

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION (APL) NO.275 OF 2018.**

Deepakkumar S/o. Sukhdeo Bansod,  
Aged 38 years, Occ. Legal Practitioner,  
R/o. Post Saundad, Tq. Sadak Arjuni,  
Dist. Gondia.

....APPLICANT

// VERSUS //

1. State of Maharashtra,  
Through P. S. O. Sakoli,  
Dist. Bhandara.

2. Rameshwar S/o. Jairam Piprewar,  
Aged 51 years, Occ. Service,  
R/o. C/o. Police Station Sakoli,  
Tq. Sakoli, Dist. Bhandara.

.... NON-APPLICANTS

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Shri J. K. Matale, Advocate for the applicant.  
Shri T. A. Mirza, A.P.P. for the non-applicant No.1/State.

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**CORAM : V. M. DESHPANDE AND  
AMIT B. BORKAR, JJ.**

**DATE : 19.06.2021.**

**ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]**

1. Heard. Rule. Rule made returnable forthwith.
2. This is an application under Section 482 of the Code of Criminal Procedure, challenging registration of the First Information Report No.51/2018 dated 23.02.2018 registered with the non-applicant No.1 - Police Station for the offence under Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887.

3. The First Information Report came to be registered against the applicant and others with the accusations that on 22.02.2018 when the Police Inspector was patrolling alongwith other police constables, he heard noise from the poultry farm of one Khothele. It is alleged that when the police officials reached this spot, they found some people engaged in gambling. On further enquiry it was found that the applicant alongwith others were playing Cutpatti game and cash of Rs. 3,000/- was found at the spot. When the Police Authority took search of all six accused, the applicant accused was found to be having cash of Rs.35,000/- and one mobile handset. The Police Authorities also seized vehicle standing in front of poultry farm. Therefore, an offence under Section 12(a) of The Maharashtra Prevention of Gambling Act was registered against the applicant and others.

4. The applicant therefore, filed the present application challenging registration of the First Information Report. This Court on 12.04.2018 issued notice to the non-applicants and by way of interim relief, it is directed that the charge-sheet should not be filed against the applicant.

5. The non-applicant No.1 filed reply stating that the applicant was found engaged in gambling activities alongwith other accused at a public place. It is stated that the Investigating Officer

carried out spot panchnama and prepared seizure memo. It is also stated that the applicant did not made call to his client and therefore, his defence that he had called his client is without substance. It is stated that the investigation is almost complete and the investigating agency has sufficient material showing involvement of applicant in the crime alleged against him.

6. We have carefully scrutinized the allegations in the First Information Report and reply filed by the non-applicants. For proper appreciation of question involved, it is necessary to set out provisions of Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887 which reads as under :

*“12. A Police officer may apprehend [and search] without warrant—*

*(a) any person found [gaming][or reasonably suspected to be gaming], in any public street, [or thoroughfare, or in any place to which the public have or are permitted to have access] [or in any race-course];*

*(b) .....*

*(c) .....”*

7. From the allegations in the First Information Report and the reply filed by the Investigating Agency, it appears that the applicant alongwith others was found to be engaged in gambling activities at the poultry farm of one Abhijit Mohan Khotele. From the allegations in the First Information Report, it appears that the said poultry farm is situated in the agricultural land of Abhijit

Mohan Khotele. Section 12(a) of the said Act requires that a person is guilty of the said offence only when such person is found gaming on any public street or any place to which the public have access. The allegations in the First Information Report and the reply demonstrate that the premises where the applicant was found carrying out gambling activity was not a place where public have access as the said place is the agricultural land owned by one Abhijit Mohan Khotele. Therefore, we are satisfied that, even if, allegations in the First Information Report are accepted to be correct, the essential ingredients of the offence under Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887 are not fulfilled. Hence, the continuation of prosecution against the applicant would amount to abuse of process of Court.

8. We therefore, pass the following order :

The First Information Report bearing No.51/2018 dated 23.02.20218 registered with the non-applicant No.1 – Police Station for the offence under Section 12(a) of the Maharashtra Prevention Of Gambling Act, 1887 is quashed and set aside qua the applicant only.

Rule is made absolute in the above terms.

**JUDGE**

**JUDGE**