



WP No. 12097 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 28TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 12097 OF 2022 (GM-RES)

BETWEEN:

1. SMT. THAHSEEN BEGUM @ TASI,

...PETITIONER

(BY SRI. SIRAJUDDIN AHMED, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
BY ULSOOR POLICE STATION,
REP BY HCGP, HIGH COURT OF KARNATAKA,
AT BENGALURU – 560 001.

2. SMT. SUSMITHA NANDA DAS,



WP No. 12097 of 2022

...RESPONDENTS

(BY SRI.K.S.ABHIJITH, HCGP)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN SPL.C.NO.17/2022 ARISING OUT OF CR.NO.71/2017 FOR THE OFFENCES PUNISHABLE U/S 323, 342, 109 OF IPC AND SECTIONS 11 AND 12 OF POCSO ACT PENDING ON THE FILE OF ADDL. CITY CIVIL AND SESSIONS JUDGE FTSC-1 BANGALORE AND ETC.

THIS W.P. COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question the proceedings in Spl.Case No.17/2022 arising out of Crime No.71/2017 registered for offences punishable under Sections 323, 342, 109 of the IPC and Sections 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, "the POCSO Act").



WP No. 12097 of 2022

2. Heard the learned counsel, Sri. Sirajuddin Ahmed, appearing for the petitioner and the learned High Court Government Pleader, Sri. K.S. Abhijith, appearing for respondent No.1.

3. Brief facts that leads the petitioner to this Court in the subject petition, as projected by the prosecution are as follows:

The complainant is the mother of the child, who was 5 years old at the time of occurrence of the incident. A complaint is registered by the mother of the child, who was studying in the Nursery section of East Wood High School at Ulsoor, alleging that when her daughter comes home, was incessantly crying and used to complain that her teacher was beating her every time, used to lock her in a dark room and then let her out. It is alleged that the petitioner had also indulged in removal of the pants of the child, revealing the body of the child as a measure of punishment.



4. The complaint becomes a crime in Crime No.71/2017 for the afore-quoted offences and the police after investigation have filed a charge sheet against the petitioner for the said offences and the case is now pending as Spl.Case No.17/2022. Filing of the charge sheet against the petitioner for the afore-quoted offences, is what drives the petitioner before this Court in the subject petition.

5. The learned counsel, Sri. Sirajuddin Ahmed, appearing for the petitioner submits that a case of child abuse, which is false, is also sought to be brought under the provisions of POCSO Act, without there being any semblance of truth in the allegation and would submit that the proceedings, if permitted to continue would become an abuse of the provisions of the POCSO Act and seek quashment of the entire proceedings. He seeks to defend the action of the petitioner contending that it was only to discipline the child, like any other teacher the petitioner



has imposed certain punishment, which cannot be termed as offences under the Act.

6. On the other hand, the learned High Court Government Pleader, Sri. Abhijith K.S., appearing for the first respondent would take this Court through the documents appended to the petition and the papers of investigation to contend that the child has been beaten and treated in a manner that would become punishable under Section 11 of the POCSO Act and therefore, it is a matter of trial for the petitioner to come out clean. Hence, seeks for dismissal of the petition.

7. I have given my anxious consideration to the respective submissions made by the learned counsel and perused the material on record.

8. It is not in dispute that the child was a student and was in the class, in which, the teacher was the



WP No. 12097 of 2022

petitioner. The victim-student was 5 years old at the relevant point in time when the incident takes place on 24.02.2017. The incident of 24.02.2017, which is reported is not the solitary incident according to the complaint, as it was a collective narrative of the incidents that have happened in the school against the victim and several others, by the petitioner-accused. Since the entire issue springs from the complaint, I deem it appropriate to notice the complaint insofar as it is germane for consideration of the *lis*:

*"To
The Police Inspector
Ulsoor Police Station
Bengaluru.*

Sub:Child Abuse in Eastwood High School.

Dear Sir,

*This letter is regarding to express my deep concerns as a parent about the incident happened with my daughter **Yajnasmita Dash** (5 years old) studying in Nursery at her school Eastwood High School in Ulsoor, Bengaluru. The incident has been shared in social media and online petition has been done and I have received huge support from the citizens across India. This case has also been covered in Media*



as the social media post became Viral across the nation.

Below are the my allegations where your kind attention and immediate action are required with other concerned authorities-

1. It all started with physical punishment for my daughter who is studying in Nursery, East Wood High School, Ulsoor. Each morning started with her crying & requesting me not to send her school. At first I ignored her as I thought maybe she needs time to adjust in her new school. But later when I ask her the reason of her daily crying, she told that her class teacher used to beat her regularly. So I requested her class teacher not to beat her. But after giving here three more chances to stop beating, she continues to beat my child as well the other children. Then I decided to complain to Principal & her initial statement was "No we don't beat any kids here as beating is ban in school" but her last sentence was "A teacher doesn't have any other way to instill discipline other than beating".

2. Current Scenario-

a. Instead of beating, they came up with new way of punishment. Pulling down the pants of kids forcefully & making the rest of the class taunting "shame-shame puppy shame" and the next part is threatening them that they will be taken to one dark room where one dog is kept & it will attack their private parts.



b. *No support from other parents as they choose to keep quiet & continue seeing their innocent child suffering mentally.*

c. *My option is to change School for my daughter but that will not going to end the misery for the rest kid's. So I choose to raise my voice in the hope that it will be heard & reach to concern media.*

3. *The other parents have informed me that this is nothing in Nursery. In higher classes, teachers used to beat students with cane stick and I should show some patience and ignore this issue.*

4. *Class teacher Ms. Thahseen has also claimed that as she has helped me to get admission of my child, so expect support from us as well in return to make our child disciplined through beating.*

5. *Class teacher Ms. Thahseen has accepted verbally to us that she frequently beat my daughter because she doesn't recite nursery rhymes.*

6. *The same incident happened with another classmate of our Daughter, and his mother also heated argument with the class teacher. This heated argument can be traced from the CCTV footage at the entrance gate on 9th Feb 2017.*

7. *During admission process, we parent were informed they have CCTV camera in each floors of the school building. Thus, after the*



same incident happened with one of the kid, the parent of that kid demanded for CCTV footage on 9th Feb 2017. But School refused to provide it.

8. When Karnataka State Commission for Protection of Child Rights intervened into this matter & when Education Officer visited the school premises, it was found that no CCTV camera was there at that particular floor where the incident happened.

9. If no CCTV camera installed as claimed by school, then security of my child is questionable.

10. Another teacher of that school has also claimed to me earlier that Ms. Thahseen is habituated to beat students and she suggested me to request Ms. Thahseen not to beat my child as she regularly beats her."

(Emphasis added)

The allegation in the complaint is that the petitioner had indulged in beating the child, who was 5 years old, intermittently locking her in a dark room and letting her out after 2 minutes, traumatizing the child and removing the pants of the child along with other children, which would reveal the body of the child, all these as a measure



WP No. 12097 of 2022

of punishment. The statement given by the child under Section 164 of the Cr.P.C. reads as follows:

"ಈಗ ನಾನು ಶಾಲೆಗೆ ಹೋಗುತ್ತಿಲ್ಲ, ನಾನು ಈಸ್ಟ್ ವುಡ್ ಹೈಸ್ಕೂಲ್‌ನಲ್ಲಿ ನರ್ಸರಿಗೆ ಹೋಗುತ್ತಿದ್ದೆ ಅಲ್ಲಿ ನನಗೆ ತಾಸೀನ್ ಎಂಬ ಶಿಕ್ಷಕಿ ಇದ್ದು ಅವರು ನನಗೆ ಕೋಲಿನಿಂದ ನನ್ನ ಬಲಗಾಲಿಗೆ ಹೊಡೆಯುತ್ತಿದ್ದರು. ಅವರು ಕೋಲಿನಿಂದ ನನ್ನ ಎರಡು ಕೈಗಳಿಗೆ ಮತ್ತು ಕಾಲುಗಳಿಗೆ ಹೊಡೆಯುತ್ತಿದ್ದರು. ಅಲ್ಲದೇ ಅವರು ನನ್ನ ಕೆಳತುಟಿಯನ್ನು ಹಿಡಿದು ಎಳೆಯುತ್ತಿದ್ದರು. ನನಗೆ ನಿಲ್ಲುವಂತೆ ಶಿಕ್ಷೆ ಕೊಟ್ಟಿದ್ದರು. ಇದರಿಂದ ನನ್ನ ಕಾಲುಗಳು ನೋಯುತ್ತಿದ್ದವು. ನನ್ನನ್ನು ಶಾಲೆಯಲ್ಲಿ ಚೇರು ಮೇಲೆ ಕುಳಿತುಕೊಳ್ಳಲು ಅವಕಾಶ ಕೊಡದೆ ನಿಲ್ಲುವಂತೆ ಹೇಳುತ್ತಿದ್ದರು. ನನ್ನನ್ನು ಶಾಲೆಯ ಗೋಡೆಯ ಏಕೆದಲ್ಲಿ ನೆಲದಲ್ಲಿ ಕೂರಿಸುತ್ತಿದ್ದರು. ಎರಡು ನಿಮಿಷ ಕಳೆದ ನಂತರ ನನ್ನನ್ನು ಚೇರಿನ ಮೇಲೆ ಕುಳಿತುಕೊಳ್ಳಲು ಹೇಳುತ್ತಿದ್ದರು. ನನ್ನನ್ನು ಕತ್ತಲೆ ಕೋಣೆಯಲ್ಲಿ ಕೂಡಿಹಾಕಿ, ನಿನ್ನನ್ನು ಮನೆಗೆ ಕಳುಹಿಸುವುದಿಲ್ಲವೆಂದು ಹೇಳುತ್ತಿದ್ದರು. ಎರಡು ನಿಮಿಷದ ನಂತರ ಕೋಣೆಯ ಬೀಗವನ್ನು ತೆಗೆದು ಹೊರಗೆ ಬಿಡುತ್ತಿದ್ದರು. ಒಂದು ದಿನ ನನಗೆ ಅವರು ಬರೆಯಲು ಹೇಳಿದ್ದು, ನನ್ನ ಕೈಬರಹ ಚೆನ್ನಾಗಿದ್ದರೂ ಸಹ, ಚೆನ್ನಾಗಿದ್ದವೆಂದು ಹೇಳಿದರು. ಒಂದು ದಿನ ನಾನು ಹಾಕಿಕೊಂಡಿಟ್ಟ ಪ್ಯಾಂಟನ್ನು ಬಿಚ್ಚಿ ನನ್ನನ್ನು ಹಾಗೆಯೇ ನಿಲ್ಲಿಸಿದ್ದರು. ನಾನು ಮನೆಗೆ ಹೋಗಿದ್ದು, ನನ್ನ ತಾಯಿ ನನಗೆ ಊಟ ಕೊಟ್ಟ ನಂತರ ನಾನು ಅವರಿಗೆ ನಡೆದ ವಿಷಯವನ್ನು ತಿಳಿಸಿದೆ."

(Emphasis added)

The aforesaid statement given by the child again narrates horrendous acts of the petitioner upon the child. The charge sheet is also filed after investigation and the matter is pending consideration before the concerned Court.

9. If the complaint and the statement is read in tandem, it would demonstrate that the ingredients of the



aforesaid offences of the IPC are clearly met, insofar as the offences relating to sexual harassment on the child, as what is invoked is Sections 11 and 12 of the POCSO Act. Section 12 of the POCSO Act deals with the punishment to be imposed upon a person indulging in sexual harassment as obtaining in Section 11 of the POCSO Act. Section 11 of the POCSO Act, reads as follows:

"11. Sexual harassment.-A person is said to commit sexual harassment upon a child when such person with sexual intent, -

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or



WP No. 12097 of 2022

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

(Emphasis supplied)

Section 11(2) of the POCSO Act mandates that, a person who makes the child exhibit his body or any part of his or her body so as it is seen by any other person, it would amount to sexual harassment under Section 11 of the POCSO Act and become punishable under Section 12 of the POCSO Act. The allegation is that, the petitioner has removed the pants of the child before other students and staff, which has led to the offence so alleged. It is for the petitioner to come out clean of the acts that are narrated in the complaint.

10. A teacher is expected to guide the student, tender the age; tender the manner of guidance. It is unacceptable by any means that a teacher can traumatize



WP No. 12097 of 2022

a child, be it physical or mental. Traumatizing children by teachers as a measure of punishment particularly at tender ages, would have a devastating psychological impact on the child. Children who experience aggressive behavior or violence from the hands of a teacher often develop emotional and behavioral problems; their cognitive skills diminish and would have far reaching consequences in the psychological blend of a child and would negatively impact the academic performance of the child. The aggression of whatever means of any teacher on the child is unpardonable. It must be remembered, ***"spare the rod and spoil the child"*** has metamorphosed into ***"spare the rod and teach the child"***. If the act of the petitioner upon the child which has become an offence punishable under Section 12 of the Act for the ingredients of Section 11(2) of the Act is noticed, such act unless otherwise proven by the petitioner in a full blown trial, is *undoubtedly uncouth, unpardonable and unbecoming* for a teacher who deals with a girl child of the age of 5 years.



WP No. 12097 of 2022

11. Finding no merit in the petition, the petition stands dismissed.

**Sd/-
JUDGE**

SJK

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