

THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.

**CRIMINAL APPLICATION NO. 691 OF 2014**

1. Eknath S/o Vaijanath Kuber,  
Age: 28 years, Occu.: Agri.,  
R/o.: at Post Karmad,  
Tq. Dist. Aurangabad.
2. Ganesh S/o Umakant Dixit,  
Age: 27 years, Occ.: Private Service,  
R/o.: Flat No.20, Shanta Apartment,  
Behind Akashwani, Mitra Nagar,  
Aurangabad.
3. Umesh S/o Sominath Shinde,  
Age: 28 years, Occ.: Business,  
R/o.: 6-1-44, Vishnu Nagar,  
Aurangabad.
4. Sunil S/o Murlidhar Pradhan,  
Age: 23 years, Occ.: Private Service,  
R/o.: Kailas Nagar, Aurangabad.
5. Rahul S/o Shankar Kadarale,  
Age: 25 years, Occ.: Private Service,  
R/o.: B-4 Vishal Parak, Ayodhya Nagari,  
N-7 CIDCO, Aurangabad.
6. Nandala S/o Suresh Gavli,  
Age: 27 years, Occ.: Business,  
R/o.: 5-7, Uttam Nagar, Aurangabad.
7. Sachin S/o Ravindra Vispute,  
Age: 24 years, Occ.: Business,  
R/o.: House No.255, Jai Bhavani Nagar,  
N-4 CIDCO, Aurangabad.

8. Abhay S/o Kisan Bhosale,  
Age: 30 years, Occ.: Business,  
R/o.: 4-18-134-8 Vishnu Nagar,  
Aurangabad.
9. Shekhar S/o Namdeorao Bankar,  
Age: 28 years, Occ.: Business,  
R/o.: V/A- 39, behind Akashvani,  
Vishnu Nagar, Aurangabad.
10. Viki S/o Pralhad Jaiswal,  
Age: 24 years, Occ.: Private Service,  
R/o.: Jaibhavani Nagar, Aurangabad.
11. Vijay S/o Laxman Phule,  
Age: 28 years, Occ.: Private Service,  
R/o.: V/A 37 Vishnu Nagar, Aurangabad.
12. Vishal S/o Arjun Raut,  
Age: 28 years, Occ.: Business,  
R/o.: D-24, Arihant Nagar, Aurangabad.
13. Ganesh S/o Kadu Pawar,  
Age: 27 years, Occ.: Agri,  
R/o.: 118b, Bus Stand Parisar,  
Navjivan Colony, Vaijapur, Aurangabad.

... **APPLICANTS**  
(Ori. Accused)

### **VERSUS**

1. The State of Maharashtra,  
Through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
2. The Superintendent of Police,  
Aurangabad, Dist. Aurangabad.  
(Through, Karmad Police Station,  
Karmad, Tq. Dist. Aurangabad).

... **RESPONDENTS**

...  
Mr. N. S. Kadarale, Advocate for Applicants.  
Mrs. V. S. Choudhary, APP for Respondents.  
...

CORAM : **T. V. NALAWADE &  
K. L. WADANE, JJ.**

DATE : 23<sup>rd</sup> July, 2018.

**JUDGMENT:** ( Per T. V. Nalawade, J. )

. The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.4 of 2014, registered with Karmad Police Station, District Aurangabad, for the offence punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act. Subsequently, the prayer was added for claiming relief of quashing of proceeding of S.C.C. No.1352 of 2014 also. This case is filed in C.R. No.4 of 2014.

2 Both the sides are heard.

3 The FIR was given by police officer of Karmad Police Station on 1<sup>st</sup> January, 2014. On the night between 31<sup>st</sup> December, 2013 and 1<sup>st</sup> January, 2014, the police officers of this police station were doing patrolling duty and they had received secrete information

that in the land of Eknath, some persons were playing gambling game by using cards and it was Zanna Manna game. Police took two Panchas and went to the spot. They noticed that 12 to 13 persons had created a circle and they were playing Zanna Manna game by using cards. Applicant No.1 is the owner of the land and other Applicants were also found there playing the game. When personal search of the Applicants was taken, cash amount was found with them. One pack of playing cards was also taken over and Panchanama was prepared.

4           The learned counsel for Applicants submitted that the incident did not take place in public place and so, the case needs to be quashed and set aside. He placed reliance on some observations made by the learned Single Judge of this Court, Nagpur Bench in the case reported as **2012 ALL MR (Cri) 3593 (Mr. Kirit s/o. Natwarlal Sangane & Ors. Vs. State of Maharashtra)**.

5           In aforesaid reported case, the Police had made allegations that 6 to 7 persons were gambling by using two sets of playing cards and FIR was given for similar offence. The learned Single Judge observed that in FIR it was mentioned that it was public

place and the place was lawn in front of cottage of privately owned land.

6           The provision of Section 12(a) of the Maharashtra Prevention of Gambling Act runs as under:

“(a) any person found gaming or reasonably suspected to be gaming, in any public street, or thoroughfare, or in any place to which the public have or are permitted to have access or in any race-course”

7           The aforesaid provision shows that when even a private place is allowed to be used by public by giving permission to have access to private place, that place can be treated as public place and action for such offence can be taken. In the present matter, 13 persons were playing game by using one pack of playing card and big cash amount was found with many persons. It was submitted that they were enjoying year ending and they were not playing gambling game.

8           The provision of Section 9 need to be kept in mind. It gives presumption in respect of the offence punishable under

Sections 4 and 5 of the Gambling Act. The provisions of this Act show that satisfaction of the police officer is important and he needs to get satisfied that the gambling game was going on. When one pack of playing card is found and 13 persons are playing the game there by using cards, the Court needs to keep that circumstance in mind. Such game cannot be a game having skill and such game can be only a game of chance. The police have specifically mentioned that it was Zanna Manna gambling game. This Court holds that it is not possible to disbelieve the police officers on that point in view of the aforesaid circumstances. In the result, the following order is passed:

**ORDER**

- I. The application is dismissed.
- II. Interim relief is vacated.
- III. Rule is discharged.

**[ K. L. WADANE, J. ]**

**[ T. V. NALAWADE, J. ]**