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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment Reserved on: 01.03.2024*

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Judgment Pronounced on: 05.03.2024+ **W.P.(C) 3144/2024, CM APPL. 12871/2024****JHARNA**

..... Petitioner

Through: Mr Hemant Kumar and Mr Shivam
Jangra, Advocates along with
petitioner in person.

versus

DELHI HIGH COURT THROUGH REGISTRAR GENERAL

..... Respondent

Through: Dr Amit George with Mr Arkaneil
Bhaumik, Mr Rayadurgam Bharat,
Mr Adhishwar Suri, Mr Shashwat
Kabi, Mr Piyo Harold Jaimon, Ms
Suparna Jain and Mr Rishabh Dheer,
Advocates along with Mr Pankaj
Kumar, Assistant Registrar.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****AMIT BANSAL, J.**

1. The present writ petition has been filed challenging the correctness of the Answer Key dated 20th December, 2023 published by the respondent in respect of Question No. 154 of booklet D in the Delhi Judicial Services (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.

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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. The petitioner's grievance is with regard to the correct option for one of the questions of the DJS Preliminary Examination, 2023 i.e. Question No. 154 of Booklet D, which is set out later. The petitioner had opted for '*Option (1)*' for the said question.
 - 5.3. 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 option to the aforementioned question was declared as '*Option (2)*'.
 - 5.4. The respondent issued a notice inviting objections to the said answer key, pursuant to which the respondent received objections, including in respect of the answer to Question No. 154. On 2nd February, 2024, the respondent published a Revised Answer Key, whereby the answer to Question No. 154 remained unchanged.
 - 5.5. In the final result, the petitioner secured 160.50 marks in the DJS Preliminary Examination, 2023 while the cut off was 160.75 marks. Therefore, the petitioner fell short of 0.25 marks in clearing the cut off.



5.6. After the results were published, the petitioner applied for her OMR sheet by filing an application under the Right to Information Act, 2005. On 19th February, 2024, the petitioner gained access to her OMR Sheet and confirmed her answer to the aforementioned question.

6. Being dissatisfied, she filed the present writ seeking the following reliefs:-

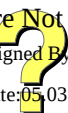
- “i. Revise the impugned answer key Dt. 20.12.23 and direct the Respondent to declare option 1 of the question no. 154 of booklet D to be correct;*
- ii. Direct the Respondent to revise the result of the Petitioner and award 1.25 marks....”*

7. The question in issue i.e Question No. 154 of Booklet D is set out below for ease of convenience:

“154: Section 91 of the Cr.P.C. enables the Court or the Officer Incharge of a police station to summon such document or other thing necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings. This provision also enables the accused to move an application for production or preservation of documents so as to assist him in his defence at the time of consideration of charge against him or recording of statement under section 313 Cr.P.C.

- 1) Statement is wrong since section 91 does not confer any locus standi or legal right upon the accused to move any application.*
- 2) Statement is correct if the court is satisfied that the material available with the investigator not made part of the Chargesheet, has a crucial bearing on the issue of framing of charge.*
- 3) Statement is correct. The court cannot pass orders to preserve certain records, even if the same would be destroyed in the ordinary course of business.*
- 4) Statement is correct since in the absence of specific powers, the court does not have any inherent powers to do pass orders ex debito justitiae.”*

8. Learned counsel appearing on behalf of the petitioner submits that ‘Option (1)’, marked by the petitioner, should be the correct answer in respect of Question No. 154. It is submitted that an accused has no right to





move an application under Section 91 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for the preservation or production of documents at the stage of charge in the trial. Reliance in this regard is placed on the judgment of the Supreme Court in *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 which has been followed recently in *State of Rajasthan v. Swarn Singh @ Baba* in CRL. Appeal 856/2024 decided on 12th February, 2024.

9. *Per contra*, learned counsel appearing on behalf of the respondent raises a preliminary objection with regard to the maintainability of the present petition as the petitioner herein did not raise any objections qua the said question, even though the respondent had sought objections. Furthermore, the present writ has been filed after much delay, considering the Revised Answer Key was published on 2nd February, 2024.

10. On merits, it is submitted on behalf of the respondent that out of the four options that were given to said question, 'Option (2)' was the most suitable answer. It is stated that 'Option (1)', as marked by the petitioner, cannot be the correct answer. Reliance in this regard has been placed on the judgment of the Supreme Court in *Nitya Dharmananda Alias K. Lenin and Anr. v. Gopal Sheelum Reddy also known as Nithya Bhaktananda and Anr.*, (2018) 2 SCC 93

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

12. On the aspect of maintainability, although it is correct that the petitioner had not preferred an objection concerning the question in issue, admittedly, there were other candidates who had lodged an objection *qua* the said question with the respondent. Recently, in *Shruti Katiyar v. Registrar General, Delhi High Court* in W.P(C) 2344/2024, decided on 20th February,



2024, also concerning the correctness of the answer in the DJS Preliminary Examination 2023, this bench had rejected a similar objection raised on behalf of the respondent by holding that the objections would attain universality when preferred by any candidate and relief given, if any, would inure in favour of all candidates. The relevant observations from ***Shruti Katiyar*** (supra) have been set out below:-

“7. As indicated above, although it is not in dispute that the petitioner had not preferred objection concerning the question in issue i.e., question no.54 in ‘Booklet A’, there were other candidates who had lodged an objection qua the same with the respondent. Therefore, in our view, the preliminary objection taken by Dr George loses its efficacy as a relief given to any candidate would inure ordinarily in favour of all the candidates. The objections, in a sense, attain universality, once taken by any candidate. The purpose of affording candidates the opportunity to lodge objections is salutary as it allows the respondent to take corrective measures in the larger interest of candidates and move away from a possible unfair result.”

13. As regards the objection that the present writ petition was filed belatedly, the petitioner has stated that the petition has been filed about 10 days after the petitioner received her OMR sheet pursuant to an RTI application. Hence, in our view, it cannot be stated that there was a delay in approaching this Court.

14. Now we proceed to examine the objection preferred by the petitioner on merits.

15. For the sake of reference, Section 91 of Cr.P.C which is the subject matter of the question in issue is set out below: -

“91. Summons to produce document or other thing.—(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose



possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

16. A reference may also be made to the relevant part of Section 313(1) of the Cr.P.C.

"313. Power to examine the accused.—(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b)...."

17. Learned counsel for the petitioner has placed reliance on the judgment in ***Debendra Nath Padhi*** (supra), wherein the Supreme Court has observed that the entitlement of an accused to seek an order under Section 91 of the Cr.P.C. would ordinarily not come till the stage of defence. The relevant portion from the said judgment is set out below-

"25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with



reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

[Emphasis is ours]

18. Counsel for the petitioner submits that the judgment in **Debendra Nath Padhi** (supra) has been followed by the Supreme Court very recently in **State of Rajasthan v. Swarn Singh**, in CRL. Appeal No. 856/2024 dated 12th February, 2024.

19. Counsel appearing on behalf of the respondent has placed reliance on the judgment of the Supreme Court in **Nitya Dharmananda** (supra) where it has been observed that subject to the satisfaction of the Court, the Court can summon documents invoking Section 91 of the Cr.P.C. The relevant observation of the Supreme Court in **Nitya Dharmananda** (supra) is set out below: -

“5. It is settled law that at the stage of framing of charge, the accused

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cannot **ordinarily** invoke Section 91. However, the court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke Section 91. To exercise this power, the court is to be satisfied that the material available with the investigator, not made part of the charge-sheet, has crucial bearing on the issue of framing of charge.

XXXX

XXXX

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8. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet. **It does not mean that the defence has a right to invoke Section 91 CrPC dehors the satisfaction of the court, at the stage of charge.**

[Emphasis is ours]

20. It is pertinent to note that in *Nitya Dharmananda* (supra), the Supreme Court has taken note of the findings in *Debendra Nath Padhi* (supra) and has also extracted paragraph 25 of the said judgment, which has been set out above.

21. Even though counsel for the petitioner has placed strong reliance on the judgment in *Debendra Nath Padhi* (supra), it is relevant to note that the Supreme Court in the aforesaid judgment has used the word “**ordinarily**” in respect of the entitlement of the accused to file an application under Section 91 of the Cr.P.C. till the stage of defence. A reading of the aforesaid passages quoted from *Nitya Dharmananda* (supra) suggests that subject to the satisfaction of the court, the accused can invoke Section 91 at the stage of charge also. This would imply that there is no absolute bar on the right of the accused to file such an application, though ordinarily an accused may not be permitted to do so.

22. In our view, *Option (2)* which has been stated by the respondent to be

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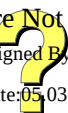


the correct answer takes into account this aspect while providing that the assertions made in the question would be correct only upon the satisfaction of the Court, when the material which is available with the investigator and is not made part of the chargesheet, has a crucial bearing on the issue of framing of charge. On the other hand, *Option (1)*, chosen by the petitioner, cannot be the correct answer as it envisages a complete bar on the accused to file an application under Section 91 of the Cr.P.C.

23. We may note that in the present petition, we are not called upon to determine the correct legal position with respect to Section 91 of the Cr.P.C. The scope of the present petition is only to examine the relative correctness of the options given in the said question. It is pertinent to note that the “Instructions to Candidates” section of the question paper itself records that a candidate must choose the most appropriate option for the question asked.

24. The examination system itself provides a mechanism for the correction of inadvertent mistakes that may have crept into the answer key by providing an option for candidates to raise objections against answers which they consider to be incorrect. It is to be noted that some of the candidates did file their objections in respect of the said question i.e Question No. 154 which were duly considered by the respondent and the respondent chose not to alter the Model Answer Key dated 20th December, 2023.

25. Once the candidates have filed objections and they have duly been considered by the exam conducting authority, there cannot be any further objections to the same and a finality has to be attached to the process. Unless the answer given by the exam conducting body is demonstratively wrong, the Court cannot interfere with the same.





26. It is a settled position of law that Courts have to presume the correctness of the answer key and even if there is a doubt raised with regard to the same, the discretion should be exercised in favour of the exam conducting body. Only in the event when the answer key is palpably incorrect, would the Court interfere with the same in exercise of its jurisdiction under Article 226 of the Constitution of India. 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.

27. In our considered view, the challenge raised by the petitioner does not meet the aforesaid criterion.

28. In view thereof, we do not find merit in the present petition and the same is, along with the pending application, dismissed.

AMIT BANSAL
(JUDGE)

RAJIV SHAKDHER
(JUDGE)

MARCH 5, 2024

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