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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3843 OF 2018
WITH
CRIMINAL APPLICATION NO.553 OF 2018

Satish Hari Kulkarni]
R/o 14, Madhusanch Society,]
Karve Nagar, Pune]
] .. Petitioner

VERSUS

1. **State of Maharashtra,**]
Through the Director General of Police,]
Maharashtra State.]
]
2. **The Commissioner of Police,**]
Swargate Division, Pune]
]
3. **Assistant Commissioner of Police,**]
Swargate Division, Pune]
]
4. **Dr.Shivaji Pawar,**]
Assistant Commissioner of Police,]
Swargate Division, having office at]
Office of Assistant Commissioner of]
Police, Swargate Division at Swargate,]
near Swargate Police Station]
]
5. **Dnyaneshwar Bhaginath Palwe,**]
Police Naik having buckle No.628,]
having office at the Deputy]
Commissioner of Police, Zone-1, Pune]
] .. Respondents

Mr.Satyavrat Joshi i/b Mr.Nitesh J. Mohite for the Petitioner.

Mr.K.V.Saste, APP for the Respondent/State.

**CORAM : S.S.SHINDE &
MANISH PITALE, JJ.**

**RESERVED ON : 09th FEBRUARY, 2021
PRONOUNCED ON : 18th FEBRUARY, 2021**

JUDGMENT (PER MANISH PITALE, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.

2. The petitioner has approached this Court invoking jurisdiction under Article 226 of the Constitution of India as also Section 482 of the Criminal Procedure Code for quashing of FIR and charge-sheet pertaining to an incident in respect of which, he has been arraigned as an accused alongwith other persons. As per the FIR, it is alleged that the petitioner alongwith other accused persons had committed offences under the provisions of the Maharashtra Prevention of Gambling Act, 1887 (here-in-after referred to as **“the Act of 1887”**) on 8th December, 2017. The petitioner was arrested in connection with the said case but, later on, he was enlarged on bail. Pursuant to completion of investigation, charge-sheet was filed against the accused persons, including the petitioner for the offences under Sections 4 and 5 of the Act of 1887 as also certain provisions of the Maharashtra Prohibition Act, 1949 and the Cigarettes and Other Tobacco Products Act, 2003.

3. The petitioner has approached this Court claiming that there is no material brought on record in pursuance of the investigation,

demonstrating that any of the ingredients of the aforesaid offences could be made out against him. As per the petitioner, the material on record in no manner connects him with the offences of gambling or gaming or being connected with a common gaming house as defined under the provisions of the Act of 1887. According to the petitioner, entire allegations levelled against him in the present case are concocted and that therefore, the FIR as well as the charge-sheet deserved to be quashed in his context.

4. A perusal of the material on record shows that the police allegedly received secret information on 8th December, 2017 about gaming activities being conducted at the premises, namely, Kapila Matrix, Mundhva Road, Goregaon Park, Pune. A raid was conducted, in pursuance of which, offences were registered wherein the name of the petitioner also figured alongwith other accused persons. Investigation was completed and charge-sheet was filed wherein material was sought to be brought on record to show the involvement of the accused persons, including that of the petitioner.

5. Aggrieved by the aforesaid action of the respondents, the petitioner is before this Court by filing the present writ petition. On 28th January, 2020, this Court issued notice and granted stay of further proceedings in the trial court only in relation to the petitioner.

6. Mr.Joshi, learned counsel appearing for the petitioner, submitted that a perusal of the provisions of the Act of 1887 would show that the offences that were alleged against the petitioner under Sections 4 and 5 were not made out, even if the material brought on

record with the charge-sheet was to be taken into consideration. It was submitted that neither was the petitioner found in the premises alleged to be the gaming house nor was he connected with the gaming house, in any manner. Since the presence of the petitioner was not established at the premises, there was no question of the petitioner having indulged in any activity that could be said to be an offence under the Act of 1887. On this basis, it was submitted that the impugned FIR and charge-sheet deserved to be quashed.

7. On the other hand, Mr.Saste, learned APP submitted that voluminous documents filed alongwith the charge-sheet indicated the involvement of the petitioner and that at this stage, no relief could be granted as claimed by the petitioner.

8. We have perused the material on record and heard learned counsel for rival parties. In order to consider the contentions raised on behalf of the petitioner, it would be appropriate to refer to relevant provisions of the Act of 1887. Section 4 stipulates that a person, who opens, keeps or uses any house, room or place for the purpose of a common gaming house or being owner of such premises wilfully allows it to be used for the said purpose or such a person is in the care or management of such a premises or advances money for the purposes of gaming in such house, he shall be punished with imprisonment extending to a period of two years and he may also be punished with fine. Section 5 stipulates that if a person is found in a common gaming-house gaming or present for the purposes of gaming, he shall be punished with imprisonment extending to six months and he is also liable to pay fine.

9. Since it is alleged that the petitioner had committed the said offences, it would be necessary to peruse the charge-sheet and the accompanying documents to examine as to whether ingredients of the aforesaid two offences can be said to be even *prima facie* made out against the petitioner. A perusal of the charge-sheet and the documents filed therewith shows that it is nowhere indicated as to how the petitioner can be said to be connected with the premises that, according to the respondents, could be said to be a common gaming house. There is nothing to show any connection of the petitioner to the said premises. He is not shown to be either an owner or occupier of the said premises. Infact, the leave and licence agreement pertaining to the said premises annexed to the charge-sheet, does not show that the petitioner was either a partner or that he was in any manner entrusted with occupation of the said premises. Thus, it becomes clear that the petitioner is not covered under the four categories specifically enumerated in Section 4 of the Act of 1887 to even, *prima facie*, show that he could be charged in connection with the common gaming house under Section 4 of the Act of 1887.

10. Infact, it is somewhere alleged that the petitioner is a partner of 'New World of Sports Club' and that therefore, he could be connected with the said premises, being used as a common gaming house. But, a perusal of the charge-sheet would show that a list of members of the said Club, annexed to the charge-sheet, does not show the petitioner as a member of gaming house. Therefore, the material on record is completely bereft of any connection of the petitioner with the said premises alleged to have been used as common gaming house. Hence, there is substance in the contention

raised on behalf of the petitioner that no offence under Section 4 of the Act of 1887 could be said to have been committed even, *prima facie*, by the petitioner on the basis of the material brought on record alongwith the charge-sheet.

11. As regards Section 5 of the Act of 1887, the petitioner could be said to be *prima facie* connected with such offence only if it could be said that he was gaming in the said common gaming house or he was present for the purpose of gaming. But, a perusal of the material on record does not show anywhere that when the raid was conducted by the police, on the basis of secret information regarding the premises in question, the petitioner was actually found in the said premises. When the petitioner was not found at the time of raid, how could it be said that either he was gaming in the common gaming house or that he was present for the purpose of gaming. A perusal of the facts stated in the final report/charge-sheet shows that there is only reference to the petitioner as having committed offences under the provisions of the Act of 1887, without any further material to establish his presence when the raid was conducted. Therefore, the material on record, even if accepted, does not make out even a *prima facie* case against the petitioner.

12. When the presence of the petitioner itself is not established on the basis of the material brought on record, it cannot be accepted that he can be hauled up for offences under the provisions of the Maharashtra Prohibition Act, 1949 and the Cigarettes and Other Tobacco Products Act, 2003. Therefore, ingredients of none of the offences alleged against the petitioner are made out on the basis of the material on record. In case of ***State of Haryana & Ors. Vs.***

Bhajan Lal & Ors.¹, the Hon'ble Supreme Court has held in paragraph 102 as under :-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

1 1992 Supp (1) SCC 335

(5) Where the allegation made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13. A perusal of the above quoted categories identified in the aforesaid judgment of the Hon’ble Supreme Court would show that the case of the petitioner is covered by categories 1 to 3. Hence, we find that there is substance in the contentions raised on behalf of the petitioner that the petitioner is not liable to face trial on the basis of such a charge-sheet and accompanying material. Learned APP could not show anything from the charge-sheet and the material on record as to how the ingredients of the offences alleged against the petitioner were made out.

14. In view of the above, we are of the opinion that the present writ petition deserves to be allowed. Accordingly, it is allowed in terms of prayer clause (a), which reads as follows :

“That this Hon’ble Court be pleased to exercise its power under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. and may be pleased to quash and set aside the chargesheet bearing SCC No.1420 of 2018 which is

pending on the file of learned Judicial Magistrate First Class, Cantonment Court, Pune arising out of CR No.329 of 2017 which is registered with Mundhawa Police Station, Pune qua the petitioner.”

15. It is made clear that the FIR and the charge-sheet have been quashed only in respect of the petitioner.

16. Rule is made absolute in above terms.

17. In view of the disposal of the writ petition, pending application stands disposed of.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)