

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5286 OF 2017**

Allen Arun Bansode	...Petitioner
Versus	
State of Maharashtra	...Respondent

Mr. Nilesh Tribhuvann a/w Ms. Asna S. Patel for the Petitioner

Ms. S. D. Shinde, A.P.P for the Respondent-State

Mr. Pratap L. Giri from Mundhwa Police Station, Pune, is present

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
TUESDAY, 19th JUNE, 2018***

P.C. :

1 The writ jurisdiction of this Court is invoked for quashing and setting aside the FIR No. 329 of 2017 lodged with the Mundhwa Police Station, Pune, on 9th December 2017 for the offences punishable under Sections 4 and 5 of the Maharashtra Prevention of Gambling Act, 1887 ('Gambling Act' for short), Section 65D of the Bombay Prohibition Act and Section 21(1) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 ('Cigarettes Act' for short).

2 The said FIR has been registered pursuant to the raid which was carried out in the Club known as New World of Sports Club Ltd., Mundhwa, Pune. It is an undisputed position that the Petitioner was a Director of the said Club and claims to have resigned two months prior to the registration of the FIR. The FIR which has been registered refers to the acts which have been indulged in by the Petitioner, so as to attract the provision of the Gambling Act and the Cigarettes Act. It seems that the FIR names as many as 41 persons.

3 The above Petition has been listed from time to time for admission. Today, the learned A.P.P Ms. Shinde informs us that the investigation is complete and that the investigating agency would be filing the charge-sheet on 22nd June 2018.

4 The learned counsel for the Petitioner would, however, seek the relief sought in the above Petition, namely, the quashing of the FIR by contending that the ingredients of the offences alleged against the Petitioner are not made out. The learned counsel would also question the wisdom of registering the FIR against the Petitioner, as according to him, it is only

after the investigation was carried out and the role of the Petitioner was disclosed in the said investigation, that the Petitioner could have been arraigned as an accused. The learned counsel would also question the registration of the FIR on the ground that the Petitioner is not concerned with the said Club as he has resigned from the Directorship two months prior to the registration of the FIR and if that be so, the offence under the Gambling Act could not have been registered against the Petitioner. In support of the aforesaid contentions, the learned counsel Mr. Tribhuvann would place reliance on the following judgments of the Apex Court in the matters of ***Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & Ors.***¹, ***Madhavrao Jiwajirao Scindia & Ors. vs. Sambhajirao Chandrojirao Angre & Ors.***² and the judgment of a Division Bench of this Court, to which one of us (R. M. Savant, J.) was a party in the matter of ***Rushikesh Ravindra Aaherwadikar & Anr. vs. The State of Maharashtra***³.

5 We have, with the assistance of the learned counsel for the Petitioner Mr. Tribhuvann and the learned A.P.P Ms. Shinde, have gone

1 (1983) 1 SCC 1

2 (1988) 1 SCC 692

3 Cri. Writ Petition No. 2997/2017 dated 20.9.2017

through the contents of the FIR. On such perusal, we find that *prima facie* the ingredients of the offence alleged against the Petitioner are made out. Insofar as the case of the Petitioner that he has ceased to be a Director two months prior to the registration of the FIR is concerned, under the Gambling Act, it is not only the person who is in management of a gaming house but in terms of Section 4, the person who has the care or in any manner assists in conducting the business, can also be made responsible. Admittedly, the Petitioner was a Director of the Club and was found on the premises. Hence, *prima facie* we are not in a position to accept the contention of the learned counsel for the Petitioner that the Petitioner could not have been roped in.

6 Insofar as the judgments relied upon by the Petitioner are concerned, in our view, the said judgments would have no application in the facts of the present case. Insofar as the judgment in ***Municipal Corporation of Delhi (supra)*** is concerned, the said case involves the Food Adulteration Act and it is on account of the infirmity in the complaint that the Apex Court recorded a finding that no offence was revealed against the Directors. Insofar as the judgment in ***Madhavrao Jiwajirao Scindia***

(supra) is concerned, the same is an exposition as regards the powers under Section 482 of the Code of Criminal Procedure. The Apex Court, in the said case has held that the Court should consider whether it is expedient to continue the prosecution. Insofar as the judgment of the Division Bench in the case of ***Rushikesh Ravindra Aaherwadikar (supra)*** is concerned, the said judgment revolves around the facts involved in the said case, wherein the Division Bench observed that no cognizable offence has been made out and accordingly quashed the charge-sheet.

7 Insofar as the instant case is concerned, we have refrained ourselves from making any elaborate comments on merits, lest, it affects the Petitioner at the trial.

8 Since the charge-sheet is to be filed on 22nd June 2018, we do not deem this a fit case to exercise our writ jurisdiction. The Writ Petition is accordingly dismissed.

9 After the charge-sheet is filed, it would be open for the Petitioner to take appropriate recourse under the Cr.P.C. If any such

application is filed, needless to state that the same would be heard on its own merits and in accordance with law.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.