

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

118 CRIMINAL WRIT PETITION NO.1128 OF 2023

SANTOSH KISANRAO APASWAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioner : Mr.A.D. Sonkawade h/f Mr.Golegaonkar Madhur
A.
APP for Respondent/State : Mr.A.R. Kale
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 28th NOVEMBER, 2023.**

ORAL ORDER (Per Sanjay A. Deshmukh, J) :-

1. This petition is filed by the petitioner for quashing of proceedings in Regular Criminal Case (RCC) No.703 of 2021 pending before the 3rd Additional Chief Judicial Magistrate, Nanded in pursuance of charge-sheet No.29 of 2021 and First Information Report (FIR) bearing No.98 of 2021 registered with Bhagyanagar, Nanded Police Station for the offence punishable under section 7 of the Maharashtra Prevention of Malpractices at University, Board and Other Specified Examinations Act, 1982.

2. Informant - respondent no.2 – assistant teacher lodged report that the petitioner was attending the examination of MPSC, 2020 and while he was writing paper, he carried the cell phone with

him, and therefore, the report was lodged against him under section 7 of the Maharashtra prevention of Malpractices at University, Board and other Specified Examination Act, 1982 (for short, "the said Act").

3. The learned advocate for the petitioner submitted that an offence punishable under section 7 of the said Act is not made out against the petitioner. He submitted to quash R.C.C. No.703 of 2021 against the petitioner.

4. The learned APP for the State strongly opposed the petition by contending that the petitioner admittedly carried the cell phone with him in examination hall, which is not permissible as per rule of the examination. He submitted to reject the petition.

5. The section 7 of the said Act reads as under :-

"7. Whoever is found in or near an examination hall by the invigilator or any other person appointed to supervise the conduct of the examination, copying answers to the question paper set at the examination, from any book, notes or answer papers of other candidates, or appearing at the examination for any other candidate or using any other unfair means, shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both."

6. Perused the charge-sheet. Report shows that petitioner only carried the cell phone with him, however, it is nowhere alleged that he used that cell phone for copying in that examination. Admittedly he was removed from the examination hall. It is undisputed fact that the petitioner did not use cell phone for copying in that examination as contemplated under section 7 of the said Act.

7. The ingredients of section 7 of the Maharashtra Prevention of Malpractices at University, Board and Other Specified Examinations Act, 1982 are not prima facie establishing from the report and charge-sheet. There is prima facie no evidence against the petitioner to proceed with the trial. Considering this aspect, compelling the petitioner to face trial would be an abuse of process of the Court. The petition, therefore deserves to be allowed. It is allowed in terms of prayer clause "B".

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

sga/