
(1999) 08 AHC CK 0138
In the Allahabad High Court
Case No : Writ Petition No. 3345 (M/B) of 1999

Kumari Poonam Awasthi	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998 — Section 2, 3, 9

Citation : (2000) 2 AWC 1420

Hon'ble Judges : Virendra Saran, J;Nassemuddin, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Virendra Saran and Naseemuddin, JJ.—Kumari Poonam Awasthi has filed this writ petition for quashing the first information report dated 8.5.1998 in Case Crime No. 174 of 1998 Police Station Kotwali Gola, district Khert.

2. Learned counsel for the petitioner and learned Government advocate were heard.

3. It appears that opposite party No. 3 Dr. O. P. Mishra (Senior Superintendent) Principal, C.G.N. (P.G.) College, Gokaran Nath, district Kheri lodged an F.I.R. with the allegation that on 8.5.1998 at about 7.10 a.m. the petitioner, who was appearing in the examination of B.A. II year, handed over some unauthorised material to the invigilator in the examination room after the distribution of the question papers at 7.10 a.m. She was appearing on that day in 1998 Studies Hindi Literature II paper. That the petitioner did not make use of the material. That even then in order to save the infectious effect of keeping the unauthorised material, action was taken against her and second copy was given to her for examination. The F.I.R. was lodged u/s 3/9 of the U. P. Public Examinations (Prevention of Unfair Means) Act. 1998 (hereinafter as the Act). A case was registered.

4. Relevant Sections of the Act applicable to the present case are contained in Sections 2 (d). 3 and 9 which are quoted below :

"2. Definitions.--In this Act-

(a)

(b)

(c)

(d) "Unfair means" in relation to an examinee while answering questions in a public examination means the unauthorised help from any person directly or indirectly, or from any material written, recorded, copied or printed, in any form whatsoever, or the use of any unauthorised telephonic, wireless or electronic or other instrument or gadget.

3. Prohibition of the use of unfair means.--No examinee shall use unfair means at any public examination.

9. Penally for use of unfair means.--Whoever contravenes or attempts to contravene or abets the contravention of the provisions of Section 3 shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to two thousand rupees or with both."

5. Applying the provisions of law on the facts of the present case, it appears that a person can be said to have used "unfair means" when the person takes "unauthorised help" from any material while "answering questions" in a public examination or "uses" any of the unauthorised things mentioned in the definition of "unfair means". If the examinee has not taken any help from any person or material and has not made use of any of the unauthorised things, then the examinee cannot be said to have used unfair means. Section 3 prohibits use of unfair means by an examinee. In the instant case, admittedly, the examinee had not used any unfair means- She had herself handed over the unauthorised material at 7.10 a.m. to the invigilator in the examination hall. According to the F.I.R. the examination started at 7.10 a.m. as it was the first sitting. So. as soon as the question papers were distributed the unauthorised material was handed over to the invigilator who had also incidentally seen the material. It has been clearly mentioned that the unauthorised material was not at all used by the examinee. It has also been clearly mentioned that in order to save others from the future infectious III effect (Sankramak Kuprabhav) the examinee was treated as guilty, and so was given another answer book. In view of the facts and circumstances of the case, no offence punishable u/s 9 read with Section 2 (d). 3 of the Act was made out. It is relevant to mention that the Act makes specified conduct of the examinee an offence in a case where the examinee uses unfair means as defined under the Act at any public examination. Simple possession of any unauthorised material has not been made an offence under the Act. The unauthorised possession or other things of the like nature might probably be the subject-matter of disciplinary proceedings under some rules of the Education

Code/Act ; but as far as penal provision is concerned, the Act makes it clear that an offence is made out only when the examinee uses unfair means as laid down and understood in clause (d) of Section 2 of the Act. As far as the offence as defined under the Act is concerned, the examinee could be said to have committed an offence u/s 3 when unfair means are resorted to and that too as laid down under the Act. In the instant case the examinee, admittedly, was not using unfair means. Therefore, the F.I.R. does not show that the examinee committed any cognizable or non-cognizable offence and definitely the F.I.R. does not disclose that an offence u/s 3/9 was made out. For these reasons the first information report has to be quashed and consequently the investigation and prosecution on that basis have also to be quashed.

6. The writ petition is allowed. The first information report dated 8.5.1998 in Case Crime No. 174 of 1998 Police Station Kotwali Gola, district Kheri u/s 3/9 of the Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998 and consequent investigation are hereby quashed.