

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

Criminal Application [ABA] No.21 of 2015

(Rajiv @ Raju s/o Ramrao Lande and another
vs.

The State of Maharashtra, through P.S.O. Buldhana [City], District Buldhana)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

Mr. A.A. Naik, Advocate for the Applicants.
Mr. M.J. Khan, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : MARCH 3, 2015.

Heard Mr. Naik, the learned Counsel for the applicants.

The applicants are before this Court apprehending their arrest in connection with Crime No.3104 of 2014, registered at Police Station Buldhana (City) for the offences punishable under Section 7 of the Maharashtra Prevention of Malpractices at University, Board and Other Specified Examinations Act, 1982 (hereinafter referred to as "the Act" for the sake of brevity) and subsequently under Sections 420 and 120-B of the Indian Penal Code with Section 66(A), (D) of the Information Technology Act.

The report was lodged at the instance of one Sandeep Shinde, Gram Sevak. The sum and substance of the report is, Zilla Parishad Buldhana by advertisement issued in the newspaper called upon on-line applications for the post of

Aarogya Sevak (Health Attendant). The examination for selecting the candidates was scheduled on 30/11/2014 at Shivaji Highschool, Buldhana. The complainant/informant was discharging his duties on the center as Invigilator from 02:00 p.m. to 03:30 p.m. The examination was going on and approximately at 03:00 p.m., the Invigilator found one Akash More and Pradeep Kodse indulged in an act of copying. It is alleged that they were receiving text messages on Mobile No. 9624579982. Accordingly, the report was lodged.

The learned Counsel for the applicants submits that on the allegation that the applicants forwarded text messages to one Gaikwad and in turn Mr. Gaikwad forwarded those messages to the candidates, who were attending the examination of Health Attendant, the applicants are implicated in the offence. The learned Counsel in his detailed submission, by inviting my attention to the provisions of Maharashtra Prevention of Malpractices at University, Board and Other Specified Examinations Act, 1982, submits that the examination of the Health Attendant carried by the Zilla Parishad, Health Department cannot be termed as an examination as defined under the Act. He by inviting my attention to Section 7 of the Act submits that the provisions of the Act specifies the act of mischief in or near an examination hall. The submission of the learned Counsel is, there is absolutely no material even to

remotely suggest that the applicant was found in or near an examination hall. His submission is only on the assumption and presumption in the nature of indirect facilitation of forwarding the text messages to one Gaikwad. The applicants are tried to be implicated in an offence under Section 7 of the said Act, which is not at all permissible. He submits that there is also no material to attract the allegation of mischief under Section 420 of the Indian Penal Code. He further submits that as the other act alleged against the applicants under the provisions of Information Technology Act, the offence being bailable, is not submitting any submission to that effect.

Mr. Khan, the learned A.P.P. opposes the application. The learned A.P.P. submits that the applicants are the mastermind behind the act of mischief played in the said examination. He submits that the statement recorded by the investigating agency reveals that certain amount was demanded by the applicants and the amount was handed over to the applicants. The learned A.P.P. then submits that the investigation is going on and the agency collected the material in the form of call details report and also the messages forwarded from Sim No.7038467253 during the examination period, the said mobile is to be seized from the applicants. The application opposed by the State against the applicant no.2 is on the ground that the applicant no.2 was working as a collection agent for the

applicant no.1.

On the backdrop of the above referred submissions of the learned Counsel appearing for the respective parties, namely the Counsel for the applicants and the learned A.P.P., I have gone through the relevant provisions and the material. The word examination is defined in the Act which reads thus:

*“Examination” means any examination held or proposed to be held by any University or the Board and includes such other examination held or proposed to be held by such other authority as may be specified in this behalf, from time to time, by the State Government **by notification in the Official Gazette** (emphasis supplied).*

The examination was for selecting the candidates in the Health Department of Zilla Parishad, Buldhana. Therefore, by no stretch, it can be said that it was neither University examination or the Board examination. The other part of the definition takes in a sweep the examination or the examination proposed to be held by authority as may be specified and notified in the Official Gazette by the State. There is no material placed on record that such a notification was issued by the State Government in the Official Gazette. Then as the learned Counsel Mr. Naik for the applicants rightly submitted that the key words of Section 7 of the Act that whoever is found in or near an examination hall and then the other act of mischief such as copying answers from book, notes or using any other unfair

means are referred to, were the pre-requisites would be a mischief played by the person, who is found in or near an examination hall. The material placed on record referred to an act of the applicants alleging to be played remotely through an extraneous gazette. Thus, the material how far would attract the alleged mischief under the Act would be a matter of dispute.

Insofar as the submission of the learned A.P.P. that the agency collected the material in the form of statement of the witnesses and the material referred to in the reply filed by the State at Paragraph 8 & 9, if perused, in this statement, it is stated that the amount was paid to the applicants for managing Government job. Thus, there is also considerable merit in the submission of Mr. Naik that by such an allegation, it would not be sufficient to allege a mischief against the applicants covering an act under Section 420 of the Indian Penal Code. The other objection of the learned A.P.P. that some material is to be seized from the applicants, the investigating agency can take necessary steps and this Court cannot direct the investigating agency nor this Court can issue direction to the applicants to assist the investigating agency in a peculiar and particular way.

The learned Counsel for the applicants has made out a case. The apprehension of the State can be taken care of by imposing certain conditions on the applicants.

In the result, the application is allowed. The interim order passed by this Court on 21/01/2015 stands confirmed with a condition that the applicants to attend Police Station Buldhana (City) on every Sunday from 09:00 a.m. to 12:00 p.m. till filing of the charge-sheet.

The application is disposed of as such.

JUDGE

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