

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.298 OF 2019
(Puran s/o Damduji Suryawanshi and others vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri R.P. Waghmare, Advocate for applicants.

Ms. T. Udeshi, Additional Public Prosecutor for respondent.

CORAM : P.N. DESHMUKH AND
 PUSHPA V. GANEDIWALA, JJ.

DATED : JUNE 11, 2019

Heard learned Counsel for the parties.

This application is filed by applicants for quashing of SCC No.1092/2014 pending on the file of Judicial Magistrate, First Class. Arvi.

Shri Waghmare, learned Counsel for applicants, submits that entire action initiated by Police is null and void as before effecting raid in the premises of Adarsh Krida Mandal, which is a Society registered under Societies Registration Act and of which applicant no.1 is President, no permission was sought from District Magistrate as contemplated under Section 6 of the Maharashtra Prevention of Gambling Act. It is further submitted that though after the raid, panchamana is carried out, same is not prepared on the spot and in fact, in the said document, presence of applicant no.1 is not reflected. It is also submitted that according to said panchanama, register containing names of members of the Society was seized and according to its contents, accused nos.1, 2 and 17 (not before the Court since dead and referred in application as accused no.19) did not participate

in the game of rummy. It is also contended that there are many lacunae in drawing panchanama and since effecting raid itself is illegal, subsequent act of registration of offences and prosecuting applicants is thus uncalled for. One of the grounds also put forth is about old age of applicants. It is submitted that due to their old age, it is not possible for them to attend Court for framing of charge, which would result in prolonging of trial before Magistrate. It is, therefore, prayed that application be allowed.

Ms. Udeshi, learned Additional Public Prosecutor for respondent, has opposed the application.

The affidavit-in-reply of respondent reveals that on 16/3/2014 raid was conducted at the premises of applicant no.1 wherein applicant nos.4 to 18 were found playing with cards using money. It is the specific case of respondent that during the course of investigation, it was nowhere revealed that applicants indulged in playing rummy. The learned Additional Public Prosecutor has also pointed out contents of panchanama where there is reference of amount of Rs.11,334/-, which came to be seized from the spot during raid. The learned Additional Public Prosecutor has thus prayed for dismissal of application.

The learned Counsel for applicants during the course of hearing has submitted that on the date of raid, i.e. on 16/3/2014, licence of Adarsh Krida Mandal was not in force in view of fact that it was valid till 31/12/2013, however, on the date of raid application for renewal of licence was pending with the competent Authority and as licence was renewed from the date of expiry, it is deemed to be valid on the day of raid and accordingly, applicant no.1 was duly possessing licence to run Adarsh Krida Mandal.

Submissions advanced by learned Counsel for applicants

are not at all convincing in view of the admitted fact of applicant no.1 having not been in possession of valid licence for allowing other applicants to play with cards at his premises on 16/3/2014.

The learned Counsel for applicants has referred to licence on record, marked as Annexure "H". Perusal of the said document reveals that same was renewed on 19/4/2014 for the period upto 31/12/2014 by giving effect from 1/1/2014. Relying upon this document, submissions as aforesaid are made, however, same are not acceptable in view of the fact that licence was renewed after the raid was carried out and as such, on the date of raid, i.e. 16/3/2014, there was no valid licence though subsequently on 19/4/2014 such licence was issued giving effect from 1/1/2014. In view of that, we hold that no licence was possessed by applicant no.1 and in spite of that, he allowed other applicants to play with cards.

Apart from above, the case put forth in para 10 of the application is with regards to various documents. However, we find no propriety to act on those documents in this jurisdiction as it will be proper for the trial Court to consider the same at the time of trial. Other ground put forth regarding old age of applicants and as such, they are unable to attend Court at the time of framing of charge or on the fixed date of hearing can be taken due care by the learned trial Court, if applicants apply for personal exemption.

We find no substance in the application. Hence, it is dismissed.

JUDGE

JUDGE