CIVIL MISCELLANEOUS

Before D. K. Mahajan and S. S. Sandhawalia, J.

BHAGWATI PARSHAD,—*Petitioner.*

Versus

PUNJABI UNIVERSITY, PATIALA.—*Respondent.*

Civil Writ No. 874 of 1969.

February 11, 1970.

Punjabi University Regulations (1968)—*Ordinance* 3(b) *and* (c)—*Use of unfair means in the Examination Hall—Incriminating material in possession of a candidate—Mere possession of the material—Whether sufficient to bring the case under Ordinance* 3(c)—*Attempt to use the material—Whether necessary.*

Held, that the language of neither Ordinance 3(b) nor that of 3(c) of the Punjabi University Regulations, 1968, makes an "attempt" to use the material punishable but is directed merely against inadvertent or mala fide possession. Neither of these two modes of possession necessarily require a deliberate and conscious overt act, to use the incriminating material. Once possession of the incriminating material by a candidate in the Examination Hall is established, all that has to be determined is whether the same was innocent or guilty—to use the language of the provisions—whether the same was "inadvertent" or "mala fide". A statute may make bare possession culpable. That is exactly what the language of Ordinance 3(c) of the Regulation plainly does without anything more in the shape of an overt act or an attempt to use the material possessed. Thus the crucial thing to be determined is the intent with which the incriminating material is possessed which inevitably is an issue of fact. (Para 10)

Petition under Article 226/227 *of the Constitution of India praying that a writ in the nature of certio rari, Mandamus or any other appropriate writ, order or direction be issued quashing the order dated* 22nd *February,* 1969 *passed by the Respondent, and order passed by the Committe (formed by the Punjabi University Patiala).*

J. N. KAUSHAL, G. C. GARG, AND J. V. GUPTA, ADVOCATES, for the petitioner.

RATTAN SINGH, ADVOCATE FOR ADVOCATE-GENERAL, PUNJAB, for the respondent.

JUDGMENT

The judgment of this Court was delivered by :—

SANDHAWALIA, J.—This petition under Articles 226 and 227 of the Constitution of India was admitted to hearing by a Division Bench

in order to examine the *ratio decidendi* in *Prem Nath Goel* v. *Punjabi University, Patiala* (1).

(2) The facts are in a narrow compass. Bhagwati Parshad petitioner was a student of the Mohindra College, Patiala, and he appeared in the Pre-Engineering Examination in April-May, 1968 under roll No. 5. On 26th August, 1968, the petitioner took his examination in the subject of English paper 'A', the time for which was from 2 p.m. to 5 p.m. Before the start of the examination, the Centre Superintendent imparted the usual instructions to the examinees that they shoud search their pockets and dispossess themselves of any objectionable material. Thereafter the petitioner along with others commenced taking the examination and it has been averred on his behalf that at about 3.15 p.m. the Deputy Superintendent of the Centre came to the seat of the petitioner and noticed some printed leaves torn out of a book relating to the subject of examination of that day lying behind him. It is alleged that the Deputy Superintendent planted the said papers on the petitioner and he was thereafter taken to the Centre Superintendent where he expressly denied the possession of the incriminating material and it is further alleged that the latter was satisfied with his explanation and did not ask the petitioner to make any statement. The petitioner was, however, given another answer book to continue with the rest of the paper.

(3) Subsequently the petitioner received a communication from the Assistant Registrar of the respondent University requiring him to appear before him on the 31st of October, 1968, in connection with the above-said unfair means case reported against him by the Centre Superintendent. The petitioner accordingly appeared and the incriminating material against him was made available to him for perusal. A detailed questionnaire (annexure 'B') was also put to him and he gave his replies to the specific questions therein controverting the allegations made against him. The Committee dealing with the case of the petitioner on consideration of the materials passed a detailed order against the petitioner holding him guilty of the possession of the incriminating papers with a *mala fide* intention and imposed the punishment of diqualification for two years under Ordinance 3(c) of the University Regulations. The decision of the University was communicated, to him by the Assistant Registrar

(1) C.W. No. 830 of 1967 decided on 21st November, 1967.

was annexure 'A'. An appeal against the decision of the Committee was carried to the Vice-Chancellor but did not find favour with him and was rejected. The petitioner then moved the present writ petition.

(4) In the affidavit filed on behalf of the respondent University by its Registrar, the averments of the petitioner regarding the actual incident in the Examination Hall have been controverted. On the contrary it has been averred that on the relevant day when the examination was going on the Supervisor on suspicion reported the matter to the Deputy Superintendent of the Centre who then searched the petitioner in the presence of the Supervisor. As a result of this search the incriminating papers were recovered from the pocket of the petitioner, and this material admittedly related to the paper in question and some of the answers to the question—paper were also contained therein. It has been further averred that it was false that the Centre Superintendent was satisfied with the explanation of the petitioner and that in fact the petitioner had categorically refused to make any statement. An endorsement to this effect is said to have been made by the Superintendent on the reporting papers forthwith. The version of the incident given by the petitioner has been expressly characterised as false.

(5) Mr. J. N. Kaushal very lucidly advanced a single contention in support of this petition. It was pointed out that the incriminating papers recovered from the petitioner contained the solution to some parts of questions numbers 5 and 6 of the question paper of that day but these were not even attempted by the candidate. The finding of the Committee, therefore, was that the petitioner had no opportunity to use the incriminating material and on this premises it was forcefully contended that the petitioner was liable only under Ordinance 3(b) and that his case could not possibly fall under Ordinance 3(c). Primary reliance was placed on *Prem Nath Goel's case* (1).

(6) To appreciate the contention raised, it is first necessary to advert to the relevant provisions of the Ordinance which are as follows:—

> "3(b) If a candidate is found having in his possession or accessible to him papers, books or notes due to inadvertance but which papers, books or notes could be of

assistance to him, he may be debarred from passing in that paper as a disciplinary measure without any implication of moral turpitude.

(c) If possession of such papers, books, or notes by him is found to be *mala fide*, he shall be disqualified for two years including that in which he was found guilty if he is a candidate for an examination held once a year or for four examinations including that in which he was found guilty, if he is a candidate for an examination held twice a year :

Provided * * * * * *."

For facility of reference the operative part of the detailed order recorded by the Committee may also be set down *in extenso* :—

"The Committee believes that the candidate did not attempt these parts of question Nos. 5 and 6, the solution of which is available in those incriminating papers, because he could not get an opportunity to do so. Under these circumstances, the Committee do not find any reason to disbelieve the reports of the Supervisory staff in this respect. The Committee unanimously decide that the candidate, Bhagwati Parshad (Roll No. 5, Pre-Engineering—August, 1968) is guilty of keeping in his possession papers of the book relevant to the question paper with *mala fide* intentions in the examination Centre and deserves punishment. Therefore, the Committee disqualify him for two years under ordinance 3(c) and debar him from appearing in any examination of the University."

(7) The gravamen of the argument on behalf of the petitioner is its reliance on *Prem Nath Geol's case* (1). It was forcefully contended that if that case is rightly decided, the petitioner's act can only fall within Ordinance 3(b) and not under 3(c).

(8) It is hence necessary to advert to the ratio of the case above-said. The facts in the said case were closely similar. There also the student was found in possession of the incrimination hand-written papers inside his answer book during the course of examination

and in the subsequent unfair means case he was found guilty under Ordinance 3(c) and was disqualified for a period of two years. Allowing the petition on the ground that the act of the student did not fall under Ordinance 3(c), the learned Judge had observed as follows :—

> "To my mind, clause (c) of Ordinance 3 is attracted only in those cases where the candidate is found to have actually done some deliberate and conscious overt act during the course of the examination, manifesting a malicious intention to make unfair use of the note or paper in his possession. In the absence of any such overt act or attempt, the mere possession of the examinee of some notes or papers, which could be of use in that examination, could not entail the penalty provided in clause (c).

and again

> This bare circumstance of possession without further proof of any deliberate overt act or attempt on the part of the petitioner to make use of it could not raise any presumption of *mala fide* against the petitioner. The University has, therefore, grievously erred in taking action under clause (c) of Ordinance 3, when the case was only within the purview of clause (b) of Ordinance 3."

(9) The observations above-said clearly lend close support to the contention raised on behalf of the petitioner. Consequently we have closely examined the reasoning in the case above-said but with respect to the learned Judge regret our inability to subscribe to such a view. An analysis of the judgment would disclose that the error in the reasoning of the learned Judge seems to have crept in by his equating "*mala fide* possession" with "attempt" or an overt act to copy or use the incriminating material. The theory and the concept of a "deliberate overt act" is related only to "attempt" and in our view has no direct bearing on "possession" which is an independent fact in itself. It is only in the case of attempts that the law requires an overt act which is either sufficiently proximate or is the penultimate act to the culpable thing attempted. In the incisive language of Hokmes J., in the context of attempt—

> "As the aim of the law is not to punish sins, but is to prevent certain external results, the act done must come pretty

> near to accomplishing that result before the law will notice it."

The significant thing which has to be high-lighted is that the language of neither 3(b) nor 3(c) makes an "attempt" to use the material punishable but is directed merely against "inadvertent" or "*mala fide* possession". We are, therefore, unable to agree that either of these two modes of possession would necessarily require a deliberate and conscious overt act, to use the incriminating materials.

(10) Once possession of the incriminating material has been established, all that has to be determined is whether the same was innocent or guilty—to use the language of the provisions—whether the same was "inadvertent" or "*mala-fide*". A statute may make bare possession culpable. That apart possession with a guilty intent (or to use the terminology of the criminal law with the requisite *mens rea*) without more may well be brought within the ambit of punishment. That is exactly what the language of Ordinance 3(c) plainly does without anything more in the shape of an overt act or an attempt to use the material possessed.

(11) The crucial thing, therefore, is to determine the intent with which the incriminating material is possessed. Now, it is well-settled that intention is usually an inference from surrounding facts and circumstances. In *Mahbub Shah* v. *Emperor* (2), Sir Madhavan Nair, J. speaking for the Board had observed as follows :—

> "As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case."

(12) The issue of intention, therefore, is inevitably an issue of fact. Where (as in the present case) the Tribunal of fact entrusted to determine such an intention has come to the clearest finding that it was *mala fide*, on materials available to it, this Court would be extremely reluctant to go behind such a finding.

(2) A.I.R. 1945 P.C. 118.

(13) It is not without significance that the present petitioner at no stage had alleged that his possession of the incriminating material was inadvertent. This was never his plea. The Committee believed the statements of the supervisory staff and rejected the version given by the petitioner which has been averred to be completely false and incorrect in the return. The recovered material admittedly related to the question paper of that day and some of the answers to the same were contained therein. The finding of fact is that these were found upon the person of the petitioner in a search conducted by the Supervisory staff after its suspicions were aroused by the conduct of the petitioner. We deem it unnecessary to refer to every circumstance on which the Tribunal arrived at its finding that the possession was *mala fide* and deem it sufficient to say that there exists ample material to arrive at such a finding. We are wholly unable to agree with the view of the learned Judge that a deliberate overt act or an attempt to make use of the incriminating material is the essential requisite for raising a presumption of ***mala fide*** possession under Ordinance 3(c).

(14) The learned Judge had sought support from the observations in the Full Bench decision of this Court in *Krishan Kumar Malhotra* v. *The Punjab University* (3), by way of analogy to arrive at his decision. It is patent that the learned Judges of the Full Bench were interpreting Regulation 13(b) of the Panjab University Calendar 1964-65. A reference to this provision makes it evident that both in its scope and language it is entirely different from the provisions of Ordinance 3(b) and 3(c) which now fall for construction. In fact the learned Judge himself candidly noticed this as follows :—

> "It is true that in that case the Full Bench did not expressly go into the interpretation of Regulation 12(c) of the Punjab University corresponding to Ordinance 3(c) of the Punjabi University."

(15) We have closely examined the judgment of the Full Bench and are of the view that the same has no direct bearing upon the interpretation of the provisions which fall for interpretation in the present case.

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(3) 1967 C.L.J. (Pb. & Hr.) 792.

(16) In view of the foregoing discussion with respect, we are of the view that, observations in *Prem Nath Goel's case* (1) are too widely stated and do not lay down the correct law.

(17) In passing it deverves notice that to bring a case within the ambit of Ordinance 3(b), a finding that the candidate's possession or accessibility to incriminating material was due to inadvertance has necessarily to be arrived at. This almost involves a positive finding to that effect. In the present case the Committee was unanimously of the view that the possession of the petitioner was *mala fide* which would expressly negative any inadvertence and on such a finding the provisions of Ordinance 3(c) would be automatically attracted thereto.

(18) No other contention had been pressed and we, therefore, find no merit in this petition which is dismissed but with no order as to costs.

N. K. S.

APPELLATE CIVIL

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

DES RAJ AND OTHERS,—*Appellants.*

versus

VINOD KUMAR,—*Respondent.*

Execution Second Appeal No. 498 of 1967

February 11, 1970.

Code of Civil Procedure (V of 1908)—Section 47—Pre-emption decree directing the deposit of pre-emption money on a particular date—Money not deposited on that date, but later on—No objection regarding late payment raised in the appeal against the decree—Such objection—Whether can be raised in the proceedings for the execution of the decree.

Suit for pre-emption decreed. A direction given in the decree that the balance of the pre-emption money be deposited on a particular date. Money could not be deposited because the Treasury was closed on that day, but was deposited on a later date. Appeals preferred against the decree both by the pre-emptor and the vendee. No objection raised by the vendee regarding late payment of the pre-emption money. Vendee's appeal dismissed.