

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

CRIMINAL APPLICATION NO. 1645 OF 2012

- 1) Santosh S/o Pandurang Tamboli,
Age 34 years, Occ. Business,
R/o in front of Bidkin Police Station,
Bidkin, Tq. Paithan, Dist. Aurangabad.
- 2) Laltaprasad S/o Chotelal Rajput,
Age 47 years, Occ. Business,
R/o N-7, A/4 CIDCO, Aurangabad.
- 3) Akbar S/o Ismail Shaikh,
Age 40 years, Occ. Service,
R/o Jai Bhim Galli, Chitegaon,
Tq. Paithan, Dist. Aurangabad.
- 4) Somnath S/o Tukaram Jadhav,
Age 31 years, Occ. Service,
R/o. Sahyognagar, Bidkin,
Tq. Paithan, Dist. Aurangabad.
- 5) Ambadas S/o Mogaji Jadhav,
Age 32 years, Occ. Service,
R/o. Sai Nagar, Chitegaon,
Tq. Paithan, Dist. Aurangabad.
- 6) Bankatlal S/o Bhanudas Pofale,
Age 50 years, Occ. Business,
R/o. Chava Colony, Bajaj Nagar,
Waluj, Aurangabad.
- 7) Vaijnath S/o Dnyanoba Karad,
Age 47 years, Occ. Business,
R/o Bansilal Nagar, Aurangabad.

... **APPLICANTS**

VERSUS

The State of Maharashtra,
Through In-charge Bidkin
Police Station, Tal Paithan,
Dist. Aurangabad.

... **RESPONDENT**

...
Mr. V. D. Sapkal, Advocate for Applicants.
Mr. R. V. Dasalkar, APP for Respondent / State.
...

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

DATE : 18th 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.1 of 2011, registered with Bidkin Police Station, Taluka Paithan, District Aurangabad and also quashing of charge-sheet filed by Police in this crime and case bearing S.C.C. No.172 of 2011, pending in the Court of Judicial Magistrate First Class, Paithan. The case is filed for the offence punishable under Section 12(a) of the Bombay Prevention of Gambling Act.

3 The papers of investigation were made available. The FIR was given by the Assistant PSI on 7th January, 2011. On that day, the Police had specific information against the present Applicants that they were involved in gambling activities and they were present on the back side of one restaurant situated on Aurangabad-Paithan road. The information was received in the noon time and the raid was effected at about 17:00 hours. When Police and Panchas went to the spot, they noticed that all the Applicants were present on the spot and there was one more person and they were sitting together by creating a circle and in front of them there were cards used for gambling. They were having cash amount also. When the personal search was taken, huge cash amount was found with each of them and total 52 cards of same pack were found and they were taken over. Police realized that it was gaming by name Zanna Manna and it was gambling. Report was given accordingly and all the Applicants were taken in custody of the spot. Papers of investigation are consistent with the aforesaid contents of FIR.

4 The learned counsel for Applicants placed reliance on the observations made by the learned Single Judge of this Court in the

case reported as **2004 (3) Mah L R 362, (Robert Elangoj Vs. Inspector of Police and another)**. The learned Single Judge has discussed the provisions of Sections 3, 4, 7 and 12 of the Bombay Prevention of Gambling Act, 1887. By referring the Supreme Court case, the learned Single Judge has observed that presumption under Section 7 of the Act can be available if the instrument of gambling is described and the manner of game is also described.

5 The facts and circumstances of each and every case are always different. In the aforesaid case, different game and different place like video game parlour was involved. In the present matter, cards were involved and cards were found before each player and there were eight players. It is the case of Police that they were playing Zanna Manna game and it is gambling. The provisions of Section 7 of the special Act shows that when the article is seized as instrument of gaming, such instrument or thing can be used as evidence until contrary is proved. Such cards can be used for gambling and considering the number of players involved in the present matter, it cannot be said that skill game like rummy or other similar game was being played there. In view of these circumstances

and the articles which are actually taken over by the Police from the spot, this Court holds that at this stage, there is no need to doubt the opinion formed by the Police Officer that there is reasonable ground for suspecting that the cards were being used for gambling. In view of these circumstances, this Court holds that it cannot be said that the false case is filed against the Applicants or there will be no material against the Applicants to prove the aforesaid offence. 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.]