

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.6521 OF 2016

Between:

Rajul Kumar & 2 Others ... Petitioners/Accused Nos.2
to 4.

And

1. The State of Telangana,
Through SHO PS Bollaram,
Represented Public Prosecutor,
High Court at Hyderabad. ... Respondent.

2. Amitabh Rathi ... Respondent/Defacto
Complainant.

DATE OF JUDGMENT PRONOUNCED : 04.08.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | |
|--|--------|
| 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER,

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No. 6521 of 2016

% Dated 04.08.2023

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! Counsel for the Petitioner: Sri K.Venu Madhav

^ Counsel for the Respondents: Sri Public Prosecutor

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.6521 OF 2016****ORDER:**

1. This Criminal Petition is filed by the petitioners/A2 to A4 to quash the proceedings in C.C.No.766 of 2016 on the file of XI Additional Chief Metropolitan Magistrate at Secunderabad.

2. A complaint was filed by the *defacto* complainant/2nd respondent namely Amitabh Rathi who was the Lieutenant Colonel, Administrative Office for Commandant, 1-EME Centre, 3 Tr Battalion workshop shed, Hyderabad. A common entrance examination was organized on 26.07.2015. During examination, A1 was found using unfair means while writing examination. On enquiry, it was observed that there was involvement of the petitioners/ A2 to A4 in the malpractice. Basing on the complaint, crime was registered vide Crime No.72 of 2015 under Section 420 r/ 34 of IPC and Sections 4, 5 & 8 of A.P. Public Examinations (Prevention of Malpractices and Unfair Means) Act, 1997 (for short 'the Act of 1997').

The investigation revealed that A1 and these petitioners/A2 to A4 were preparing for writing common entrance which was scheduled on 26.07.2015. 1st petitioner/A2 used his previous contacts with one VP Singh, who has leaked answers for the Tech and GD tests being conducted on the said date in advance through mobile phone communication. He received answers for the tests on his mobile phone and the same was shared with A1 and petitioners 2 and 3, who are A3 and A4. During examination, all the accused were caught and the telephone messages and other communication revealed that answers were provided to these petitioners well in advance and the petitioners were answering questions on the basis of earlier information, which amounts to malpractice and unfair means adopted during examination.

3. Learned counsel appearing for the petitioners would submit that the Act of 1997 is not attracted to Central Government examinations conducted in Andhra Pradesh. Section 2(b) of the said Act defining 'Government' means the

State Government of Andhra Pradesh only. Definition under section 2(e) 'Public examination' means any examination conducted by the State Government and does not include Central Government. Sections 4, 5 and 8 of the Act are not attracted and there is no evidence of cheating, for which reason, proceedings have to be quashed.

4. On the other hand, learned Public Prosecutor opposed quashing of the application and argued that the petitioners were indulging in malpractice and liable to be prosecuted.

5. The definition of 'Public Examination' is extracted hereunder:

"2(e)"Public Examination" means any examination either qualifying or competitive conducted by the Government or any other authority or body or any university under any law for the time being in force for awarding or granting any degree, diploma, certificate or any other academic distinction or for qualifying for admission into any course of study or for selecting for appointment or regularisation or promotion to any post in public service and includes any other examination declared by the Government by notification to be a public examination.

Explanation: For the purposes of this clause, the expression, 'Public Service' means services in any office or establishments of,-

(a) the Government;

(b) a local authority;

(c) a Corporation or undertaking wholly owned or controlled by the State Government;

(d) a body established under any law made by the Legislature of the State whether incorporated or not, including a University;

(e) any other body established by the State Government or by a society registered under any law relating to the registration of societies for the time being in force, and receiving funds from the State Government either fully or partly for its maintenance or any educational institution whether registered or not but receiving aid from the Government; (f) "Unfair means" in relation to an examinee appearing in a public examination means the unauthorised help from any person in any manner or from any material written, recorded, printed or reproduced in any form whatsoever or the unauthorised use of any telephonic, wireless or electronic or other instrument or gadget in any manner; and

6. Section 2(e) of the Act defines that a Public Examination means any examination by the Government or any other authority for the purpose of admission or selection for appointment. 'Any other authority' would include the Central Government establishments, Army etc.. The definition encompasses all government authorities both State and Central or any body or any University established under any law for the time being in force. The definition does not confine to the examination conducted by the State Government, but also includes examination conducted by the State Government.

7. Under Section 2(f) of the Act, 'Unfair' means in relation to examination adopting unfair means or taking unauthorized

help either through wireless, electronic or any other instrument in any manner.

8. *Section 3. Prohibition of the use of unfair means - The use of unfair means at or in connection with any public examination by any person is hereby prohibited.*

According to Section 3 of the Act, any use of 'Unfair means' in connection with any public examination by any person is prohibited. Contravention of Section 3 is punishable under Section 8 of the Act. For the sake of convenience, Sections 4, 5 and 8 of the Act of 1997 are extracted hereunder:

*“4. **Unauthorised possession and disclosure of question paper** - No person who is not lawfully authorised or permitted by virtue of his duties so to do shall, before the time fixed for the examinees to leave an examination centre at a public examination,- (a)procure or attempt to procure or possess, such question paper or any portion or a copy thereof; or (b)impart, or offer to impart information which he knows or has reason to believe, to be related to, or derived from, or to have a bearing upon such question paper.*

*5. **Prevention of leakage by person entrusted with examination work** – No person who is entrusted with any work pertaining to a public examination shall, except where he is permitted by virtue of his duties so to do, directly or indirectly divulge or cause to be divulged or make known to any other person any information or part thereof which has come to his knowledge by virtue of the work being so entrusted to him.*

*8. **Penalty** - Whoever contravenes or attempts or conspires to contravene or abets the contravention of the provisions of section 3 or section 4 or 1. Inserted by the Act No.27 of 2006, S.3. section 5 or section 6 or section 7*

1[or section 7A] shall be punishable with imprisonment for a term which shall not be less than three years but which may extend upto seven years and with fine which shall not be less than rupees five thousand, but which may extend upto rupees one lakh.

9. The petitioners were caught practicing by unfair means by securing answers prior to writing the examination. *Prima facie*, the allegations attract offences under Sections 3 and 4 of the said Act of 1997.

10. Section 5 of the Act of 1997 is not attracted for the reason of the petitioners not being the persons who were entrusted with any examination work.

11. In view of aforesaid discussion, the Criminal Petition fails and accordingly, the same is dismissed. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 04.08.2023

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.6521 OF 2016

Dt. 04.08.2023

kvs

