

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.68 OF 2022

Anurag s/o Jamnashankar Pandey

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Hudkeshwar,
District Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Tejas Deshpande, Advocate for petitioner.

Mr. A. R. Chutke, APP for respondent/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 23/02/2022

1) Heard Mr. Deshpande, learned counsel for the petitioner and Mr. Chutke, learned APP for the respondent/State.

2) The order dated 09.02.2022 reads as under:

“2. Heard Mr. Deshpande, learned counsel for the petitioner, who submits, that the case against the petitioner does not attract Section 75 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter to be referred as the “J.J. Act, 2015”). The brief facts relating to the matter are that the petitioner is the Head Master of Suyash Convent School, Nagpur, in which one Manaish Haribhau Raut was appointed as a dance teacher. On 30.11.2016, when the said Manaish Haribhau Raut was teaching dance to the students in the school and while the practice was going on, he has assaulted his students with an iron rod causing injuries to them, as a result of which, a complaint was lodged by one Aruna Rajendra Khandale, the mother of one of the girls vide crime No. 519/2016 for the offence punishable under Section 324 of the Indian Penal code which came to be registered against the said Manish Haribhau Raut. However, the charge-sheet which came to be

filed on 18.04.2017, surprisingly included the name of the petitioner as accused No.2 and also the provisions of Section 75 of the J.J. Act, 2015.

3. *On an application for discharge filed by the petitioner at Exh.3, the learned Magistrate by the order dated 02.04.2019, passed an order rejecting the same. In revision the learned Sessions Court partly allowed the revision, holding that the assault was made by the accused No.1 alone, which was in the classroom, in which, he was teaching dance to the girls students, wherein the petitioner was not present and so also there was no common intention, and therefore, insofar as, the offence punishable under Section 324 read with Section 34 of the Indian Penal Code was considered, the revision was partly allowed and the petitioner was discharged in respect of the aforesaid offence. However, by the same order dated 10.08.2021, the learned Sessions Court has directed that charge be framed against the petitioner/accused No.2 under Section 75 of the J.J. Act, 2015.*

4. *Mr. Deshpande, learned counsel for the petitioner submits, that Section 75 of the J.J. Act, 2015, would not be attracted, as the basic ingredient necessary for its application is the actual charge of or control over a child and the assault by such a person. Admittedly, in the present matter, the petitioner, though the Head Master, was not in actual charge or control over the children, rather it was the dance teacher Manish Haribhau Raut, in view of which, it is contended that even the offence under Section 75 of the J.J. Act, 2015, would not be attracted. Issue notice for final disposal to the respondent, returnable on 18.02.2022.”*

3) Mr. Chutke, learned APP for respondent contends that Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as the “J.J. Act, 2015”) would be attracted as the applicant who was the Headmaster of the institution, was

in fact having overall control over the children, and therefore, the application, needs to be rejected.

4) Section 75 of the J.J. Act reads as under:

*“75. **Punishment for 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:*

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.”

5) The word ‘actual’, according to the Advanced Law Lexicon means real; existing in act as opposed to

constructive, theoretical, or speculative, as in actual possession, actual seizure. In legal phraseology the word “actual” is used as the opposite of “constructive/virtual/symbolic”. The expression also has to be read in the contextual back-ground of Section 75 of the J.J. Act, 2015 where a person in actual charge or control of a child is made penally liable for any action of assault, abandonment, abuse, exposure or wilfully neglects the child or, causes or procures the above to be done in a manner likely to cause such child unnecessary mental or physical suffering. In the present context, when Section 75 of the J.J. Act, 2015 is a penal provision providing punishment for cruelty to the child, the expression “actual charge of, or control over” a child, would necessarily have to be construed in a strict sense. Considering the same in my opinion, in the present facts of the case, the expression has necessarily to mean that the children were under the actual charge or control of a person and not otherwise. The second proviso to Section 75 of the J.J. Act, when it relates to an organisation, makes a person employed by or managing such organisation guilty of the offence, however, only if such person employed by or managing the organisation was the person who had committed the acts as contemplated by Section 75 of the J.J. Act. In the given facts of this case, it is an admitted position that the children were in the dance class being conducted by the dance teacher by name Manish Haribhau Raut and the applicant, who is the Headmaster of the institution was nowhere near the said class. Neither any action of any assault, has been

attributed to the applicant. Nor is there any allegation that the applicant had connived with the said act in any manner whatsoever. The applicant has merely been roped in, for the reason he is the head of the institution where the alleged incident happened which in fact, is directly attributable to the dance teacher Manish Haribhau Raut. None of the statements of the witnesses, recorded by the police authorities, indicate, that the applicant was ever having charge of or control over the children and all those statements consistently record that the actual charge or control over the children was that of the dance teacher Manish Haribhau Raut. It is thus apparent, that the applicant, would not fall within the meaning of the expression “whoever having actual charge of, or control over”, nor is the second proviso to Section 75 of the J.J. Act, attracted *vis-a-vis* the present applicant, in view of which, the provisions of Section 75 would clearly not be attracted. This being the case, the order of the learned Judicial Magistrate First Class dated 02.04.2019 and the judgment of the learned Sessions Court dated 10.08.2021 in so far as they relate to Section 75 of the J.J. Act, 2015 *vis-a-vis* the applicant cannot be sustained. They are therefore, quashed and set aside and the application at Exh.3 filed by the applicant, is accordingly allowed and the applicant stands discharged. No costs.

JUDGE