

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPICATION NO. 3503 OF 2007

1. Rajesh s/o. Gopinath Godse,
Age 39 years, Occu. Business,
 2. Madhukar s/o. Mahadev Chavan,
Age 45 years, Occu. Agriculture,
 3. Bappaji s/o. Sahebrao Sakhare,
Age 35 years, Occu. Service,
- All R/o. Prashantnagar, Ambajogai,
Dist. Beed.

....Applicants.

Versus

1. The State of Maharashtra
2. Police Inspector,
Ambajogai Police Station,
Dist. Beed.
3. Superintendent of Police,
Beed, Dist. Beed.

....Respondents.

Mr. Satej S. Jadhav, Advocate for applicants.

Mr. M.M. Nerlikar, APP for respondent Nos. 1 to 3.

WITH
CRIMINAL APPICATION NO. 2678 OF 2014

1. Sanjay s/o. Limbraj Bawane,
Age 44 years, Occu. Business,
R/o. Prashantnagar, Ambajogai,
Tq. Ambajogai, Dist. Beed.
2. Anil s/o. Limbraj Bawane,
Age 35 years, Occu. Business,
R/o. Prashantnagar, Ambajogai,
Tq. Ambajogai, Dist. Beed.

3. Rajesh s/o. Gopinath Godse,
Age 45 years, Occu. Business,
R/o. Prashantnagar, Ambajogai,
Tq. Ambajogai, Dist. Beed.

....Applicants.

Versus

1. The State of Maharashtra
2. Police Inspector,
Ambajogai (City) Police Station,
Tq. Ambajogai, Dist. Beed.
3. Superintendent of Police,
Beed, Dist. Beed.

....Respondents.

Mr. S.A. Ambad, Advocate for applicants.

Mr. M.M. Nerlikar, APP for respondent Nos. 1 to 3.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : JULY 17, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule in Criminal Application No. 2778/2014. Rule is made returnable forthwith. By consent heard both the sides for final hearing. Heard both the sides in Criminal Application No. 3503/2007 also.

2) Both the proceedings are filed under section 482 of Criminal Procedure Code. The first proceeding is filed for relief of quashing of C.R.No. 117/2007 registered in Ambajogai Police Station for the offences punishable under sections 4 and 5 of Bombay

Prevention of Gambling Act, 1887. The second proceeding is filed for relief of quashing of F.I.R. Nos. 53/2013 and 55/2013 registered with Ambajogai Police Station for the offence punishable under section 12-A of Bombay Prevention of Gambling Act.

3) In the first proceeding, allegations are made by one Police Officer in F.I.R. that on 8.9.2007, on the basis of specific information when police effected raid on the premises of applicants, it was noticed that electronic machines were used and people were using machines by giving money and there was promise to give more money in return in case people were able to win the game installed in the machines. Many persons were found in the premises of the applicants. Some coins which could have been used for putting the machines in operation were also found. These machines were taken over and then F.I.R. was given for aforesaid offences.

4) In the second proceeding, the F.I.R. bearing C.R. No. 53/2013 shows that in the premises of applicants, machines were found and by using coins the machines could be made operational. Applicants were giving coins to people, the customers, by taking money and the people were using those coins for use in machine. This incident took place on 23.12.2013. On the same day, C.R.No. 55/2013 was registered and similar allegations are made in the said

F.I.R. in respect of the video parlour by name Godsey Video Game.
C.R. No. 53/2013 involves Sai Video Game.

5) The papers of investigation do not show as to how the gambling was taking place. The police papers show that there was a place for inserting coins, but the papers do not show as to how and why the people who were customers were to get money by using machines. Submissions made show that there is possibility that the people were using the machines only by way of amusement for playing games. It was submitted that even if it is presumed that the game involved skill and if people were to get money after showing some skill, it cannot be said that the applicants were using the instruments, machines for gambling.

6) On the aforesaid point, the learned counsel for applicants placed reliance on observations made by the Apex Court in the cases reported as **AIR 1968 SC 825 [The State of A.P. Vs. K. Satyanarayana and Ors.]** and **1993 (2) Mh.L.J. 1538 [Kumar A. Nadar Vs. V.K. Saraf, Commissioner of Police] Bombay High Court**. In the second case cited supra, this Court had occasion to consider the case filed against video parlour owner, who was prosecuted under the provisions of sections 3 (ii), 4 (1)(a) and 5 of Bombay Prevention of Gambling Act. The prosecution was quashed

by the learned Single Judge of this Court by holding that the machines were installed and played for amusement and further, there was also license for sale of token on payment of cash as machines could be operated only by inserting the token. In the first case cited supra, the Apex Court has made following observations with regard to game of playing cards and they are as under :-

"Where the playing cards were supplied to the players by the club at an extra charge of Rs.3/- and there was sitting fee of 50 paise per person from those who joined the game and if the game continued beyond a certain time in the night, a late fee was also levied.

Held, these circumstances would not show that the club was making a profit or gain so as to render the club into a common gambling house. As regards the extra charge for playing cards, it can be said that clubs usually make an extra charge for anything they supply to their members because it is with the extra payments that the management of the club is carried on and other amenities are provided. It is commonly known that accounts have to be kept, stocks have to be purchased and maintained for the use of the members and service is given. Money is thus collected and there is expenditure for running of each section of the establishment. Just as some fee is charged for the games of billiards, pingpong, tennis etc. an extra charge for playing cards (unless it is extravagant) would not show that the club was making a profit or

gain so as to render the club into a common gambling house. Similarly, a late fee is generally charged from members who use the club premises beyond the scheduled time. This is necessary, because the servants of the club who attend on the members have to be paid extra remuneration by way of overtime and expenditure on light and other amenities have to be incurred beyond the club hours. Such a charge is usual in most of the clubs and a judicial notice of the fact can be taken. With regard to the sitting fee of 50 paise per person it cannot be said that it is such a heavy charge as to be described as an attempt to make a profit or gain for the club:"

"The game of Rummy is not a game entirely of chance like the 'three-card' game. The 'three-card' game which goes under different names such as 'flush', 'brag' etc., is the game of pure chance. Rummy on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up to Rummy requires considerable skill in holding and discarding cards. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone, it cannot be said that Rummy is a game of

chance and there is no skill involved. Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home."

7) The aforesaid observations need to be considered before considering the allegations made against the applicants. Allegations are already quoted and they do not show as to how the activity can be called as gambling. The police papers do not support the case of gambling though there are allegations made in the F.I.R. of that nature.

8) The submissions show that for some years licence fee was not paid. The learned counsel for applicants submitted that applicants undertake to make that payment. In view of these circumstances, this Court holds that it is not desirable to allow the prosecution to go on against the applicants. In the result, following order :-

ORDER

(I) Applications are allowed. Relief is granted in terms of prayer cause "B" in both the applications in respect of entire F.I.R.

Rule is made absolute in aforesaid terms and subject to

conditions mentioned in the reasoning.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

SSC/