

(2011) 05 AHC CK 0307

In the Allahabad High Court

Case No : Criminal Miscellaneous W.P. No. 9297 of 2011

Surya Bhan Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-05-2011

Acts Referred:

Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998 — Section 10, 12(2), 6, 7

Citation : (2011) 3 ACR 2793

Hon'ble Judges : S.C. Agarwal, J; Amar Saran, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Amar Saran and S.C. Agarwal, JJ.—This case has been nominated by Hon'ble the Chief Justice before a Bench to be presided over by one of us (Amar Saran, J.), by an order dated 24.5.2011.

2. This writ petition has been filed for quashing an F.I.R. dated 12.4.2011 and for staying the arrest of the petitioners at Case Crime No. 107 of 2011, Police Station Paschimpur, district Kaushambi, under Sections 6, 7 and 10 of the Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998 (hereinafter referred to as "Unfair Means Act").

The allegations in the F.I.R. were that on 4.4.2011, when the U. P. Board examinations of the second paper of Urdu of High School and first paper of Sanskrit of Intermediate were being held at the Ram Newaj Singh Uchcharat Madhyamik Vidyalaya, Jagatpur, Katri, Kaushambi, an inspection was made by the Administrative Officers. At that time, a comparison was made of the examination copies of the candidates. It was found that answers of the examinees were all similar and thus it was apparent that mass copying had been allowed to take place at the examination centre. The Centre Superintendent, Supervisor and the Invigilators conducting the examination appeared to have colluded for facilitating this mass copying and action was sought against the

offenders who were not named in the F.I.R. lodged by Rajiv Kumar, Finance and Accounts Officer on behalf of the District Inspector of Schools, Kaushambi.

3. The petitioners' counsel raised several contentions. One, that no inspection was made on the date in question. For this purpose he sought to place reliance on the duty chart dated 4.4.2011 (vide Annexure-3 to the writ petition). Two that no offence under Sections 6, 7 and 10 of Unfair Means Act was disclosed. Three, that the F.I.R. was highly belated.

4. It is relevant to mention that the duty chart is a defence document. Also as the Centre In-charge of the Examination had himself been made an accused, the non-mention of the inspection in the duty chart is of no significance.

5. Because an F.I.R. is registered belatedly, because the administration may need to look at the ramifications of a problem, provides no ground for quashing an F.I.R.

6. Section 7 of the Unfair Means Act provides that no person, who is on the management or on the staff of an institution which is being used for the holding of a public examination, or who is entrusted with any work pertaining to a public examination, shall provide any help or assistance to an examinee in using unfair means in public examination. Thus, an offence u/s 7 of the Unfair Means Act prima facie clearly appears to have been disclosed. This offence is also punishable u/s 10 of the Act. On a plain examination of the F.I.R. allegations, it cannot, therefore, be said that no cognizable offence was disclosed against the petitioners. Hence no ground exists either for quashing the F.I.R. or for staying the petitioners' arrest.

7. In this connection this Court had occasion to notice in Criminal Misc. Writ Petition No. 16739 of 2010, Awadh Prasad v. State of U.P. and another, that district Kaushambi has become a hot bed for the use of unfair means and there is collusion of the education mafia with institutions and their principals and management, who guarantee success irrespective of whether a student has prepared for his examinations or not. In the said writ petition in which one of us (Amar Saran. J.) was a member, after examining the Senior Sub Inspector of P. S. Saini and S. P. Kaushambi who appeared before the Bench on 6.10.2010 it was observed :

The S. P. himself pointed out that district Kaushambi has become a hub for facilitating unfair means and cheating in the board examination and students from all over the country are coming and camping here in order to appear in the secondary examinations. There is collusion of the Education mafia with various aided and un-aided institutions, where examinations are conducted and by other persons associated with the institution or examinations. He further stated that the District Magistrate and the S. P. are very serious about breaking the backbone of this grave crime. It is not only damaging for the students to pass by such unfair practices by setting up impostors in their place and other unfair means, but such promotions by unfair means by undeserving persons is

detrimental for the future of our nation. It is further stated by the S.P. that more than 50 F.I.Rs. have been lodged in similar matters. We appreciate the concern of the S.P. and D.M. Kaushambi in the matter. We hope that as stated in the counter-affidavit, the investigation will be concluded within one month and we are also hopeful that efforts will be made to book the institutions and heads of institutions, who are engaged in this wide spread crime.

8. Although u/s 12 (2) of the Unfair Means Act, any offence punishable u/s 10 (or Section 11) has been made cognizable and non-bailable, but the said offence has only been made punishable with imprisonment for a term of up to one year or with fine, which may extend to (sic) 5,000 or both. We are of the view that this is clearly an inadequate sentence in this crime, which is bringing about the rack and ruin of our students. Even after passing their High School, Intermediate and even higher level examinations students are still illiterate and ignorant, which can be disastrous for the future of our nation, where much greater level of technical and educational competence is needed as a nation undergoes the march towards modernization. We also notice that this problem of an examination mafia having developed who collude with managements and heads of private or public institutions and other persons for facilitating success of unprepared students in examinations by use of unfair means has become a widely prevalent phenomena, not only in district Kaushambi, but in most districts of Uttar Pradesh. Innumerable news reports of this menace of use of unfair means have regularly appeared in various news papers and television channels. We would now like a response from the Principal Secretary (Home) and the Principal Secretary (Law), U. P. by means of affidavits as to how the State is looking at the wide ramifications of this problem and what steps are being contemplated by the State Government for checking this grave menace of wide spread of unfair means.

9. We would also like to be apprised on the next listing as to what steps are proposed to be taken for increasing the punishment for use of unfair means, as a sentence extending to only one year with or without fine is clearly inadequate.

10. We would now like S. P. Kaushambi to submit a fresh report by the next date of listing as to what steps have been taken for breaking the backbone of this grave crime in district Kaushambi and for booking the institutions and their heads and other persons, who may be involved in this crime. This Court would also like to be informed as to what strategy is being planned for preventing use of unfair means during the examinations in the future.

11. We would also like the investigation in the present case to be concluded at the earliest preferably within a period of two months. List on 26.7.2011.

12. On that date, the Investigating Officer of this case, the Superintendent of Police, Kaushambi or other senior officer deputed on his behalf may appear before this Court and inform this Court about the progress regarding the directions given hereinabove, both for concluding the investigation In the present

case as also regarding the steps taken for breaking the backbone of this crime in Kaushambi and for booking the cheating mafia and the heads and managements of institutions and others who may be involved in this crime and for developing a future strategy for checking this grave menace.

13. Copy of the order may be given to the learned A.G.A. by Monday. 30.5.2011. Registry to forward copies of this order to the S.P., Kaushambi, Investigating Officer of Case Crime No. 107 of 2011, Police Station Paschimpur, district Kaushambi, Principal Secretary (Law) and Principal Secretary (Home), U. P. within a week, for compliance.