

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE **MR. JUSTICE N.ANAND VENKATESH**

CRL.O.P.No.23120 of 2019  
and  
Crl.MP.No.807 of 2020

1.S.Jai Singh  
2.Fa.Arul  
3.Fa.Joseph Fernandez

...Petitioners

.Vs.

1.State rep.by  
The Inspector of Police,  
K-9, Thiru-Vi-Ka Nagar Police Station,  
Chennai.

2.R.Murali

..Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings pending against the petitioners in C.C.No.5604 of 2019, on the file of the learned V Metropolitan Magistrate at Egmore, Chennai.

For Petitioners : Mr.P.K.Ganesh

For Respondents : Mr.C.Raghavan  
Government Advocate  
for R 1

Mr.G.Karthikeyan  
for R 2

### O R D E R

This Criminal Original Petition has been filed challenging the proceedings pending against the petitioners in C.C.No.5604 of 2019, on the file of the V Metropolitan Magistrate, Egmore, Chennai.

2.The case of the prosecution is that the son of the 2<sup>nd</sup> respondent was studying in a Government aided School. The School prayer starts at 8.45 a.m., every working day. The School has the practice of awarding minor punishments to students who arrive late to the School. On 17.01.2018, the son of the 2<sup>nd</sup> respondent had reported late to School. He along with many of the other latecomers were asked to perform duck walk on the School ground. While doing so, unfortunately, the son of the 2<sup>nd</sup>

respondent swooned and fell down on the ground. He was immediately rushed to the Stanley Government Hospital where he was declared as 'brought dead'. The 2nd respondent was informed of this news and based on the complaint given by the 2<sup>nd</sup> respondent, an FIR came to be registered in Crime No.79 of 2018, under Section 174 of Cr.P.C.

3.On completion of investigation, a final report came to be filed before the Court below and the Court below took cognizance of the final report against the petitioners for offence under Section 304 A of The Indian Penal Code, 1860 (hereinafter referred to as "IPC") r/w Section 75 of The Juvenile Justice [Care and Protection of Children] Act, 2014. Aggrieved by the same, the petitioners have filed this quash petition.

4.The 1<sup>st</sup> petitioner who has been arrayed as A-1 was working as the physical training teacher in the School. The 2<sup>nd</sup> petitioner who has been arrayed as A-2 was the Headmaster of the School and the 3<sup>rd</sup> petitioner who has been arrayed as A-3 was the Correspondent of the School.

5.Heard Mr.P.K.Ganesh, learned counsel for the petitioners, Mr.C.Raghavan, learned Government Advocate for the 1<sup>st</sup> respondent and Mr.G.Karthikeyan, learned counsel appearing on behalf of the 2<sup>nd</sup> respondent.

6.The main ground that was urged on the side of the petitioners is that it was an unfortunate incident and that the same was not a result of any rash or negligent act of the petitioners, against the son of the 2<sup>nd</sup> respondent.

7.The Postmortem Report was also brought to the notice of this Court wherein, the doctor has given a final opinion to the effect that the death was due to natural cause and no exact cause of death can be opined.

8.In order to sustain a charge under Section 304 A of IPC, there must be some material to show that there was an overt act on the part of the accused persons and there is a proximity between the act of the accused and the cause of death. In other words, the act of the accused persons must be the *causa causans*

for the death. Useful reference can be made to the judgment of the Hon'ble Supreme Court in ***Sushil Ansal v. State through Central Bureau of Investigation*** reported in **(2014) 6 SCC 173** and to the judgment of this Court in ***Sasikumar and Ors. v. The State, rep. by Inspector of Police*** reported in **(2019) 1 LW CrI 581**.

9. When the matter came up for hearing on 24.02.2021, this Court found that the materials collected by the prosecution did not make out any offence against the petitioners. It was a battle between the mind and the conscience. The conscience was not willing to send away the 2<sup>nd</sup> respondent with empty hands since he has lost his son in this case. This Court felt that even though the petitioners may not have a legal obligation towards the 2<sup>nd</sup> respondent, the conscience of this Court was insisting for at least imposing a moral obligation on the petitioners for the death of the son of the 2<sup>nd</sup> respondent.

10. When the matter came up for hearing on 24.02.2021, this Court passed the following order:

"Today, when the matter came up for hearing, the second respondent was present at the time of hearing before this Court. This Court enquired the second respondent with regard to his willingness to receive compensation from the petitioners. The second respondent completely left it to the discretion of this Court. The learned counsel appearing on behalf of the second respondent submitted that pursuant to the earlier orders passed by this Court, an interim compensation of Rs.3,25,000/- (Rupees Three lakhs twenty five lakhs only) was paid today to the second respondent by way of demand draft No.823011, dated 19.09.2019, drawn on South Indian Bank (renewed on 19.02.2021). The second respondent who was present in person also acknowledged the said fact.

2. This Court, after taking into consideration the age of the boy who lost his life and also the attendant circumstances, felt that a compensation of Rs.10,00,000/- will be just and proper. This Court directed the learned counsel appearing on behalf of the petitioners to take instructions in this regard. The learned counsel for the petitioners submitted that the petitioners will abide by the directions of this Court and the balance amount of Rs.6,75,000/- will be paid during the next date of hearing. Once again, this Court called upon the second respondent and informed him about the fact that a further sum of Rs.6,75,000/- will be paid as compensation to the second respondent. The second respondent again

reiterated that he is leaving it to the entire discretion of this Court.

3. In view of the above, post this case under the caption "for passing final orders" on 04.03.2021 at 02.15 p.m.

11. When the matter was taken up for hearing today, the learned counsel for the petitioners handed over a Demand Draft for a sum of Rs.6,75,000/- [Rupees six lakhs seventy five thousand only] to the 2<sup>nd</sup> respondent drawn on South Indian Bank bearing demand draft No.343495 dt.02.03.2021. This Court once again personally spoke with the 2<sup>nd</sup> respondent and he gracefully said that the case can be closed. Looking at the eyes of the 2<sup>nd</sup> respondent, this Court was able to feel the lingering pain in his heart on losing his son at such a tender age. Though this Court was able to impose a moral obligation on the petitioners to at least pay a monetary compensation, and accordingly a sum of Rs.10,00,000/- [Rupees two lakhs only] was paid to the 2<sup>nd</sup> respondent, the same will not in any way match the great loss suffered by the 2<sup>nd</sup> respondent.

12. A victim or survivor of crime can never be put back in a place where they were before the happening of such event. Therefore, the simple underlying theory behind the criminal justice system is to teach a lesson to the perpetrator and the society so as to prevent the commission of such crimes and to help the victim heal from their trauma by giving them closure. This Court therefore, is interested only to give this 2nd respondent, who is the father of the victim child, closure on this matter, instead of allowing this to invade his memories, only putting the family through continued trauma and despair.

13. However, in doing so, this Court does not wish to turn a Nelson's eye to the issue in hand. This case has steered the attention of this Court, shocking its conscience to its dismay, upon the fact that children in this Country are till date being subjected to the sadistic and inhumane "culture" of corporal punishment. Therefore, before parting with this matter, this Court finds itself duty bound to make certain observations in this regard.



14. Corporal Punishment refers to the intentional application of physical pain as a method of changing behavior. It is a discipline method in which a supervising adult deliberately inflicts pain upon a child in response to a child's unacceptable behavior. The immediate aim of such punishments is supposedly to prevent the child from repeating such behavior in future. Though it mainly refers to physical pain either through hitting or forcing the child to sit/stand in uncomfortable positions; and the evolving definition also includes within its ambit wrongful confinement, verbal insults, threats and humiliation, which are used with impunity and in utter disregard to the law of land and principles of learning. (***Protection of Children against Corporal Punishment in Schools and Institutions: Summary Discussions by the Working Group on Corporal Punishment***, National Commission for the Protection of Child Rights, Delhi, December, 2008.)

15. Research in the field has revealed that the outcomes of corporal punishment can be severely negative inasmuch as it can lead to escalation with time (mild punishments

to very harsh punishments as the child grows older), encouraging of violence (as the child grows up perceiving violence as an appropriate response to conflict) and immense psychological damage (as it is emotionally harmful and is puts the child through gaslighting, indicting messages confusing concern and love with pain and submission).

16. In 1989, the United Nations adopted the Convention on the Rights of the Child (hereinafter referred to as "UNCRC") which took specific notice of the practice of Corporal Punishment. The United Nations Committee on the Rights of the Child defines 'corporal' or 'physical' punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. The UNCRC, in no uncertain terms acknowledges that 'children are holders of human rights and acknowledges their distinct legal personality and evolving capacities'. Article 28(2) of the UNCRC indicates that the school discipline should be administered in a manner consistent with the child's human dignity and the Convention. Articles 3, 18 and 36 of the Convention deal with parental and adult responsibility in the

private sphere and the right to protection from exploitation. Article 19 provides for measures to protect children against all forms of physical abuse and imposes an obligation on member states to protect children from all forms of physical or mental violence, injury or abuse. India ratified the UNCRC in 1992.

17. The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "RCFCE Act") classifies corporal punishment as physical punishment, mental harassment and discrimination, and physical punishment has been ascribed the same meaning as has been given by the United Nations Committee on the Rights of the Child. Under the RCFCE Act, corporal punishment is violative of the right of the child to education, as well as the right to life with dignity. According to the Section 17 of the RCFCE Act, 'no child shall be subjected to physical punishment or mental harassment'. However, even this enactment is not without its limitations as it applies to only children between 6-14 years of age and excludes certain institutions from the ambit of this Act.

18.The Constitution of India, 1950 (hereinafter referred to as "the Constitution") under Article 21 protects the right to life and the same has been modified by way of insertion of Article 21A to include the right to education for children under 14 years of age, and the right to life with dignity. It follows therefore, that corporal punishment amounts to abuse and militates against the freedom and dignity of a child. It also interferes with a child's right to education because fear of corporal punishment makes children more likely to avoid school or to drop out altogether. Articles 14, 15 (3), 39 (e) and (f) of the Constitution, guarantee equality and protection directing states to work progressively to protect children from abuse.

19.However, despite the legislative framework that by all means seek to eliminate corporal punishment, the practice has been persistently followed by schools and institutions across the country. The use of corporal punishment is not a novel phenomenon in Indian society and its educational system, where it is accepted as a convenient form of punishing and disciplining

children. What is perhaps novel is the growing understanding that corporal punishment is an act of violence on children.

20. In 2010, Government representatives in SAIEVAC (South Asia Initiative to End Violence Against Children) developed a national action plan to achieve prohibition, and in 2011 endorsed a report on progress towards prohibiting corporal punishment in South Asia states which included an analysis of the reforms required in India. In the third/fourth state party report to the UN Committee on the Rights of the Child, 2011, the Government confirmed that corporal punishment of children is not considered an offence due to section 89 of the IPC; this was to be rectified by the drafting of a Prevention of Offences against the Child Bill which would make corporal punishment an offence.

21. In view of the same, the Abolition of Corporal Punishment in Educational Institutions Bill, 2010 was introduced in the Rajya Sabha as Bill No. LXXVI of 2010. However, in 2011 this Bill was replaced by a bill on sexual offences – as enacted, the Protection of Children from Sexual Offences Act, 2012 does not

prohibit corporal punishment.

22. In 2012, The Government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of India. (9 July 2012, A/HRC/21/10, Report of the working group, para. 138(104)). In the same year, the Ministry of Women and Child Development proposed amendments to the Juvenile Justice (Care and Protection of Children) Act, 2000 which would include a new section on corporal punishment, defining and punishing such punishment in line with the Penal Code provisions on the offences of causing hurt and grievous hurt. The Act as adopted in 2015 did not achieve full prohibition of corporal punishment as it confined itself to prohibit corporal punishment in child care institutions only.

23. The National Policy for Children 2013, (hereinafter referred to as "2013 Policy") adopted in April 2013, provides for protection of children from "all forms of violence" but specifically refers to corporal punishment only in connection with education ie. in schools. The 2013 policy, in Paragraph 4.6(xv), states that in

education, the state shall “ensure no child is subjected to any physical punishment or mental harassment” and “promote positive engagement to impart discipline so as to provide children with a good learning experience”.

24. It is pertinent to note that Rule 51 of the Tamil Nadu Education Rules as amended in 2003, legally protects children from corporal punishment.

25. On 26 March 2014, The Ministry of Human Resource Development, Government of India, wrote to all State governments to abolish the practice of corporal punishment in all educational institutions. It is noteworthy that they have made a connection between corporal punishment and children dropping-out of school.

26. In 2017, India underwent its third cycle examination in the 27th Session of the Universal Periodic Review of India’s human rights record in which the following recommendations were made:

- “Introduce legislation to prohibit corporal punishment

of children in the home and in all other settings, including as a sentence under traditional forms of justice” (Liechtenstein);

- “Introduce comprehensive and continuous public education, awareness raising and social mobilization programs on the harmful effects, of corporal punishment” (Liechtenstein);
- “Establish a database of all case of violence against children and explicitly prohibit all forms of corporal punishment of children under 18 of age in all settings” (Zambia)”.

(8 May 2017, A/HRC/WG.6/27/L.8, ***Draft report of the working group***, unedited version, paras. 5(233), 5(234) and 5(235)).

27. The Government accepted all the three above-mentioned recommendations.(6 September 2017, A/HRC/36/10/Add.1, ***Report of the working group: Addendum***).



28. However, no specific legislation had been set in motion to prohibit and eradicate corporal punishment on children, so far.

29. Effort has been made in an article titled "***Spare the Rod and.....!.....(?).....!***" reported in ***(2003) 2 LW (JS) 33***, to trace the history of judicial trends on this issue. The relevant portions of the article are extracted hereinunder:

"When we tried to peep into the law to find out if it has any Magna Carta for the teaching community for such ignoble action, we came across Mansell v. Griffin, 1908-1-K.B. 947 and R v. Honey, 1860 2 Foster and Finlason 202 (Nisi Prius), (1856 to 1867), which led us to accept as the law of England, 'When a parent sends his child to school, he (the father!) delegated to teachers at the school the power to inflict reasonable and moderate corporal punishment when required, in the same way as he, as a parent would have power to inflict moderate and reasonable corporal punishment in a proper case'!!.

We remember, though we are not able to locate the actual decision, that during the

3rd decade of the last century a learned Judge of our High Court threw out a claim made by a father on behalf of his minor son against a teacher and/or a school, for damages for having inflicted excessive corporal punishment, and the case arose from the Malabar District of those days.”

30. The Hon’ble High Court of Delhi in its judgement in ***Parents Forum For Meaningful Education and Anr. v. Union of India and Anr.*** reported in ***2001 (57) DRJ 456 (DB)***, while striking down Rule 37(1)(a)(in) and (4) of the Delhi School Education Rules, 1973, which gave a legal sanction for corporal punishment, as being violative of Articles 14 and 21 of the Constitution, heavily came down on the practice of inflicting corporal punishment on children, discussing the issue at utmost length, taking cognizance of the cruciality of the issue of corporal punishments inflicted on children. In doing so, the learned single judge held as follows:

“It also appears to us that corporal punishment is not keeping with child’s dignity. Besides, it is cruel to subject the

child to physical violence in school in the name of discipline or education.

Even animals are protected against cruelty. Cruelty to animals is punishable under Section 11 of the Prevention of Cruelty to Animals Act, 1960. Beating, kicking, over-riding, over-driving, over-loading, torturing or otherwise treating any animal so as to subject it to unnecessary pain or suffering is a criminal offence. Our children surely cannot be worse off than animals. There are instances galore where the children have been traumatised and beaten in schools causing grave injuries to them on account of their innocent pranks, mistakes and mischiefs.

..... we have carried inhuman practices even into the new millennium..”

31. This Court, finds itself in complete agreement with the reasonings rendered by the Hon’ble Delhi High Court in the above-mentioned judgement and infact, it took this Court much effort to restrain itself from extracting a major portions of the same hereunder.

32. This Court would also like to address another pertinent issue in light of the facts and circumstances of this case, namely, on the importance and nature of responsibility that physical training staffs of schools, in specific, must be aware of.

33. The Duck Walk or the Duck Waddle, which the victim child in this case was allegedly made to do as a punishment for reporting late to school, though was once an exercise employed in discipline and fitness regimes across the world including the defence training institutions, came to become a subject of much debate and dispute as with regard to its likelihood to cause injuries. A favourite for torturing football players, this exercise is executed from a fixed squatting position and is so called for its resemblance to the walk of a duck that has just been hit behind the ear. As early as the 1950s, the vulnerability of the knee joint to injury, surprisingly arising from exercises, which had long been thought to increase strength, was questioned and examined.

34. The knee is a hinge joint, held together by ligaments and supported and activated by muscles. The lower end of the femur (thigh bone) and the upper end of the tibia (large leg bone) articulate in much the same manner as would opposing knuckles of the two hands when held together. The bones are spanned in front by a third, the Patella, or knee cap. Two semilunar cartilages or menisci, are situated at the head of the tibia. These cartilages deepen the articulation to form a socket between the femur and the tibia and to serve as a cushion to absorb shock; they are thick at the edges and thin in the centre of the joint. The entire joint is enclosed in a membranous sac forming a joint capsule; this sac contains bursae which secrete a lubricating (synovial) fluid during joint movement.

35. The major binding ligaments are the lateral and medial collaterals on the sides of the knee joint and the anterior and posterior cruciates crisscrossing from front to back within the joint. The collateral ligaments restrict sideward movements of the leg at the knee joint; the cruciate ligaments restrict extension to an alignment with the femur. Thus, The only primary movement

possible in a normal knee are flexion until the calf muscles strike the back of the thigh muscles and extension to a straight line of the leg and thigh. A slight rotation and lateral and medial movements of the leg occur when the leg is partially flexed.

36. While other muscles are involved, three major muscle groups act on the knee. The gastrocnemius, comprising bulk of the calf of the leg, the quadriceps femoris forming the main bulk of the front of the thigh having origins on the femur and pelvis and insertion is by a common tendon encompassing the patella and top of the tibia. The hamstrings are the bulky muscles at the back of the thigh with origins on the pelvis and insertions on the heads of the tibia and fibula. Muscles of the hamstring group support both the medial and lateral sides of the knee joint and give stability to the posterior aspect of the knee joint and retard knee hyper extension. (Clarke, H. Harrison, Ed., ***Exercise and the Knee Joint***, President's Council on Physical Fitness and Sports, Washington, D.C., Physical Fitness Research Digest; Series 6, n1 p1714 -Jan 1976).

37. The vastus medialis and vastus lateralis muscles of the quadriceps group insert not only in the patella but also in the rectinaculum patellae, associated with the capsular ligaments of the knee and blending posteriorly into the collateral ligaments. When the quadriceps muscles are strengthened, these ligaments of the knee are given strong support. Although the largest joint in the body, the knee is the most vulnerable to injury because of its poor bony arrangement. Exercises that unduly stretch or damage the ligaments of the knee should therefore, be avoided.

38. In 1961, Dr. Karl Klein of the University of Texas published a study that is thought to be the beginning of the anti-squat movement. The deep knee bend type of exercise, which includes full squats with weights, duck waddle, and Russian bounce, is a leading questionable exercise in physical conditioning regimens. Such exercises are to be avoided, as they contribute to chronic synovitis by violent compressions of the synovial sac. In 1962, the National Federation of State High School Athletic Association and the Committee on the Medical Aspects of Sports of the American Medical Association condemned the use of the

deep-knee-bend type of exercise in the conditioning of athletes. Physical Trainers have therefore, been strongly suggested/advised to avoid employing the Duck Waddle or Duck Walk or any deep-knee bending exercises that require bending of the knee beyond ninety degrees angle or squat lower than parallel to the surface of the floor, as they have been found to cause injury to the knee joint if done without strengthening the surrounding muscles.

39.The present case is a classic example and a reminder that physical trainers and teachers are duty bound to keep themselves updated and informed about the scientific developments and associated research findings that may have a direct impact on the way they impart physical training to persons who may not have specialised knowledge or awareness on the subject. This is more so in cases where physical training is imparted to children since a minor negligence or ignorant act of a physical trainer may lead to a major injury, impairing the child for the rest of its future. Any professional is left with no option but to constantly update themselves with the advancements in their own fields and physical trainers are no exception to this rule. Infact,



they are required to have a higher threshold of responsibility and caution in doing so, as their instructions and knowledge or the lack of it, as the case may be, has the potency to directly affect the physical health of their trainees, and therefore, the same cannot be brushed aside as a trivial issue.

40. This Court took pains to do a little research on the issue of corporal punishment of children and importance of knowing the effects of certain physical workouts, since it may result in adverse consequences for a child. This has to be kept in mind by all those who are involved in providing education for children and more particularly the parents who play a major roll in moulding the character of the child.

41. In the present case, the role of this Court was more in the nature of a conscience keeper than as a arbiter resolving a legal dispute between the parties. At times, it becomes important for the Court to play this role atleast to achieve a moral satisfaction while disposing of the case.

42.In the result, the proceedings in C.C.No.5604 of 2019, on the file of the VI Metropolitan Magistrate, Egmore, Chennai, is hereby quashed and this criminal original petition is accordingly allowed. Consequently, the connected miscellaneous petition is closed.

04.03.2021

Index : Yes  
Internet: Yes  
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To

- 1.The Inspector of Police,  
K-9, Thiru-Vi-Ka Nagar Police Station,  
Chennai.
2. V Metropolitan Magistrate,  
Chief Metropolitan Magistrate Court,  
Egmore, Chennai.
- 3.The Public Prosecutor,  
High Court, Madras.

**N.ANAND VENKATESH.J.,**  
KP

Crl.OP.No.23120 of 2019

04.03.2021