complainants). Perused the records.

8. SUBMISSIONS MADE BY THE AMICUS CURIAE:

Learned Amicus would submit that the issue at hand has to be viewed in the backdrop of the International Conventions on Child Rights. Learned Amicus specifically invited this Court's attention to the U.N. Convention on the Rights of the Child, 1989 ('Child Rights Convention', for short), specifically to Article 37(a) of that Convention, which reads as follows:

> *"No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment….."* (underlined for emphasis)

Article 16(1) of the Convention was also emphasised, which stipulates that no child shall be subjected to arbitrary

or unlawful interference with his or her privacy, family etc., nor to unlawful attacks on his or her honour and reputation. As per Article 28(2) of the Child Rights Convention, the States Parties are mandated to take appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention. It is pointed out by the learned Amicus that the Child Rights Convention of the year 1989 was ratified by India, and the child friendly laws, namely the J.J. Act, Right of Children to Free and Compulsory Education Act, the Protection of Children from Sexual Offences Act etc., expressly recognize the U.N. Convention. Learned Amicus then invited the attention of this Court to Section 17 of the Right of Children to Free and Compulsory Education Act, 2009, which stipulates that no child shall be subjected to physical punishment or mental harassment. Learned Amicus would submit that the treaty obligations should be honoured and should be harmoniously construed,

when a State law is interpreted. In this regard, learned Amicus relied upon the judgment of the Hon'ble Supreme Court in ***Union of India and Others*** **v.** ***Agricas LLP and Others*** [2021 (14) SCC 341], besides relying on Article 51(c) of the Constitution. In support of the proposition that corporal punishment of the child, nowadays, is not recognized by law, the following judgments are also referred and relied (1) the judgment of the Gujarat High Court in ***Hasmukhbhai Gokaldas Shah*** **v.** ***State of Gujarat*** [2009 KHC 5650]; (2) a Division Bench judgment of the Delhi High Court in ***Parents Forum for Meaningful Education and Another*** **v.** ***Union of India and Another*** [2001 KHC 3179]; (3) ***S Jai Singh*** **v.** ***State*** [MANU/TN/1655/2021]. Learned Amicus would conclude by submitting that the judgments that justify corporal punishment, which still follow the old common law approach, are not in tune with India's binding obligations under the Human Rights treaties, especially the Child Rights Convention. According to the learned Amicus, corporal punishment is

violative of the recognized fundamental rights to life, liberty, dignity, bodily integrity and privacy of the child guaranteed under Articles 14 and 21 of the Constitution. In the present scenario, corporal punishment to a child is not recognised by law and it is an archaic notion that the child can be punished physically by teachers in order to maintain discipline. Relying on ***Navtej Singh Johar and Others v. Union of India*** [2018 (10) SCC 1], it is the submission of the learned Amicus that Indian Courts, while dealing with corporal punishment, must be guided by constitutional morality, than societal morality.

9. ARGUMENTS OF THE COUNSEL FOR PETITIONER IN CRL.M.C No.8067/2024:

In answer to the above contentions, learned counsel for the petitioner in Crl.M.C.No.8067/2024 would submit that corporal punishment on child is not explicitly criminalised in India through penal Statutes. The constitutional allegiance of India is not monistic, but

dualistic in nature, wherefore, the International Conventions will not become automatically enforceable in India, unless incorporated in the domestic law. If there is conflict between the international law and the domestic law, the latter will prevail, is the submission made. In this regard, learned counsel relies upon a series of judgments, which would be referred to while discussing the issue. learned counsel would submit that even though the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Juvenile Justice (Care and Protection of Children) Act, 2015 (as amended by the Act 23 of 2021) expressly took stock of the Child Rights Convention and re-enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 to make the same in tandem with the provisions of the Convention, Section 82 of the 2015 Act which deals with corporal punishment, does not rope in teachers, who imparts education to children. In other words, in the absence of specific provisions criminalising corporal punishment, criminal

liability cannot be fastened on teachers, who impose minimal and reasonable punishment to discipline the children, is the submission made. Secondly, it is submitted by the learned counsel that, as against the international law, strict interpretation is warranted in respect of the criminal laws of the Country, which fastens criminal liability. Penal Statutes requires strict construction, is the submission made. The maxim ***nullum crimen sine lege*** (no crime without law) was pressed into service. learned counsel relied on Article 21 of the Constitution, which prohibits conviction of a person for an offence, except in violation of law in force at the time of the act. A criminal offence can never be inferred based only on International Treaties. Reference is also made to Section 3 of the Indian Penal code, which prescribes that a person can be punished for the offences explicitly defined under it. In support of this proposition, learned counsel relied upon several judgments, which also will be discussed during analysis

by the Court. On facts, it was submitted that the petitioner, a lower primary teacher, had allegedly beaten 2nd respondent's son with a cane for poor performance during dictation. learned counsel would submit that there is no *mens rea*, whatsoever, and the same - even if it is assumed to have been done - can only be with good intentions for betterment and better discipline of the child, which, by any stretch of imagination, cannot be castigated as an offence.

10. ARGUMENTS OF THE COUNSEL FOR PETITIONER IN CRL.M.C Nos.10077/2024 and 9017/2024:

learned counsel for the petitioners in the Crl.M.Cs above referred would submit that the offence under Section 118(1) of the B.N.S. is not maintainable, inasmuch as no dangerous weapon has been used; nor was any injury caused to the child. In the context of Section 75 of the J.J. Act, learned counsel relied upon a series of judgments of this Court (which will be referred to in this judgment

later) to point out that the offence will not lie. Counsel would finally submit that, unless the authority to inflict minimal punishment on pupils is conceded to the teachers, their discipline, in accord with the rules and regulations of the institution, cannot be maintained. That apart, the overall growth of the child rooted on such discipline also has to be ensured, for which purpose minimal punishment, without affecting the body, limb or mind of the pupil, may have to be resorted to, is the submission made.

11. ARGUMENTS ADVANCED ON BEHALF OF DEFACTO COMPLAINANTS IN CRL.M.C Nos.9017/2024 AND 10077/2024:

Per contra, this Crl.M.C. was seriously opposed by the learned counsel for the defacto complainants in the above Crl.M.Cs. Counsel relied on an Order of the Madras High Court in Crl.O.P.No.23120/2019 and Crl.M.P.No.807/2020 dated 04.03.2021, wherein, the constitutional guarantees available to children are dealt with by a learned Single Judge.

12. ARGUMENTS OF THE PUBLIC PROSECUTOR:-

This application was also seriously opposed by the learned Senior Public Prosecutor, on the premise that a cane can become dangerous, especially taking into account the tender age of the child in question and also for the reason that the child in one case had undergone a surgery, shortly before the incident. As regards offence under Section 75 of the J.J. Act, the learned Prosecutor would submit that the conduct would attract the offence of 'assault', as defined in Section 75 of the J.J. Act.

13. COURT'S ANALYSIS:-

Let me first consider the arguments advanced by the learned Amicus. The following are the judgments of this Court, which justify minimal and reasonable punishment to a child/student with a view to discipline him/her.

1. ***Abdul Vaheed*** **v.** ***State of Kerala*** [2005 KHC 535], paragraphs 3,8.
2. ***Rajan @ Raju*** **v.** ***SI of Police*** [2018 (5) KHC 967], paragraph 11.

3. ***Nirmala K*** **v.** ***State of Kerala*** [2019 (5) KHC 912], paragraphs 8, 11.
4. ***Amal*** **v.** ***State of Kerala*** [2020 (4) KHC 781], paragraph 6.
5. ***Prameela Fergod*** **v.** ***State of Kerala***, [2021 KHC 840], paragraphs 7, 8
6. ***Jaya*** **v.** ***State of Kerala*** [2022 (1) KHC 678], paragraph 11
7. ***Jomi*** **v.** ***State of Kerala*** [ILR 2024 (3) Ker 341], paragraphs 10,11.
8. ***Jayasree Asokan*** **v.** ***State*** [Crl.M.C 1044 of 2023 judgment dated 23.07.2024].
9. ***Sindhu Sivadas*** **v.** ***State*** [Crl.M.C 2948 of 2022 judgment dated 07.10.2024].
10. ***Sibin*** **v.** ***State of Kerala*** [2025 (2) KLT 380]

What essentially this Court should consider is the impact of the Child Rights Convention on the above dictum. It is true that Article 37(a) of the Child Rights Convention, 1989 specifically prohibits that no child should be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Similarly, Article 28(2) of the Convention requires the States Parties to take all

appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention. If the above firm resolves are enforceable *per se*, there cannot be any doubt as regards the teacher's disentitlement to inflict corporal punishment on a child, even if it be to discipline him/her. Thus, the moot question is the enforceability of the Child Rights Convention, 1989, especially the Articles specifically referred above.

14. There cannot be any doubt that the constitutional allegiance of this Country is not monistic, but only dualistic in nature (see in this regard the Constitutional Bench decision of the Hon'ble Supreme Court in ***State of West Bengal*** v. ***Kesoram Industries Ltd. and Others*** [(2004) 10 SCC 201, at page no.410]. Article 51(c) of the Constitution adumbrates India’s Directive Principle to foster respect for international law and treaty obligations in the dealings of organised peoples

with one another. On the question of enforceability of an International Convention, this Court will straight away refer to a Constitutional Bench decision of the Hon'ble Supreme Court in ***Maganbhai Ishwarbhai Patel etc*** v. ***Union of India and Another*** [(1970) 3 SCC 400]. It was held that making of law by Parliament in respect of treaties/conventions is necessary only when the covenants thereof modifies the law of India. In ***Gramophone Company of India Ltd*** v. ***Birendra Bahadur Pandey and Others*** [(1984) 2 SCC 534], it was held that the Parliament has to make law to make the treaties/convention enforceable, if the covenants thereof is in conflict with the laws of India. The following findings in ***Gramophone*** (supra) are extracted here below:

> *"5. ……. Comity of nations or no, municipal law must prevail in case of conflict. National courts cannot say yes if Parliament has said no to a principle of international law ….."*

15. The Supreme Court exhorts that the Courts have an obligation, within legitimate limits, to interpret municipal statutes, so as to avoid confrontation with the comity of nations. However, if conflict is inevitable, the international covenants must yield to municipal law, is the dictum laid.

16. The issue again fell for consideration before the Hon'ble Supreme Court in the case of ***Jolly George Varghese and Another*** v. ***The Bank of Cochin*** [(1980) 2 SCC 360] which involved the question of civil imprisonment on account of failure to discharge the decree debt. **V.R.Krishna Iyer, J.,** speaking for the Bench held that international covenants does not automatically become enforceable as part of Corpus Juris of India, but should go through the 'process of transformation' into municipal law, before an International Treaty can become an internal law. It was held that the international law does not have force or authority of civil law *proprio vigore*,

until legislation is undertaken under its inspirational impact.

17. A comprehensive discussion on the point is contained in ***Union of India and Others*** v. ***Agricas LLP and Others*** [(2021) 14 SCC 341]. After scanning through the precedents on the point, the Hon'ble Supreme Court held that States, as signatory to the International Treaty, are under an obligation to act in conformity and bear responsibility for breaches. In deviation from the propositions held thither to, it was held in ***Agricas LLP and Others*** (supra) that municipal laws cannot prevail upon treaties, as internal actions must comply with the international obligation (see paragraph no.28 of the judgment).

18. The Supreme Court again had occasion to consider the issue in ***Assessing Officer Circle (International***

Taxation), New Delhi v. ***M/s.Nestle SA*** [2023 SCC Online SC 1372]. In that case, it was held that treaties bind the Union, but would not by its own force, bind the Indian nationals. It was held that if the treaty/convention restricts or affects the rights of the citizens or others, the treaty is not enforceable, in the absence of law made by the Parliament. In ***Justice K.S.Puttaswamy (Retd) And Another.*** v. ***Union Of India And Others*** [2017 (10) SCC 1], the Supreme Court, while considering the issue of right to privacy in the backdrop of Article 21 of the constitution, found that when there is dichotomy between international law and domestic statute, the Court would give effect to the latter (See paragraph no.154 of the judgment).

19. It could, therefore, fairly be concluded that the International Treaties, by its own force, are not enforceable in India, when the provisions of such treaties/conventions is in conflict with the

municipal/domestic law or when it affects the rights of citizens.

20. The next aspect to be explored is with respect to the domestic Law, namely, the J.J. Act, 2015. Corporal punishment is defined in Section 2(24) of the J.J. Act as follows:

> *"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;"*

21. Section 2(21) defines a child care institution thus:

> *"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;"*

22. Section 82 of the J.J. Act deals with the punishment for committing the offence of corporal punishment, which is extracted here below:

> ***"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 coorporate 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 extent to one lakh rupees.”*

From the above definition, it is clear that the conduct of subjecting a child to physical punishment, involving deliberate infliction of pain, for the purpose of disciplining or reforming the child, is what corporal punishment is. However, when it comes to the charging Section 82, only a person in-charge of or employed in a '*child care institution*', who subjects a child to corporal punishment alone is liable for punishment for the said offence. Though a case where corporal punishment is inflicted on a child, with the aim of disciplining the child, is specifically dealt with in Section 82 of the J.J. Act, the statute makers, nevertheless, did not deem it proper or necessary to include a school teacher, or for that matter, a school within the definition of Section 82. The inescapable conclusion, therefore, is that a teacher

who subjects a child to corporal punishment in a school for the purpose of disciplining or reforming the child, cannot be charged with an offence under Section 82 of the J.J. Act. Section 2(24) encompasses any act which subjects a child to physical punishment for the purpose of disciplining or reforming him/her; however, such corporal punishment inflicted by a teacher is not an offence in terms of Section 82 of the J.J. Act. It is only logical to conclude that the J.J. Act, 2015 - engrafted after taking stock of the necessity to align the domestic law in tune with the Child Rights Convention - has specifically excluded the conduct/act of a teacher inflicting corporal punishment for the purpose of disciplining a child. This can only be taken as a conscious omission - and not an inadvertent one. Profitable reference in this regard can be made to the concluding observations of the *Committee on the Rights of the Child* on the combined third and fourth periodic reports of India. The reports were considered in the 1885th and 1886th meetings and adopted at its 1901st

meeting. The Committee considered the follow up measures taken and the progress achieved by India as a State party. The Committee also considered the main areas of concern and recommendations. The following observations with respect to corporal punishment is relevant and extracted here below:

> ***"Corporal punishment***
>
> *47. The Committee notes the legal prohibition of corporal punishment in all educational and care institutions. However, it remains concerned that:*
>
> *(a) XXXX*
>
> *(b) Corporal punishment is still lawful in non-institutional care settings;*
>
> *(c) Corporal punishment as a disciplinary measure and as a sentence for a crime is not prohibited throughout the State party;*
>
> *(d) Despite the State party's efforts, corporal punishment continues to be widely used within the family, alternative care and school settings and within the penal system."*
>
> *(underlined for emphasis)*

Having taken note of the above concern, the Committee *inter alia* recommended that State party to explicitly prohibit all forms of corporal punishment of children under 18 years in all settings throughout its territory. It is axiomatic from the above that the corporal punishment in the school setting has not been criminalised in India.

23. It is settled law that once an International Treaty/Convention has been engrafted to the domestic Law, by way of an amendment; or in a case, where a domestic Law has been enacted pursuant to, and for the purpose of enforcing an International Treaty/Convention, then what is enforceable is such amended law or the newly introduced enactment. In other words, one cannot fall back upon a covenant in the International Treaty/Convention for the purpose of enforceability, dehors such amendment/ legislation.

24. In the circumstances, where an enactment has been made in terms of Article 253 of the constitution, after repealing the earlier enactment on the topic, specifically to incorporate the covenants in the International Treaty and also to make the domestic Law align with such Treaty/Convention and having defined corporal punishment - but confined the punishment for that offence, only to persons in-charge of, or who are employed in a child care institution alone - an offence in respect of a teacher indulging in a corporal punishment, as defined in Section 2(24), cannot be readily inferred.

25. It is relevant in this regard to consider the proposition canvassed by the learned counsel for the petitioner in Crl.M.C. No.8067/2024 that it is not legitimate to infer an offence, unless it is in so expressly declared by a statute. Profitable reliance in this regard can be made under Article 21 of the Constitution, which proscribes punishment of a person,

except for violation of law in force, at the time of act. The maxim ***nullum crimen sine lege*** is also on all fours to the context. For the proposition that criminal statutes are liable to be interpreted strictly and that an accused can be convicted only if his act clearly falls within the offence as defined by law, reliance can be placed on i) ***A.K.Gopalan v. State of Madras*** [AIR 1950 SC 27]; ii) ***Nayyar (G.P) v. State (Delhi Administration)*** [AIR 1979 SC 602]. It is beyond the cavil of any doubt that, however morally wrong the objectionable conduct be, the same will not constitute an offence, unless it is expressly declared so by the statute. This Court, therefore, conclude that the conduct of a teacher caning a student, within reasonable and justifiable limits, so as to inflict minimal punishment for the purpose of disciplining and reforming a child, cannot constitute an offence under Section 82 of the J.J. Act. It may be realising the limitations of the offence under Section 82 that the Investigating Agency has not incorporated the said

offence; instead, what is alleged is the commission of the offence under Section 75 of the J.J. Act, which will be dealt with separately during the course of this judgment.

26. Before discussing whether Section 75 of the J.J. Act will be attracted, this Court may straight away conclude that the offence under Section 118(1) of the B.N.S. is not attracted at all in the given facts. Section 118(1) of B.N.S., which corresponds to Section 324 of the Penal Code, is extracted here below:

> ***"118. Voluntarily causing hurt or grievous hurt by dangerous weapons or means.-***
> *(1) Whoever, except in the case provided for by sub-section (1) of section 122, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to*

> *inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to twenty thousand rupees, or with both."*

A perusal of the above description of the offence would clearly indicate that the offence is attracted only when a hurt is voluntarily caused by any instrument for shooting, stabbing or cutting; or any instrument which, when used as a weapon of offence, is likely to cause death. The other descriptions may not be relevant in the given facts. In the instant case, the instrument used is a cane, except in one case which is separately dealt with. It does not answer the requirement of an instrument for shooting, stabbing or cutting, or for that matter, an instrument, which is likely to cause death, when used as a weapon of offence. This Court, therefore, concludes that the offence under Section 118(1) is not attracted in the given facts.

27. This Court will now address the offence under Section 75 of the J.J. Act. Serious controversy centers around the interpretation of the offence under Section 75 of the J.J. Act. Section 75 of the J.J. Act, insofar as it is relevant, is extracted here below:

> ***"75. Punishment of 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:"*

28. As already discussed, if the conduct of a teacher caning a student is incapable of attracting the offence under Section 82, it may not be proper to rope in a teacher for the above-referred conduct for offence under Section 75 of the Act, apart from and independent of the

question, whether the objectionable conduct of the teacher would answer any of the parameters culled out in Section 75. Primarily, Section 75 of the J.J. Act does not deal with any corporal punishment, or a case which inflicts a direct hurt on the child. The *actus reus* recognized in Section 75 are 1). assault 2). abandon 3). abuse 4). expose 5). wilfully neglects a child, or 6). causing to do any of the above acts. The above acts constituting the offence does not contemplate infliction of any direct physical harm on the child, except in case of 'abuse'. Before addressing 'abuse', I would first deal with 'assault', for, it is capable of carrying a misconception that the same would attract the objectionable conduct of caning. 'Assault' is not defined under the J.J. Act, but under Section 130 of the B.N.S. as follows:

> ***"130. Assault.***- *Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or*

> *preparation is about to use criminal force to that person, is said to commit an assault."*

An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. It is committed whenever a well founded apprehension of immediate peril, from a force already put in motion - partially or fully - is created. An assault is contained in every use of criminal force *(See the Commentary on Section 351 of Penal Code – corresponding to Section 130 of B.N.S - **by Ratanlal & Dhirajlal,** 33rd Edition, at page no. 2294)*. So, if a gesture is shown to the child, so as to create an apprehension of use of criminal force against the child, it may be an offence in terms of Section 130 of the B.N.S. However, to constitute an offence under Section 75 of the J.J. Act, it should also be established that, such gesture was 'unnecessary' too, which will be dealt with separately during the course of this judgment.

29. Now coming to 'abuse' in the context of Section 75, it may have to be borne in mind that serious abuse of child - say for begging, for giving intoxicating liquor etc. - are to be kept outside the the scope of Section 75, inasmuch as, those conduct constitute separate offences under Sections 76, 77 etc. Therefore, abuse of a lesser degree is what would have been meant under Section 75. It is therefore seriously doubtful, whether a corporal punishment inflicted on the child with an eye fixed on disciplining the child would come within the ambit and scope of Section 75. Here, this Court is bound to take stock of the settled law that, when two interpretations are possible with respect to a penal provision, the one which favours the accused must be preferred (see ***Tolaram Relumal and Another v. State of Bombay*** [**AIR 1954 SC 496**], at paragraph no.8).

30. In this regard, it is also worthwhile to note that the objectionable conduct, in order to constitute the

offence under Section 75, should be done in a manner likely to cause such child '*unnecessary*' mental or physical suffering. Having regard to the definition of Section 75, this Court is of the opinion that the suffix '*in a manner likely to cause such child unnecessary mental or physical suffering*' is common, in the sense that, it is applicable to cases where the above-referred acts are done by the person in charge, as also, in cases where it is caused to be done, both. For example, a 'wilfull neglect' of the child by a person in-charge of the child will become punishable, only when such neglect is of such a manner, which is likely to cause unnecessary mental or physical suffering to the child. The words 'wilfull' and 'unnecessary' assume significance herein. It is trite that every word in a statute is used with a definite purpose, wherefore the term 'unnecessary' also has a definite purpose to serve, in the context of an offence under Section 75 of the J.J. Act. In other words, if an assault, abandonment, abuse or neglect of the child is necessary,

in the sense that, it is justified in the attendant facts and circumstances, no offence can be read into.

31. Coming to the instant facts, the child was caned for not being attentive to the classes; or for poor performance in the dictation; even as per the prosecution case. One may have to lift the veil and find out the *bona fides* of the teacher in expecting that the child should attend the classes and perform well. Thus reckoned, the conduct cannot be considered as 'unnecessary', unless such punishment is found to be disproportionate; or actuated by *malafide* or ulterior motives.

32. It is indeed a possible contention that the teacher should have been a bit more sensitive, taking into account the tender age of the child. However, that which may be morally wrong, cannot be taken as legally wrong, unless the requirements and ingredients of the offences canvassed are spelt out, satisfactorily.

33. WHETHER TEACHERS ARE ENTITLED IN LAW TO INFLICT CORPORAL PUNISHMENT?

This question is required to be addressed to wipe off a misconception amongst the public, particularly the stake holders. I will straightaway refer to Section 17 of Right of Children to Free and Compulsory Education Act, 2009. Section 17 is extracted here below:

> *"17. Prohibition of physical punishment and mental harassment to child.—(1) No child shall be subjected to physical punishment or mental harassment.*
> *(2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person."*

As it is clear from Section 17(2), the contravention would only attract disciplinary action under the service rules. Therefore, Section 17 cannot be pressed into service to canvass that an offence has been committed. This Court also takes into account the Guidelines for eliminating

Corporal Punishment in Schools issued by the National Commission for Protection of Child Rights (NCPCR). Thus, in the light of the Child Rights Convention, the legislations enacted/amended under its inspirational impact, namely the J.J Act and the Right of Children to Free and Compulsory Education Act etc., and especially in the light of Section 17 of latter enactment, it is only logical to conclude that a teacher is disentitled to inflict corporal punishment on a child. Nevertheless, in order to constitute an offence out of the conduct of inflicting corporal punishment, the same should have been expressly declared as an offence in the penal statute concerned. This Court is, therefore, not voting in favour of the teachers inflicting punishment on children, even if it be to discipline or reform them. All what this Court hold is that, the said conduct going by the penal statutes concerned, as it stands now, is incapable of constituting an offence. I cannot therefore set and subscribe my hands to the proverb '***Spare the rod, Spoil the child***'. By

holding as above, this Court is not saving/excluding a case where any corporal punishment is inflicted on any vital part of the body of the child. Nor is the above discussion intended to save sadistic tendencies, if any, exhibited by the teachers, in the matter of infliction of punishment. Those are exceptional situations capable of constituting an offence, which are to be dealt with appropriately, as per law.

34. In the light of the above discussion, this Court finds considerable merits in Crl.M.C.Nos.8067/2024 and 9017/2024. For the reasons afore-referred, the F.I.Rs and all further proceedings in Crime No.1521/2024 of Kodungallur Police Station, Thrissur and Crime No.1375/2023 of Sulthan Bathery Police Station, Wayanad are hereby quashed.

35. Crl.M.C.No.10077/2024

Dehors the above declaration of law based on the

discussion above, this Court is of the opinion that Crl.M.C.No.10077/2024 stands in a different footing, wherefore, the relief sought for cannot be granted. Annexure-A2 is the Final Report in Crime No.148/2023 of North Paravur Police Station, which is sought to be quashed in that Crl.M.C. The offences alleged are under Section 324 of the Penal Code, read with Section 75 of the J.J. Act. A perusal of Ext.A2 Final Report would reveal the allegations as follows:

The accused, being the temporary dance teacher of St. Aloysius School, North Paravur had beaten the victim child, who was studying in the 4th standard, by using a PVC pipe on her thigh repeatedly - for the reason that she committed mistakes during dance practice - so as to cause pain and mental trauma to the child, thus committing the offences enumerated above.

36. Although a serious attempt was made by the learned counsel for the petitioner to bring this matter also

within the fold of the other two matters and to quash Annexure-A2 Final Report, this Court notice the following distinguishing factors:

Firstly, the person, who had beaten the child is not a regular teacher, but only someone, who used to be invited for training the students for dance performance in connection with the annual day celebrations of the school, wherefore it is doubtful whether the concept of inflicting reasonable punishment for disciplining or refreshing the child can be pressed into service. Secondly, the instrument used for inflicting punishment is not a cane; but a PVC pipe, which is used to augment rhythm to the dance. In this regard, profitable reference can be made to the judgment of the England and Wales High Court in ***Regina v. Hopley*** [(1860) 2 F&F 202], wherein the Court spelt out the following parameters to justify moderate and reasonable corporal punishment inflicted on a child.

i) The first, of course, is that such punishment should be moderate and reasonable, and not excessive.

ii) Second, it should not be administered for the gratification of passion or of rage. It should not be protracted beyond the child's power of endurance.

iii) It should not be with an instrument unfit for the purpose (emphasis supplied); and

iv) The punishment should not be calculated to produce danger to life and limb.

37. Out of the above parameters, the present facts will fall within the one, where it is stipulated that the punishment should not have been inflicted with an instrument unfit for the purpose. The investigation in the instant crime reveals beating of a child by using a PVC pipe, that too by a person, who is invited only during the school annual day, for training students for dance. The same cannot be readily inferred as an act for disciplining or reforming the child, from the available records, in the absence of evidence.

38. In such circumstances, the relief sought for in the Crl.M.C, namely, to quash the crime in question cannot be allowed. Nevertheless, this Court notice that the offences canvassed in the subject crime, that is, Section 324 of the Penal Code and Section 75 of the J.J Act cannot be sustained for reasons already adverted to, while discussing the two other Criminal Miscellaneous Cases. As a matter of fact, at the time of registering the F.I.R, the offence canvassed was one under Section 323, which however, was altered to Section 324 at the time when the final report was filed, on the premise that incorporation of offence under Section 323 was a mistake. Although, the weapon used is different from that of a cane in the instant facts, that is to say a P.V.C. pipe, the same also is not a weapon which is likely to cause death when used as a weapon of offence. None of the parameters constituting the offence under Section 324 are answered in the given facts. Therefore, the offence under Section 324 cannot be sustained. For the same set of reasons as

discussed in detail, the offence under Section 75 of the J.J Act also cannot be sustained. However, this Court notice that the offence under Section 323, as originally canvassed in the F.I.R, is *prima facie* sustainable. In the circumstances, the offences canvassed in the final report, namely, the one under Section 324 of the Penal Code, and also, under Section 75 of the J.J Act are hereby quashed. However, it will be open for the Investigating Officer to file a fresh final report, or for that matter, incorporate necessary changes in the present final report so as to alter the offence as one under Section 323 of the Penal Code and to proceed with the matter in accordance with law. Crl.M.C.No.10077/2024 will stand disposed of as indicated above. It is clarified that this Court has not entered into the merits of the matter and the trial court will proceed with the trial of the case, untrammeled by any of the observations made in this Order. The punishment, if any, will only be based on independent of analysis of the evidence adduced.

39. Before parting, I should place on record my deep and profound appreciation to the learned Amicus, **Adv.Jacob P.Alex,** for the commendable service rendered by him in expositing the intricacies of the law on the topic. Appreciation is due to the learned counsel for the respective parties, who also made commendable efforts to unfold the nuances of the issue dealt with.

Sd/-

C. JAYACHANDRAN
JUDGE

TR/SKP/ww/vdv

APPENDIX OF CRL.MC 8067/2024

PETITIONER ANNEXURES

ANNEXURE A1	**TRUE COPY OF F.IR IN CRIME NO.1375/2023 OF SULTHAN BATHERY POLICE STATIN, DATED 16.12.2023.**
ANNEXURE A2	**TRUE COPY OF FINAL REPORT IN CP NO.37/2024 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, SULTHAN BATHERY IN CRIME NO.1375/2023 OF SULTHAN BATHERY POLICE STATION DATED 10.01.2024.**
ANNEXURE A3	**TRUE COPIES OF THE MEDICAL RECORDS RELATING TO THE DISEASE OF THE PETITIONER.**
ANNEXURE A4	**TRUE COPY OF THE NEWS COLUMN REPORTED IN MALAYALA MANORAMA DAILY DATED 05.09.2021.**
ANNEXURE A5	**TRUE COPY OF THE AFFIDAVIT SWORN BY THE PARENTS OF THE STUDENTS DATED 02.03.24.**

APPENDIX OF CRL.MC 9017/2024

PETITIONER ANNEXURES

SEALED COVER 1 (ANNEXURE-A1)	CERTIFIED COPY OF F.I.R IN CRIME NO. NO.1521/2024 OF KODUNGALLUR POLICE STATION.
SEALED COVER 2 (ANNEXURE-A2)	CERTIFIED COPY OF F.I STATEMENT IN CRIME NO.1521/2024 OF KODUNGALLUR POLICE STATION.
ANNEXURE A3	THE CERTIFIED COPY OF F.I.R IN CRIME NO.1523/2024 OF KODUNGALLUR POLICE STATION.
SEALED COVER 2 (ANNEXURE-A4)	CERTIFIED COPY OF F.I STATEMENT IN CRIME NO.1521/2024 OF KODUNGALLUR POLICE STATION.
ANNEXURE A5	CERTIFIED COPY OF THE FINAL REPORT IN C.P.121/2024 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KODUNGALLUR ARISING OUT OF CRIME NO.1521/2024 OF KODUNGALLUR POLICE STATION.
ANNEXURE A6	TRUE COPY OF WOUND CERTIFICATE DATED 22-10-2024.
ANNEXURE A7	TRUE COPY OF STATEMENT DATED 23-10-2024 OF THE VICTIM/CHILD.
ANNEXURE A8	TRUE COPY OF ADDITIONAL STATEMENT DATED 27-10-2024.
ANNEXURE A9	TRUE COPY OF STATEMENT DATED 27-10-2024 OF CW2 ANEEZ, FATHER OF THE VICTIM/CHILD.

ANNEXURE A10	**TRUE COPY OF STATEMENT DATED 23-10-2024 OF CW4 HEMANTH.**
ANNEXURE A11	**TRUE COPY OF STATEMENT DATED 23-10-2024 OF CW5, SAJEEVAN.**
ANNEXURE A12	**TRUE COPY OF STATEMENT DATED 27-10-2024 OF CW6 JAYASREE.**
ANNEXURE A13	**TRUE COPY OF STATEMENT DATED 27-10-2024 OF CW7 DR.GANA.**
ANNEXURE A14	**TRUE COPY OF SCENE MAHAZAR DATED 23-10-2024.**

APPENDIX OF CRL.MC 10077/2024

PETITIONER ANNEXURES

ANNEXURE A1	**THE CERTIFIED COPY OF THE F.I STATEMENT AND THE F.I.R IN CRIME NO.148/2023 OF NORTH PARAVOOR, POLICE STATION.**
ANNEXURE A2	**THE CERTIFIED COPY OF THE CHARGE SHEET IN S.C.No.1929/2023 ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS COURT (FOR THE TRIAL OF THE CASES RELATING TO ATROCITIES AND SEXUAL VIOLENCE AGAINST WOMEN AND CHILDREN) ERNAKULAM.**