

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.500 OF 2017

Ganesh Jaykisan Fafat,
Aged about 38 years, Occ.
Councilor and Business, r/o. Near
Bus Stand, Tukum Ward,
Desaiganj Wadsa, Tq. Desaiganj
Wadsa, Distt. Gadchiroli.

..... **PETITIONER**

// VERSUS //

The State of Maharashtra,
Through Police Station Officer,
Desaiganj-Wadsa, Tq. Desaiganj
Wadsa, Distt. Gadchiroli.

..... **RESPONDENT**

Mr.S.A.Dhawas, Advocate for the Petitioner.
Mr.S.S.Doifode, A.P.P. for the Respondent/State.

CORAM : SMT. VASANTI A NAIK
AND
M.G.GIRATKAR, JJ.

DATED : 5th September, 2017.

ORAL JUDGMENT (Per Smt. Vasanti A Naik, J) :

Rule. Rule made returnable forthwith. The Criminal Writ Petition is heard finally at the stage of admission with the consent of the learned Counsel for the parties.

By this Criminal Writ Petition, the petitioner seeks the quashing and setting aside of the First Information Report, dt.13.3.2017, registered against the petitioner for the offence punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887.

According to the allegations in the F.I.R., when the raid was conducted by the Police Authority on 13.3.2017 at Patre Saw Mill, Desaigunj, it was found that about 15 to 20 persons were playing a game of Cards with 52 cards. It is further alleged in the

report that from the persons who were playing the cards, a sum of Rs.50,050/- was recovered. The petitioner has sought for the quashing and setting aside of the F.I.R. as according to the petitioner, the F.I.R. does not disclose an offence under the provisions of Section 12(a) of the Maharashtra Prevention of gambling Act.

Mr.S.A.Dhawas, the learned Counsel for the petitioner submitted that, even if the allegations in the F.I.R. are accepted at their face value in the totality, prima facie an offence u/s.12(a) of the Act cannot be made out against the petitioner. It is stated that it is not mentioned in the F.I.R. as to what game was being played by the accused persons with 52 cards. It is stated that it is not alleged in the F.I.R. that the petitioner and the other persons were involved in playing a game of chance. It is stated that unless it is mentioned in the F.I.R. that the persons were playing the game of cards, which was a game of chance and not a game of skill, the offence u/s.12(a) of the Act could not be prima facie made out. It is stated that the issue involved in this Criminal Writ Petition is no more res integra and this Court has time and again held in the Judgments reported in 2004 ALL MR (Cri) 1040, Robert Elango J. vs. Inspector of Police and another; 2006 LawSuit (Bom) 2334, K. L. Mansukhani vs.

Surendra Kumar; 2012 (3) Mh.L.J. (Cri) 428, Jaywant Balkrishna Sail and Others .vs. State of Maharashtra and Others and an unreported Judgment of this Court, dt.13.6.2017 in Criminal Writ Petition No.544 of 2016 (Gajendra s/o. Shivprasad Kedia .vs. State of Maharashtra and another) that unless the allegations in the F.I.R. disclose that the accused were involved in playing a game of chance with the cards and the game was mentioned, prima facie an offence under Section 12(a) of the Maharashtra Prevention of Gambling Act cannot be made out. It is submitted that there is nothing to show that the petitioner was involved in playing a game of chance with the cards. It is stated that, by applying the law laid down in the aforesaid Judgments, the F.I.R. is liable to be quashed and set aside.

Mr.S.S.Doifode, the learned Additional Public Prosecutor for the respondent does not dispute the position of law as laid down in the aforesaid Judgments. It is fairly admitted that it is not mentioned in the F.I.R. as to what game was being played by the petitioner and the other persons with 52 cards. It is, however, stated that the petitioner and the other persons were playing the game of cards with money and hence, the offence was registered against

them under the provisions of Section 12(a) of the Maharashtra Prevention of Gambling Act.

It appears from the Judgments rendered by this Court from time to time and referred to hereinabove that it would be necessary to describe in the F.I.R. as to how the particular game was being played. It would be necessary to describe the said game in detail and make an allegation that the game did not involve any skill and it happened to be a game of sheer luck or chance. It is held by this Court in the aforesaid Judgments that the Court should not take cognizance of the prosecution, unless it is mentioned in the complaint that a particular game of chance was being played by the accused. In the instant case, the report is absolutely silent as to what game was being played by the petitioner and the other persons with 52 cards. There is no allegation in the F.I.R. that a game of chance was being played by the petitioner and the other persons against whom the F.I.R. was filed. The Hon'ble Supreme Court has held in the Judgment reported in **AIR 1968 SC 825, State of Andhra Pradesh .vs. K. Satyanarayana**, after considering the provisions of Hyderabad Gambling Act which are similar to the provisions of the Maharashtra Prevention of Gambling Act that the game of Rummy is

not a game entirely of chance like the game of three cards which may be also known by different names such as 'flush', 'brag' etc. By applying the law laid down by the Hon'ble Supreme Court and this Court in the aforesaid Judgments, the F.I.R. registered against the petitioner is liable to be quashed and set aside.

Hence, for the reasons aforesaid, the Criminal Writ Petition is allowed. The F.I.R. registered against the petitioner bearing No.102 of 2017 for the offence punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887 is hereby quashed and set aside. Order accordingly.

JUDGE

JUDGE

[jaiswal]

