

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2999 OF 2016**

Dilip Namdev Irale	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. Satyavrat Joshi for the Petitioner

Mr. S. R. Shinde, A.P.P for the Respondent-State

**CORAM : B. P. DHARMADHIKARI &
REVATI MOHITE DERE, JJ.
WEDNESDAY, 16th JANUARY 2019**

P.C. :

1 Matter was heard in first half when learned counsel for petitioner submitted that raid carried out on 29th March 2015 on house of petitioner is illegal and non-est. Hence, subsequent offence registered in pursuance thereof is also liable to be quashed and set-aside.

2 He invited our attention to provisions of Section 6(1)(ii) and (iii) of Maharashtra Prevention of Gambling Act (Bombay Act No. IV of 1887). He also submits that though reply affidavit has been

filed by the Office raiding the house on 19th July 2018, it does not throw any light on the issue.

3 Learned A.P.P relied upon reply affidavit which is sworn by the Officer, who conducted the raid. He also pointed out the annexure therewith and stated that it is general notification, which authorizes Officer to raid the house.

4 The provisions of Section 6 of 1887 Act show that its sub-clause (i) in sub-section (1) deals with areas where Police Commissioner is provided. Here, this Court is concerned with City of Satara and therefore provisions of either clauses (ii) and clause (iii) are applicable. Clause (iii) requires the Officer not below the rank of Sub-Inspector of Police authorized by special warrant in each case, of District Magistrate or Sub-Divisional Magistrate or Taluka Magistrate, especially empowered by the State Government or by Superintendent of Police or by Assistant or Deputy Superintendent of Police, provided, they are especially empowered by the State Government in this behalf. Respondents are not pointing out any such order

authorizing the Officer who has conducted raid. Raid is conducted by Deputy Superintendent of Police, Head Quarter, Satara and it is not shown that Deputy Superintendent of Police is especially empowered by the State Government in this respect.

5 Section 6(1)(iii) appears to be an overriding provision, which states that it would operate without prejudice to provisions of clause (ii). It states that in other areas, State Government may, by notification, in official gazette, specify an officer not below the rank of Sub-Inspector and he needs to be empowered by general order issued in writing by the District Magistrate. The respondents have relied upon an order of State Government dated 3rd July 1973 which is issued in terms of Section 6(1)(iii) and it mentions City of Satara.

6 However, this Notification only notifies areas and it does not again point out any Officer not below the rank of Sub-Inspector authorized either by State Government or by a general order in writing issued by District Magistrate.

7 In this situation, we accept the contention of petitioner and hold that raid conducted on house of petitioner on 29th March 2015 is bad in law. With the result, the further proceedings with reference to it also cannot legally survive. Accordingly, we make rule absolute in terms of prayer clause (a).

REVATI MOHITE DERE, J.

B. P. DHARMADHIKARI, J.