

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.374 OF 2003**

Shri. Pappu Abdul Sayed Khan Petitioner
having his address at
5-A, Good Earth Society,
Road No.2, Sindhi Colony,
Chembur, Mumbai – 400 071.

Vs.

- 1 The Sr. Inspector of Police
attached to Shahunagar Police
Station, Dharavi, Mumbai.
- 2 The Commissioner of Police
Brihanmumbai,
Mahatma Phule Market,
Mumbai
- 3 The State of Maharashtra Respondents

**ALONGWITH
CRIMINAL WRIT PETITION NO.375 OF 2003**

Shri. Murugan Swamy Harijan Petitioner
having his address at
5-A, Good Earth Society,
Road No.2, Sindhi Colony,
Chembur, Mumbai – 400 071.

Vs.

- 1 The Sr. Inspector of Police
attached to Shahunagar Police
Station, Dharavi, Mumbai.

2 The Commissioner of Police
Brihanmumbai,
Mahatma Phule Market,
Mumbai

3 The State of Maharashtra Respondents

ALONGWITH
CRIMINAL WRIT PETITION NO.376 OF 2003

Shri. Ranjeet Murugan Shettyar Petitioner
having his address at
5-A, Good Earth Society,
Road No.2, Sindhi Colony,
Chembur, Mumbai – 400 071.

Vs.

1 The Sr. Inspector of Police
attached to Shahunagar Police
Station, Dharavi, Mumbai.

2 The Commissioner of Police
Brihanmumbai,
Mahatma Phule Market,
Mumbai

3 The State of Maharashtra Respondents

Mr. Shantanu Phanse a/w Mr. Sagar Tambe i/by Mr. S.V.
Kotwal, Advocate for the petitioners.

Mr. S.R. Agarkar, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 27th January, 2017

JUDGMENT :

1 The above petitions give rise to common question for consideration of the court and hence they are being decided by a common order.

2 The petitioner in the first petition is the accused in L.A.C. No. 67 of 2003 pending in the Court of Additional Chief Metropolitan Magistrate, Bandra, Mumbai. It arises out of an N.C. Complaint registered with Shahunagar Police Station, Dharavi. The petitioners in the two other petitions are the accused in L.A.C. No.40 of 2003 pending in the same Court and arising out of an N.C. complaint filed at the same Police Station. All the three petitioners were found to be working as managers in Video Parlours that were being run without police Licence. All the three petitioners were arrested and released on bail. Since the offence was bailable, released on bail. The police have also seized the video game machines from the parlours.

3 Mr. Phanase, the learned advocate for the petitioners submits that the action of the police is illegal as it is in breach of Section 155(2) of Criminal Procedure Code ("Cr.PC" for short). He points out that the petitioners have allegedly committed offence under Section 33W punishable under

Section 131 of the Bombay Police Act. The punishment provided therefor is of fine of Rs.50/-. As such the offence is bailable and non-cognizable. The police have not taken permission of the Magistrate having power to try the offences alleged.

4 Mr. Agarkar, the learned APP does not dispute the above facts. In that case, the police could not have investigated into the offence alleged without permission of the Magistrate having power to try the case in view of Section 155(2) Cr.P.C. Consequently, any step taken is illegal investigation. Therefore, the petitions are allowed in terms of prayers clause (a) and (b).

(Smt. R.P. SondurBaldota, J.)