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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 591 OF 2014

Nitin Gopalkrishna Gosavi	Applicant
versus	
The State of Maharashtra	Respondent

Mr. B. D. Joshi along with Mr. Virendra Pethe, advocate for the applicant.
Mr. K. V. Saste, APP for the State.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATED : 5th February, 2015.

P.C.:

Heard Mr. Joshi, learned counsel for the petitioner and Mr. Saste, learned APP for the respondents.

2 This petition is filed under the provisions of Section 482 of the Code of Criminal Procedure, 1973 for quashing and setting-aside the proceedings of R.C.C.No.2205 of 2014 pending on the file of JMFC, 1st Court, Bhiwandi. At the instance of police constable- Shri Mahadev Kashinath Vedpathak, Ganesh Puri Police Station, has registered FIR II 3 of 2014 on 4th April, 2014 against the petitioner and others for offences punishable under Sections 4 and 5 of the Maharashtra Prevention of Gambling Act, 1887 (for short "the 1887 Act"). After completion of investigation, charge-sheet is filed which is numbered as criminal case No.2205 of 2014. A Copy of the FIR is annexed at page 9 and the

statement of the complainant is annexed at page 13. Perusal of the same discloses that, on the basis of information that the petitioner is involved in gaming within the meaning of the said Act, the room which is adjacent to his house was raided at about 6.45 p.m. on 4th April, 2014 and it was found that six persons were playing a game of cards i.e. rummy on a table and the petitioner was sitting on another table. It was alleged that the petitioner and six other persons have committed offences under Sections 4 and 5 of the said Act and, therefore, registered offences against them.

3 Mr. Joshi, learned counsel for the petitioner submits that the FIR itself shows that the game of rummy was played in room belonging to the petitioner and the room was raided by the complainant-constable along with others. He relied upon the decision of the Apex Court in **Jaywant Balkrishna Sail and ors. versus State of Maharashtra and ors. 2012 (4) Bom.C.R. (Cri) 18** to contend that the game of rummy is a game of skill and, therefore, would not fall within the definition of “game”. He contended that if the said game of card is not “gaming”, then, the provisions of Sections 4 and 5 will have no application in the present case.

4 Mr. Saste, learned APP on the contrary opposed the petition vehemently. He also relied upon the judgment of the Division Bench in

Jaywant Balkrishna Sail (Supra) and the provisions of Sections 3, 4 and 5 of the said 1887 Act .

5. Having considered the rival submissions and having gone through the FIR along with the relevant provisions of the said 1987 Act and the ratio of the decision of the Apex Court in **Jaywant Balkrishna Sail (Supra)**, we find merit in the petition.

6. The FIR shows that six persons were playing game of cards and each of them were in possession of 13 cards. The petitioner was found sitting on another table. Mr. Joshi, learned counsel for the petitioner submitted that the number of cards in possession of each of the person showed that they were playing game of rummy which proposition is not disputed by Mr.Saste, learned APP. So it can safely be taken that when the petitioner's room was raided, six persons were playing game of rummy.

7. The Division Bench of this Court in **Jaywant Balkrishna Sail (Supra)** had an occasion to consider the definition of “gaming”. The Division Bench in paragraph 19 held that perusal of the definition of word “gaming” reveals that when two or more persons play together a game of chance for a stake or wager which is to become the property of the winner, would fall within that definition. The Division Bench in paragraph

21 held that the Apex Court and this Court has consistently held that a card game of skill would not constitute an offence of gambling. Both learned counsel for the petitioner and learned APP for the State does not dispute that the game of rummy is a game of skill and not a game of chance. In that view of the matter, game of rummy would not fall within the definition of gambling.

8. Section 4 of the 1887 Act deals with keeping common gaming house and Section 5 deals with gaming in common gaming house. In order to attract the provisions of these Sections, the prosecution firstly must satisfy that the persons found playing cards in premises which was raided were gaming. Since we have already found that the acts of the persons found in possession of the cards at the relevant time does not amount to gaming, we are of the view that the offences under Sections 4 and 5 of the 1887 Act are also not made out. Be that as it may, reference must be made to the provisions of Section 13 of the 1887 Act, under which, the provisions of the Act would not be applicable to the game of skill wherever played. Both learned counsel and learned APP are in agreement that the game of rummy is the game of skill. If that be so, same will not be an offence merely because it was played in the room belonging to the petitioner.

9. In our view, from any angle, the averment in the complaint does not disclose any offence under Sections 4 and 5 of the said Act and, therefore, the proceedings of the said criminal case No.2205 of 2014 arising out of FIR No.11 3 of 2014 are liable to be quashed and set-aside and the same are quashed and set-aside. The writ petition, accordingly, stands disposed of .

10. The money recovered under the panchanama shall be refunded to the petitioner and other accused who are at liberty to apply to the concerned Magistrate for refund of the money recovered from them under the panchanama.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)