

(904)-WP-2063-23-(Corrected).doc.

Corrected pursuant to speaking to minutes of the order dated 11th July, 2023.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.2063 OF 2023

Shri. Vikrant Tanaji Bhagat & Anr.

..Petitioners

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Rajaram Bansode a/w Sheetal Ubale, for the Petitioners.

Mr. K. V. Saste, APP for the Respondent/State.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 4th JULY, 2023

PC.

1. Heard.

2. Leave to amend so as to enable counsel for the petitioners to place on record copy of charge-sheet with an appropriate amendment in the prayer clause for quashing of the charge-sheet.

3. Amendment to be carried out forthwith.

4. Based on the alleged incident dated 23rd May, 2017, offence came to be registered against the petitioners which is made punishable under Sections 7 and 8 of the Maharashtra Prevention of Malpractices at University, Board and Other Specified Examinations Act, 1982 (hereinafter referred as "Act of 1982"). The genesis of the

offence alleged against the petitioners is, the petitioners were students of Bachelor of Engineering, First Year and in the final examination conducted on 23rd May, 2017, both the petitioners were found in possession of mobile phones from which they were copying answers.

5. As a sequel of above, Dean of the examination centre lodged the complaint about the aforesaid incident, which is stated to be an offence under Sections 7 and 8 of the Act of 1982. Both the petitioners were accordingly charge-sheeted.

6. While questioning the aforesaid charge-sheet, counsel for the petitioners would urge that the complaint is lodged by one Rajendra Vithal Suryawanshi in the capacity of Dean of the College where the examination was conducted. According to him, Section 7 of the Act of 1982 authorize Supervisor or Invigilator to lodge the complaint for an offence of unfair means. Drawing support from the FIR, so also, complaint by the director of the said Technical Institute on 23rd May, 2017 addressed to the Police Inspector of the Police Station, he would urge that only Supervisor or Invigilator is authorized to prefer such complaint. So as to substantiate the said claim, he has drawn support from the provisions of Section 7 of the Act of 1982. According to him, the complaint was preferred by an unauthorized person.

7. Apart from above, his contentions are, though it is

claimed in the FIR that both the petitioners have used mobile phones so as to facilitate illegal act of copying answers, FIR contains a statement that the mobile phones which were used in the commission of offence were handed over to the police authorities of which no seizure panchanama was drawn. Even if allegations in the FIR for the purpose of argument are taken into consideration at its face value, still same cannot be proved from the available material on record viz. for want of seizure of the mobile phones. According to him, petitioners who were students of engineering, have already passed out said course and are gainfully employed. In this background, his contentions are, prosecution against the petitioners is liable to be quashed and set aside.

8. Learned APP would urge that the investigation reveals that the complainant has specifically caught the petitioners raid handed while conducting illegal act of copying. He would urge that the statement of the Dean which is produced along with charge-sheet dated 23rd May, 2017 specifically supports the case of the prosecution. So as to substantiate that there exists sufficient material to sustain prosecution against the petitioners, Mr. K. V. Saste would urge that the extract of the answers and the communication made by the accused persons with other persons to seek assistance for drawing answers to the question papers sufficiently establish their *prima-facie* involvement in the offence. According to him, in the matter of discipline in educational institutions, Court should be slow in causing interference that too in

exercise of powers under Section 482 of the CrPC. As such, he has sought dismissal of the petition.

9. We have appreciated the submissions.

10. Petitioners are charge-sheeted for an offence punishable under Sections 7 and 8 of the Act of 1982. Both the provisions viz. Sections 7 and 8 of the Act of 1982 reads thus :-

“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.

8. Whoever abets any offence punishable under this Act shall be punishable with the punishment provided for the offence.”

11. Section 7 of the Act of 1982 provides for prohibition of copying and malpractice at examinations. The necessary ingredients from the plain reading of the said section warrants that if a candidate like the petitioners is found in or near the examination hall by the Invigilator or by any other person appointed to supervise the conduct of the examination, copying answers, is made liable for criminal prosecution and on conviction, is liable to undergo six

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months imprisonment and fine.

12. As far as case in hand is concerned, even if what has been stated in the charge-sheet is taken as true at its face value, it is the case of the prosecution that the Supervisor or Invigilator has found the petitioners were copying in the examination of B. E. First Year Civil Engineering course. The complainant is working as Faculty Dean with the center at which the petitioners were appearing for the examination and the other complaint to the Police Inspector of the Police Station is moved under the signature of the director of the said college. Both these authorities have not lodged the complaint stating that they have caught the petitioners while copying in the examination while they were discharging their duties as Invigilator or Supervisor. No such appointment order authorizing both these two persons to conduct examination in the capacity of Invigilator or Supervisor is placed as a part of the charge-sheet.

13. Apart from above, the record depicts that one Abidali Jafar Shaikh was appointed as the External Senior Supervisor under the provisions of Section 32(8) of the Maharashtra Universities Act, 1994. Neither his statement is recorded under Section 161 of the CrPC nor he is shown to be complainant to the aforesaid alleged illegal act on the part of the petitioners. As such, it cannot be said that necessary ingredients of offence under Section 7 are satisfied from the evidence collected during the course of investigation by the Investigating Officer.

14. Though in the complaint preferred by Dean of the institution, so also the director, it is mentioned that the mobile phones which were used for commission of offence were recovered from the petitioners and were handed over along with the complaint to the police officer, however, neither there is any recovery panchanama nor such mobile phones are shown to have deposited with the Police Station or produced before the Court below as property recovered in the commission of offence.

15. As such, the very charge against the petitioners cannot be established or proved for want of sufficient evidence.

16. In this background, a case for quashing is made out.

17. As such, the present petition stands allowed in terms of prayer clause (a).

18. In response to the Court's query, Mr. Rajaram Bansode, counsel for the petitioners assures that each of the petitioners shall pay cost of Rs.10,000/- to the Legal Services Authority within period of four weeks from today and submit compliance report by producing payment of receipt to the Legal Services Authority.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]