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

\+ W.P. (C) 7346/2020

SHIVNATH TRIPATHI ..... Petitioner
Through: Petitioner in person.

versus

THE REGISTRAR GENERAL
HIGH COURT OF DELHI AND ANR. ..... Respondents
Through: Mr.Sanjoy Ghose, Advocate with Mr.Naman Jain, Advocate and Mr.Manish Aggarwal, JR (Examination).

% Date of Decision: 27th November, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed seeking directions to the respondents to modify answers to Question 7, Question 53, Question 78, and to delete Question 134 of the Delhi Higher Judiciary Service Preliminary Examination (Objective Type) held on 2nd February 2020.

3. The impugned questions and the correct answers in bold are reproduced hereinbelow:-

Q.7. 'A' is married and is having one child. A's husband 'B' does not live with her. 'C' on false promise to marry 'A' makes physical

relationship with her and later refused to marry.

(1) 'C' has committee the offence of rape.

(2) ***'C' has not committed the offence of rape.***

(3) 'C' has committed the offence of sexual assault.

(4) 'C' has committed the offence under Section 494 of Indian Penal Code.

Q. 53 Company 'A' is the registered trademark holder of hte mark 'VITE' specifically in respect of pens. Company 'B' adopts the name 'VITE' in respect of ink. The adoption by company 'B' constitutes

(1) Infringement

(2) Passing of

(3) Both infringement and Passing off

(4) Neither infringement nor passing off"

"Q.78. While sentencing the accused in an offence under the Prevention of Corruption Act, 1998, the relevant criteria is

(1) Reformation

(2) Deterrence & Denunciation

(3) Both (1) & (2)

(4) None of the above"

"Q.134. A Decision rendered in a proceeding under Section 372, Indian Succession Act, 1925

(1) is summary in nature

(2) does not finally decide the rights of the parties

(3) does not bar the trial of the same question in any other proceedings between the same parties

(4) ***All of above****"*

4. Petitioner states that for question no.78, the correct answer should be option "(3)". He submits that the Supreme Court in ***K. P. Singh vs. State of Delhi [Criminal Appeal No. 1264 of 2015 (Arising Out of SLP (Crl.) No. 444 of 2015]*** while dealing with an offence punishable under Section 8 of the Prevention of Corruption Act took note of 'reformative' aspect of punishment and consequently, according to him the punishment under Prevention of Corruption

Act is reformatory as well. He relies upon the judgment of the Supreme Court in ***B.G. Goswami vs. Delhi Administration, (1974) 3 SCC 85***.

5. Petitioner in person vehemently states that since there are two possible correct answers to question no. 78, the petitioner cannot be penalized. In support of his submission, he relies upon the judgment of this Court in ***Sumit Kumar vs. High Court of Delhi and Anr. 2016 SCC OnLine Del 2818*** wherein it has been held as under: -

> *"11. We have to apply the aforesaid standard or test when we examine the contentions of the two petitioners. In other words, only when we are convinced that the answer key is "demonstrably wrong" in the opinion of a reasonable body of persons well-versed with the subject, will it be permissible to exercise power of judicial review. Albeit, in cases where the answer key is indeed incorrect or more than one key to the answer could be correct, the candidates should not be penalized for answers at variance with the key. The expression "demonstrably wrong" and the clapham omnibus standard or test on the second aspect (i.e. more than one correct key) is noticeably the corner stone of the said principle. While applying the said test, the Court should keep in mind that the answer key should be presumed as correct and should not be treated as incorrect on mere doubt."*

6. He further states that for question no.7, the correct answer should be option "(1)". He submits that the question of rape or no rape cannot be decided on the given facts of the question as there may be different outcome of the case depending on age, income, economic status, demographic status, social status or education of a woman. In support of his submission, he relies upon the judgments of the Supreme Court in ***Anurag Soni*** *v.* ***State of Chhatisgarh,*** **(2019)** ***13 SCC 1*** and ***Pramod Suryabhyan Pawar v. State of Maharashtra & Anr., (2019) 9 SCC 608***.

7. As far as question no.53 is concerned, he states that the correct answer should be "(1)", as mere registration of trade mark does not entitle a person to a remedy of passing off as it is not stated in the Question that plaintiff company had any reputation or goodwill.

8. He states that question no.134 ought to be deleted because the proceeding under Section 372 of the Indian Succession Act, 1925 is 'summary' according to Section 373 of the Indian Succession Act, 1925.

9. Petitioner submits that the inaction of the respondents in not processing petitioner's objection to the answer key and subsequent notices have caused grave injustice to the petitioner. He further submits that no reason has been assigned for not modifying or deleting the answers provided by respondents.

10. This Court, vide order dated 22nd October, 2020, had directed the present writ petition to be placed before the Examination-cum-Judicial Education and Training Programme Committee of Hon'ble Judges and its comments/minutes were required to be placed before this Court.

11. In pursuance to the said order, the learned counsel for the respondent has placed on record the minutes of the meeting of Examination-cum-Judicial Education and Training Programme Committee held on 19th November, 2020 whereby the comments of the petitioner in respect of four impugned questions have been considered and the Committee has opined as under:-

Sl. No.	***Agenda***	***Minutes***
1.	*To consider the comments of Examiners in respect of 04 questions*	*The Committee has gone through the Answer keys and also perused the comments of the Examiners in respect of all the four questions challenged by the petitioner in the writ petition. The view of the Committee is*

	challenged by Mr. Shivnath Tripathi in W.P. (C.) No. 7346/2020 titled "Shivnath Tripathi vs. The Registrar General, High Court of Delhi & Anr."	*as under:-* ***Q.7. 'A' is married and is having one child. A's husband 'B' does not live with her. 'C' on false promise to marry 'A' makes physical relationship with her and later refused to marry.*** *(1) 'C' has committee the offence of rape.* *(2)* ***'C' has not committed the offence of rape.*** *(3) 'C' has committed the offence of sexual assault.* *(4) 'C' has committed the offence under Section 494 of Indian Penal Code.* ***Decision*** *As per answer key, the correct answer is (2). The Committee is of the opinion that this is the correct option.* ***Reason*** *The prosecutrix is only 'separated' and not 'divorced' and an inducement of marriage can only be made to an unmarried or divorced person. Here the prosecutrix still maintains her status as a married person.* *This follows from the decision of Supreme Court in* ***Prashant Bharti v. State (NCT of Delhi)*** *reported as* ***(2013) 9 SCC 293,*** *where it was held as under:* *"17 ...It is apparent from irrefutable evidence that during the dates under reference for a period of more than one year and eight*

		months thereafter, she had remained married to Lalji Porwal. In such a fact situation, the assertion made by the complainant/prosecutrix, that the appellant-accused had physical relations with her, on the assurance that he would marry her, is per se false and as such, unacceptable. ***She, more than anybody else, was clearly aware of that fact that she had a subsisting valid marriage with Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage****...* *The decisions of* ***Anuraq Soni*** *v.* ***State of Chhatisgarh*** *reported as* ***(2019) 13 SCC 1*** *and* ***Pramod Suryabhyan Pawar v. State of Maharashtra & Anr.,*** *reported as* ***(2019) 9 SCC 608*** *are not applicable in this case as the issue of 'promise to marry' in relation to a 'subsisting marriage' was not before the court.* ***"Q. 53 Company 'A' is the registered trademark holder of the mark 'VITE' specifically in respect of pens. Company 'B' adopts the name 'VITE' in respect of ink. The adoption by company 'B' constitutes*** *(1) Infringement* *(2) Passing of*

		(3) Both infringement and Passing off *(4) Neither infringement nor passing off"* ***Decision*** *As per answer key, the correct answer is (3). The Committee is of the opinion that this is the correct option. The reasoning for the same is given below.* ***Reasons*** *The registered trademark of the company is 'VITE' for Pens. Under Section 29(2)(a) of the Trade Marks Act, 1999, if the mark used by B is identical to the registered trademark and the goods and services are similar, then the same could constitute infringement. Pens and ink are similar goods as these are cognate and allied. They are sold via the same trade channels and the class of customers is also identical. The use by B for mark 'VITE' for ink would also constitute passing off of A's goods as those of B. Use by B of the mark 'VITE' could cause damage to A's reputation as also A's business and goodwill. The various pre-conditions for passing off would also be satisfied in terms of the judgment in* ***Cadila Healthcare Ltd v. Cadila Pharmaceuticals Ltd., 2001 PTC 300(SC)*** *and in several other decisions both of the Supreme Court and the High Court.* ***"Q.78. While sentencing the accused in an offence under the Prevention of Corruption Act, 1998, the relevant criteria is***

		(1) Reformation ***(2) Deterrence & Denunciation*** *(3) Both (1) & (2)* *(4) None of the above"* ***Decision*** *As per answer key, the correct answer is (2). The Committee is of the opinion that this is the correct option.* ***Reasons*** *In **Shanti Lal Meena v. State of (NCT of Delhi)** reported as **(2015) 6 SCC 185**, where in a case under POC Act, after considering the principles of sentencing policy and past precedents, the Supreme Court (Three Judge Bench) held as under:* *"20. As far as punishment for offences under the PC Act is concerned, we do not think that there is any serious scope for reforming the convicted public servant. The moment he is convicted, he loses his job. Hence, there is no significance to the theory of reformation of his conduct in public service. The only relevant object of punishment in such cases is denunciation and deterrence. That is the reason Parliament has restricted the judicial discretion in imposing punishment."*

		*So far as decision in **K.P. Singh v. State (NCT of Delhi)** reported as (2015) 15 SCC 497 (Two Judge Bench) is concerned, although the view of V. Gopala Gowda, J. does not refer to sentencing policy but the concurring view of T.S. Thakur, J. refers to it in following words:* *"10. Determining the adequacy of sentence to be awarded in a given case is not an easy task, just as evolving a uniform sentencing policy is a tough call. That is because the quantum of sentence that may be awarded depends upon a variety of factors including mitigating circumstance peculiar to a given case. The Courts generally enjoy considerable amount of discretion in the matter of determining the quantum of sentence. In doing so, the courts are influenced in varying degrees by the reformative deterrent and punitive aspects of punishment, delay in the conclusion of the trial and legal proceedings, the age of the accused, his physical/health condition, the nature of the offence, the weapon used and in the cases of illegal gratification the amount of bribe, loss of job and family obligations of accused are also some of the considerations that weigh heavily with the Courts while*

		determining the sentence to be awarded. The Courts have not attempted to exhaustively enumerate the considerations that go into determination of the quantum of sentence not have the Courts attempted to lay down the weight that each one of these considerations carry. That is because any such exercise is neither easy nor advisable given the myriad situations in which the question may fall for determination. Broadly speaking, the courts have recognised the factors mentioned earlier as being relevant to the question of determining the sentence. Decisions of this Court on the subject are a legion. Reference to some only should, however, suffice." *The above is a generalised view of the parameters involved in award of sentence in a criminal case. The sentence was not reduced on the aspect of reformation but on other aspects including period of trial, bribe amount and undergone sentence.* *The decision in* ***B.G. Goswami v. Delhi Administration*** *reported as* ***(1974) 3 SCC 85*** *was again a decision of a "Two Judge bench'.* ***"Q.134. A Decision rendered in a proceeding under Section 372, Indian Succession Act, 1925***

		(1) is summary in nature *(2) does not finally decide the rights of the parties* *(3) does not bar the trial of the same question in any other proceedings between the same parties* *(4)* ***All of the above****"* ***Decision*** *As per the answer key, the correct answer is (4).The Committee is of the opinion that this is the correct option. The reasoning for the same is set out below:* ***Reasons*** *Proceedings under Section 372 of the Indian Succession Act, 1925 for grant of succession certificate is not for the purpose of adjudication of any claims between the legal heirs. Such application is made under Section 372. A succession certificate cannot be granted in respect of any debt or security for which letters of administration or probate is required. Under Section 373, the proceedings are summary in nature. If there are any questions of fact and law, which are intricate and difficult to determine, the District Judge only takes a prima facie view as to which person has the best title. Since the proceedings are summary in nature, Section 387 specifically stipulates that there would be no bar to conduct a trial on the same question in any suit or proceedings between the same parties. Thus, the correct answer is (4) i.e. All of the above.*

		Case Law *Section 372-Proceedings for grant of Succession Certificate-Grant of certificate of any decision made in such proceedings will not bar any party to the proceeding to raise same issue in a subsequent suit.* ***[Madhvi Amma Bhawani Amma and Ors. Vs. Kunjikutty Pillai Meenakshi Pillai and Ors C.A. No. 1544 of 1990 Decided On: 27.04.2000, paras 13, 16, 19]*** *This sub-section [Section 373, Indian Succession Act, 1925] reveals two things, first adjudication is in a summary proceedings and secondly if the question of law and fact are intricate or difficult, it could still grant the said certificate based on his prima facie title. In other words the grant of certificate under it is only a determination of prima facie title. This as a necessary corollary confirms that it is not a final decision between the parties. So, it cannot be construed that mere grant of such certificate or a decision in such proceedings would constitute to be a decision on an issue finally decided between the parties.* *This leaves no room for doubt. Thus any adjudication made under Part X of this Act which includes Section 373 does not bar the same question being raised between the same parties in any subsequent suit or proceedings.* *So we have no doubt to hold that any decision made in the proceeding under*

		Section 372, for the grant of Succession Certificate under the Indian Succession Act, would not bar any party to the said proceedings to raise the same issue in a subsequent suit. ***[Joginder Pal Vs. Indian Red Cross Society and Ors. C.A. No. 5664 of 2000 (Arising out of SLP (C) No. 17208 of 1999) Decided On: 29.09.2000]*** *These Sections [373, 383 (e), 387, Indian Succession Act, 1925] make it clear that the proceedings for grant of succession certificate are summary in nature and that no rights are finally decided in such proceedings. Section 387 puts the matter beyond any doubt. It categorically provides that no decision under Part X upon any question of right between the parties shall be held to bar the trial of the same question in any suit or any other proceeding between the same parties. Thus Section 387 permits the filing of a suit or other proceeding even though a succession certificate might have been granted.* *In view of the above, the Committee is of the opinion that all the aforesaid four questions have been correctly framed and answer keys provided thereto are also correct.* *Registry is directed to place these Minutes on record before the Court.*

12. Having heard the parties, this Court is of the view that it is essential to outline the scope of Court interference with the results of an examination. The

Supreme Court in ***Ran Vijay Singh & Ors. vs. State of Uttar Pradesh & Ors., (2018) 2 SCC 357***, while discussing the law regarding judicial interference with the results of an examination has held as under:-

> *"18. A complete hands-off or no-interference approach was neither suggested in Mukesh Thakur [H.P. Public Service Commission v. Mukesh Thakur, (2010) 6 SCC 759 : (2010) 2 SCC (L&S) 286 : 3 SCEC 713] nor has it been suggested in any other decision of this Court—the case law developed over the years admits of interference in the results of an examination but in rare and exceptional situations and to a very limited extent.*
>
> *xxx xxx xxx*
>
> *30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:*
>
> *30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;*
>
> *30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;*
>
> *30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;*
>
> *30.4. <u>The court should presume the correctness of the key answers and proceed on that assumption</u>; and*

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

(emphasis supplied)

13. This Court is of the view that the petitioner has sought to reap the benefit of the observations of this Court in ***Sumit Kumar vs High Court of Delhi*** (supra) without actually following the standard/test of judicial review discussed thereunder.

14. The Division Bench of this Court in the aforesaid judgment, after discussing several judgments of the Supreme Court on the same matter, held that a candidate could not be penalized for answers at variance with the key only if the answer key was proven to be incorrect beyond doubt. However, it is relevant to note that according to the said judgment, an answer key cannot be disregarded as being incorrect merely on a doubt. The Court had reiterated the settled law that there is always a presumption of correctness regarding the answer key and it may be subject to judicial review only when it is "demonstrably wrong" i.e. it must be such as no reasonable body of men well-versed in the particular subject would regard it as correct.

15. In another case being ***High Court of Tripura vs. Tirtha Sarathi Mukherjee, (2019) 16 SCC 663*** the Supreme Court has held as under:-

"23. ..... Even in the judgment of this Court in Ran Vijay Singh v. Rahul Singh (2018) 2 SCC 357 which according to the first respondent forms the basis of the High Court's interference though does not expressly stated so, what the Court has laid down is that the Court may permit re-valuation inter alia only if it is demonstrated very clearly without any inferential process of reasoning or by a process of rationalisation and only in rare or exceptional cases on the commission of material error. ....."

(emphasis supplied)

16. In the present case, the Examination-cum-Judicial Education and Training Programme Committee has considered the queries raised by the petitioner at length and given detailed reasons as to why the impugned answer key is the single, objective, correct answer of the four options provided in the exam. In our view, there is no other answer that can possibly be "correct".

17. This Court is also in complete agreement with the opinion and reasons given by the Committee in its minutes of meeting dated 19th November, 2020. The Committee has rightly concluded that the impugned questions have been correctly framed and answer keys provided thereto are also correct.

18. The petitioner herein has based his arguments on mere conjectures and has failed to elucidate even a single valid ground to challenge the reasoning given by the Committee. Therefore, the petitioner has failed to demonstrate that the impugned questions and answer keys are inherently incorrect or manifest injustice has occurred in the present case.

19. Keeping in view the aforesaid factual and legal scenario, this Court finds no ground to interfere with the decision of the Committee as there is no evidence of commission of any material error in the present case.

20. Consequently, the present writ petition, being bereft of merit, is dismissed.

21. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

NOVEMBER 27, 2020
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