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

CRIMINAL WRIT PETITION NO.241/2019

1. Abhindra s/o Vishwanathrao Kanse,
Aged about 35 years, Occ.: Business,
R/o Shivaji Nagar, Ner Parsopant,
Tq. Ner Parsopant, Dist. Yavatmal.
2. Rajiv s/o Madhusudan Sahani,
Aged about 44 years, Occ.: Business,
R/o Subhash Nagar, Nizamabad,
(Andhra Pradesh)
3. Bhimchand @ Munna s/o Pralhad
Kashyap,
Aged about 40 years, Occ.: Business,
R/o. Rajur Fata, Post – Palsoni,
Tq. Wani, Dist. Yavatmal. PETITIONERS

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1. State of Maharashtra,
through Police Station Officer,
Police Station, Pandharkawda,
Dist. Yavatmal.
2. Vinod Zalke, ... (..Deleted)
3. The Superintendent of Police,
Yavatmal, Tq. & Dist. Yavatmal. RESPONDENTS

 Shri P. R. Agrawal, Advocate for petitioner
 Shri A. S. Fulzele, Addl. P. P. for the respondents.

**CORAM : SUNIL B. SHUKRE AND
 AVINASH G. GHAROTE, JJ.**

DATED : 28/01/2021

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

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- 1] Heard. **Rule.** Rule made returnable forthwith.
- 2] Heard finally by consent of the learned counsel appearing for the parties.
- 3] Neither the FIR nor the seizure memo, which we have seen from the case diary shows that any money or any tokens in lieu of money were put on the table and by putting them at stake, the game of cards was played. There is no dispute about this fact. In other words, what is undisputed is that no money or any token in lieu of money has been actually recovered from the spot where the game of cards was being allegedly played. The recovery of money of course is there but it has been recovered during the course of the personal search of accused no.1 who is petitioner no.1. The amount of Rs.4,500/- was found from his full-pant pocket. This money cannot be said to be having any nexus whatsoever with the game of cards alleged to be played at the place of the incident. Such being the admitted facts of the case, we are of the considered opinion that no offence much less any offence as contemplated under Sections 4 and 5 of the Maharashtra Prevention of Gambling Act is *prima facie* constituted in the present case. These offences relate to opening, keeping or using any place any house or enclosure as a common gaming house

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and putting such house or enclosure to the use of gaming or for the purpose of gaming. Section 3 of the said Act defines gaming as an act which includes wagering or betting except wagering or betting upon a horse race or dog race when such wagering or betting takes place in the manner and on the day as mentioned in clauses (a) to (c) of Section 3. In the present case, as no money or any token has been found, which could be used for the purpose of wagering or betting for playing the card game, no offence whatsoever as contemplated and punishable under Section 4 and 5 of the Maharashtra Prevention of Gambling Act would be *prima facie* made out and therefore, in our view this is a fit case for quashing of the FIR registered against these petitioners.

4] In the result, the petition is allowed. The Crime No.167 of 2019 registered for offences punishable under Section 4 and 5 of the Maharashtra Prevention of Gambling Act, 1887 at Police Station Pandharkawada, District Yavatmal is hereby quashed and set aside to the extent of these petitioners only.

Rule is made absolute in these terms.

JUDGE

JUDGE