

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

210 (3 cases)

- 1. CWP No.8698 of 2020 (O&M)
 Date of decision : 16.08.2021**

SUMIT

...Petitioner

Versus

**MAHARAJA RANJIT SINGH PUNJAB TECHNICAL
UNIVERSITY AND OTHERS**

...Respondents

- 2. CWP No.10067 of 2020 (O&M)**

SAMARJOT SINGH

...Petitioner

Versus

**MAHARAJA RANJIT SINGH PUNJAB TECHNICAL
UNIVERSITY AND OTHERS**

...Respondents

- 3. CWP No.11479 of 2020 (O&M)**

CHARANPREET

...Petitioner

Versus

**MAHARAJA RANJIT SINGH PUNJAB TECHNICAL
UNIVERSITY AND OTHERS**

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

**Present: Mr. V.P. Sangwan, Advocate
 for the petitioner in CWP-8698-2020.**

**Mr. G.P.S. Bal, Advocate
for the petitioner in CWP-10067-2020.**

**Mr. Peeush Gagneja, Advocate
for the petitioner in CWP-11479-2020.**

Mr. Dilraj Singh Bhinder, Advocate
for the respondents.

SUDHIR MITTAL, J. (Oral)

This order/judgment shall dispose of CWP-8698-2020, CWP-10067-2020 and CWP-11479-2020 as the petitioners/students were allegedly involved in the same incident of use of unfair means.

CWP-8698-2020

The petitioner in this case was allegedly involved in use of unfair means by creating a whatsapp group on 10.12.2019. This is evident from an involvement report dated 22.01.2020 annexed as Annexure P-2. Thereafter, a show cause notice dated 28.01.2020 (Annexure P-3) was issued to him, in which the allegation made was that he was found copying from mobile phone in examination held on 08.01.2020. Reply to the said show cause notice was found to be unsatisfactory and thus, order dated 06.02.2020 (Annexure P-4) was passed by the Unfair Means Committee on the ground of paper leakage on social media/whatsapp. The appeal has been dismissed vide order dated 21.05.2020.

Learned counsel for the petitioner has argued that order dated 06.02.2020 (Annexure P-4) has been passed without any application of mind as the petitioner has been held guilty of use of unfair means by leakage of paper on whatsapp without there being any show cause notice to that effect. The show cause notice is for using unfair means on 08.01.2020 in the examination. The Appellate Authority has also not applied its mind and has not even granted any opportunity.

Learned counsel for the respondent-University submits that document Annexure P-2 makes it abundantly clear that the petitioner was also involved in creation of a whatsapp group for leakage of exam paper and thus, the order cannot be said to be erroneous.

There is no gainsaying that a delinquent can be punished only for the offence for which he is charged. In this case, although the offence alleged is of use of unfair means, the manner of use of unfair means and the date on which said incident took place is at variance in the show cause notice and in the order of punishment. The petitioner has been punished for leakage of examination paper on social media/whatsapp, whereas, the show cause notice is regarding use of unfair means by looking through the mobile phone on 08.01.2020. The allegation regarding creation of whatsapp group relates to December, 2019.

In view of the above, the impugned order cannot be sustained. The writ petition is allowed and order dated 06.02.2020 as well as the Appellate order dated 21.05.2020 are set aside. The matter is remanded to the Unfair Means Committee for taking a fresh decision after issuing the proper show cause notice.

CWP-11479-2020

The petitioner has been held guilty of use of unfair means vide order dated 11.02.2020 (Annexure P-1) and the appeal has been dismissed vide order dated 21.05.2020 (Annexure P-2). It has been found that he was guilty of use of unfair means by receiving the leaked paper of Environmental Science-II on 08.01.2020.

It has been argued that in respect of the aforementioned case, an FIR was registered against many people but the petitioner has not been challaned. Further, allegation is only of receipt of whatsapp message and not of forwarding the same. The receipt of whatsapp message is not in the control of a person and thus, the punishment imposed is illegal.

The petitioner is a student of Engineering. He possesses a high intellect and understanding. Before the examination, he should have ensured that he did not become member of any dubious whatsapp group. Having not been careful in this regard, he has to suffer the consequences. Receipt of examination paper on 08.01.2020 on whatsapp has not been disputed and thus, to say that he is innocent, is a case of locking the stables after the horse has bolted.

Thus, the writ petition has no merits and is dismissed.

CWP-10067-2020

The facts in this case are identical to CWP No.11479 of 2020 and thus are not being repeated.

Learned counsel for the petitioner has submitted that in view of Section 65-B of the Indian Evidence Act, 1872, electronic record would be admissible in evidence only if the conditions referred to in sub Section (2) of the Section stand satisfied. There is nothing on record to indicate that the said conditions have been satisfied in this case. Thus, to hold the petitioner guilty of receiving question paper on whatsapp is illegal.

Section 65-B (supra) is a Rule of evidence. It applies only where electronic record is sought to be produced as evidence in a

criminal case. The same may aid the petitioner in the criminal case registered against him but not in a case of use of unfair means. In the instant case, mobile phone of the petitioner has been recovered and the same has been found to contain the question paper mentioned in the order of punishment. Authenticity of the same is not in doubt and thus, reliance upon Section 65-B of the Indian Evidence Act, 1872 is misconceived.

The writ petition has no merits and is dismissed.

A photocopy of this order be placed on the files of other connected cases.

(SUDHIR MITTAL)
JUDGE

16.08.2021

jyoti-II

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No