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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 08.02.2024+ **W.P.(C) 1872/2024 & CM APPL. 7819/2024, CM APPL. 7820/2024****KRITIKA NARAYAN**

..... Petitioner

Through: Ms Malvika Trivedi, Senior Advocate with Mr Sriharsha Peechara, Mr Ashish Tiwari, Ms Harshita Gupta, Mr Akshat Kulshrestha, Mr Shailendra Slaria, Mr Sujal Gupta, Mr Shubham Kumar Mishra and Mr Sahib Patel, Advocates.

versus

**HIGH COURT OF DELHI
THROUGH REGISTRAR**

..... Respondent

Through: Dr Amit George, Mr Shashwat Kabi, Mr Arkaneil Bhaumik, Mr Abhishwar Suri and Mr Rayadurgam Bharat, Advocates.

**CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE AMIT BANSAL**

[Physical Hearing/Hybrid Hearing (as per request)]**AMIT BANSAL, J. (ORAL)**

1. The present writ petition has been filed challenging the correctness of the Revised Answer Key dated 2nd February, 2024 published by the respondent in respect of Question No.89 in the Delhi Judicial Services

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(hereinafter referred to as 'DJS') Preliminary Examination, 2023 and consequentially seeking grant of additional marks to the petitioner in respect of the said question.

2. Issue Notice.

3. Notice is accepted by the learned counsel appearing on behalf of the respondent.

4. With the consent of the counsels for the parties, the present petition is taken up for consideration and disposal.

5. Brief facts giving rise to the present petition are as under:

5.1. The respondent had advertised for 53 vacancies for the DJS Preliminary Examination, 2023, *vide* notification dated 6th November, 2023. The Preliminary Examination was scheduled for 10th December, 2023 but was subsequently rescheduled for 17th December, 2023. The petitioner was one of the candidates appearing for the said exam.

5.2. Question No.89 was one of the questions set out in the Preliminary Examination, which has been set out below, for ease of convenience:

“89 If a person entrusted with money diverts it for his personal gain without intending to deceive which Section would likely be invoked?”

(1) Section 420

(2) Section 406

(3) Section 420 & Section 406

(4) None of the above”

5.3. The petitioner had opted for 'Option 2' i.e., “Section 406” as the correct answer.

5.4. The Model Answer Key in respect of the Preliminary Examination was released by the respondent on 20th December, 2023. In the said answer key, the correct answer to the aforementioned question was declared as ‘Option (2)’.



5.5. The respondent issued a notice inviting objections to the said answer key, pursuant to which the respondent received various objections, including in respect of the answer of Question No.89. On 2nd February, 2024, the respondent published a Revised Answer Key, whereby the answer to Question No.89 was changed from ‘*Option (2)*’ to ‘*Option (4)*’.

5.6. In the final result, the petitioner secured 160.50 marks in the DJS Preliminary Examination, 2023 and the marks obtained by the last selected candidate from the unreserved category were 160.75. Therefore, the petitioner fell short of 0.25 marks in clearing the cut off.

6. Accordingly, the petitioner has challenged the revised answer to Question No.89, seeking (i) additional marks in respect of the aforesaid question on the basis that the option exercised by the petitioner was the correct one or, in the alternative; (ii) deletion of the aforesaid question.

7. Learned senior counsel appearing on behalf of the petitioner submits that ‘*Option (2)*’, i.e., “*Section 406*” was the correct answer in respect of Question No.89. It is submitted that in the aforesaid question use of the phrase ‘*without intending to deceive*’ rules out the possibility of intention to deceive, which is not a necessary ingredient for the offence under Section 406 of the Indian Penal Code, 1860 (IPC). In this regard, reliance has been placed on the judgment of **Radha Rani v. Parmod Kumar Oberoi**, 1995 Supp (4) SCC 491. Therefore, “*Section 406*”, set out as ‘*Option 2*’ would be the correct answer, as was provided in the original answer key dated 20th December, 2023.

8. It is further submitted that the question used the expression ‘*section likely to be invoked*’ and not the sustenance of the invocation. Therefore, strict satisfaction of the ingredients of Section 405/406 of the IPC was not



required. In any event, the respondent should have accepted both ‘*Option 2*’ as well as ‘*Option 4*’ as the correct answer and awarded marks to candidates who had opted for either of the two options, as was the course adopted in some of the other questions.

9. In addition, it is submitted that where there is an obvious error in the answer key, the courts have the power to interfere. Reliance in this regard is placed on the judgment of a Co-ordinate Bench of this Court in ***Anjali Goswami v. Registrar General, Delhi High Court***, 2019 SCC OnLine Del 6829.

10. *Per contra*, learned counsel appearing on behalf of the respondent submits that it is clear from a reading of Section 405 of the IPC that ‘dishonesty’ is an essential ingredient for the offence under Section 405 of the IPC, inasmuch as it provides the existence of ‘*mens rea*’. In this regard reliance has been placed on the judgment of the Supreme Court in ***N. Raghavender v. State of Andhra Pradesh***, (2021) 18 SCC 70. Therefore, ‘*Option 2*’, i.e., “*Section 406*” could not have been the correct answer to the aforesaid question and the only correct answer would only be ‘*Option 4*’ i.e., “*none of the above*”, as provided in the Revised Answer Key.

11. It is further submitted that the scope of judicial review in respect of answers in a competitive exam is very limited and the courts can interfere only when there is a glaring error.

12. We have heard the counsels for the parties and perused the material on record.

13. In order to appreciate the controversy in the present case, reference may be made to Sections 405 and 406 of the IPC. The offence of Criminal Breach of Trust is defined in Section 405 of the IPC and the punishment in



respect thereof is provided in Section 406 of the IPC. For the ease of convenience, Sections 405/406 of the IPC are set out below:

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

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Illustrations

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(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, **not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, thought Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.**

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406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”



14. The aforementioned illustrations to Section 405 of the IPC show the intent behind the statute, that dishonest intention is an essential ingredient for committing an offence under Section 405 of the IPC.

15. Section 405 of the IPC was the subject matter of interpretation of a three-judge Bench of the Supreme Court in *N. Raghavender* (supra), wherein it was observed that the crucial word used in Section 405 of the IPC is “dishonestly”. There has to be an element of dishonest intention before the offence of Criminal Breach of Trust can be invoked. Relevant observations of the Supreme Court are set out below:

“47. It ought to be noted that the crucial word used in Section 405 IPC is “dishonestly” and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is “misappropriates” which means improperly setting apart for ones use and to the exclusion of the owner.”

16. In light of the aforesaid, there cannot be any doubt that for invoking an offence under Sections 405/406 of the IPC, there has to be an element of dishonest intention. If a person simply diverts the money that she was entrusted with, without a dishonest intention, it would not constitute an offence under Sections 405/406 of the IPC. Therefore, the words, ‘without intending to deceive’ used in the aforesaid question make it abundantly clear that in the factual scenario envisaged in the said question, there is no likelihood of Section 406 of the IPC being invoked. Admittedly, Section 420 of the IPC has no relevance to the said question and therefore, the only



correct answer could be ‘*Option (4)*’ i.e., “*none of the above*”.

17. The decision of the Supreme Court in ***Radha Rani*** (supra), relied upon by the petitioner only states that ‘entrustment’ is one of the ingredients for the offence under Section 405 of the IPC. However, the Court did not delve on the issue whether dishonest intention is a necessary ingredient for the said offence. Therefore, ***Radha Rani*** (supra) would not come to the aid of the petitioner.

18. It is a settled position of law that courts have to presume the correctness of the answer key and proceed on that basis. The correctness of an answer key cannot be gone into by the courts, unless the answer provided in the key is wrong on the face of it. Reference in this regard may be made to the judgments of the Supreme Court in ***Kanpur University v. Samir Gupta***, (1983) 4 SCC 309 and ***Ran Vijay Singh v. State of UP***, (2018) 2 SCC 357.

19. In light of the discussion above, we do not find any merit in the present petition and the same is dismissed.

20. All pending applications stand disposed of.

AMIT BANSAL
(JUDGE)

RAJIV SHAKDHER
(JUDGE)

FEBRUARY 8, 2024

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