IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.352 of 2022
Arising Out of PS. Case No.-151 Year-2021 Thana- DAUDNAGAR District- Aurangabad

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Pawan Kumar @ Pawan Kumar Jhunjhunwala, Son of Girdhari Lal, Resident of Barahapathar, P.S.- Dehri- on- Sone, Dist- Rohtas. ... ... Petitioner

Versus

1. The State of Bihar Through Principal Secretary, Home Deptt., Govt. of Bihar, Patna
2. The Director General of Police, Govt. of Bihar, Patna.
3. The Inspector General, Magadh Commissionary, Gaya
4. The Superintendent of Police, Aurangabad.
5. The Sub Divisional Police Officer, Daudnagar, Dist. Aurangabad.
6. The Station house officer, Daudnagar police station, District- Aurangabad.

... ... Respondents

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Appearance :
For the Petitioner/s : Mr.Ranjeet Patel, Advocate
For the Respondent/s : Mr.Deepak Kumar, A.C. to G.P.-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 14-07-2022 Heard learned counsel for the petitioner and Mr. Deepak Kumar, learned A.C. to G.P.-4 for the State.

Learned counsel for the petitioner undertakes to remove the defects within two weeks from today.

The writ application has been heard on merit with the consent of the parties.

Case of the petitioner

Petitioner in the present case is seeking quashing of the First Information Report of Daudnagar P.S. Case No. 151 of 2021 registered for the offences punishable under Sections 420, 419, 468, 467, 34 of the Indian Penal Code, Section 4/5 of Bihar Ban on Lottery Act, 1993 (hereinafter referred to as the 'Act of

1993') and Section 11 of Bihar Bengal Gambling Act, 1867 (hereinafter referred to as the 'Act of 1867').

The sole contention of the learned counsel for the petitioner is that the F.I.R. has been registered inter alia under the provisions of the Act of 1993 and the Act of 1867. It is submitted that the Hon'ble Division Bench of this Court in the case of **M/s Iqbal Chand Khurana & Anr. versus State of Bihar** reported in **1994(1) PLJR 554** has held that the said Act of 1993 is ultra vires.

It is further submitted that taking note of the judgment of the Hon'ble Division Bench of this Court a learned coordinate Bench has allowed a quashing application in Cr. Writ No. 401 of 2013 vide judgment dated 09.04.2014. It is his submission that the investigation of the case is still pending but in view of the judgment of the Hon'ble Division Bench as well as the learned coordinate Bench of this Court, the F.I.R. is fit to be quashed.

Submission of the State

On the other hand, Mr. Deepak Kumar, learned A.C.to G.P.-4 for the State submits that a bare perusal of the judgment of the Hon'ble Division Bench in the case of **M/s Iqbal Chand Khurana** (supra) would show that the Hon'ble Division Bench has after a detailed discussion held that in view of the language of the relevant entries in List I and List II of the 7th Schedule there would be an inherent lack of legislative competency of the State Legislation to enact any provision so far as lotteries organized by the Central Government or any other State Government are concerned.

Learned counsel submits that paragraph ‘12’ of the judgment of the Hon’ble Division Bench categorically says that the Act of 1993 is ultra vires so far as lottery organized by the Central Government or any other State Government is concerned as it lacks legislative competency to that extent. A declaration has been made to that extent. Further the Hon’ble Division Bench made it clear that there is no lack of legislative competency so far as other lotteries are concerned.

Learned counsel submits that in Cr. Writ No. 401 of 2013 it appears that the learned coordinate Bench of this Court was given to understand that the Act of 1993 itself has been held ultra vires and even though paragraph ‘12’ of the Hon’ble Division Bench judgment in the case of **M/s Iqbal Chand Khurana** (supra) has been taken note of but in paragraph ‘7’ of its judgment the learned coordinate Bench has proceeded to take a view on a presumption that the Act of 1993 has been declared ultra vires. Learned counsel, thus, submits that the Hon'ble Division Bench judgment is rather going against the petitioner.

Learned counsel further submits that in this case the petitioner is an individual against whom there is an allegation that he is instrumental in the chain of supply of lotteries ticket and there are allegations of supply of forged tickets etc. He is an individual. It is not a case in which it may be said that the lottery of another State is being regularized by the Act of 1993.

<u>Consideration</u>

Having regard to the submissions noted hereinabove, this Court finds itself in agreement with the submission made on behalf of the State. Paragraph '11' and '12' of the judgment of the Hon'ble Division Bench of this Court in the case of **M/s Iqbal Chand Khurana** (supra) read as under:'-

> *"**11.1** Exclusive power of the State legislation has to be exercised subject to clause (1) of Art. 246 i.e., the exclusive power which the Parliament has in respect of the matters enumerated in List I. Assuming that there is conflict between an Entry in List I and Entry 49 of List II which is not capable of reconciliation, the power of Parliament to legislate in respect of the matter which is exclusively entrusted to it must supersede protanto the exercise of power of the Legislature.*
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> ***S.C. Nawn v. W.T.O. Calcutta**, AIR (1969) SC 59 (pr. 7); **India Cement Ltd. etc. etc. v. State of Tamil Nadu etc**., AIR (1990) SC 85.*

__11.2__ In assessing the field covered by an Act of the Parliament, one should be guided not merely by the actual provisions of the Central Act and the Rules made thereunder but should also take into account matters and aspects which can legitimately be brought within the scope of the said Statute. On such assessment if it appears that the State Act has trespassed into the field covered by the Central Act, it would be unconstitutional.

***The Hingir-Rampur Coal Co. Ltd. v. The State of Orissa and others**, AIR (1961) SC 459; **State of Orissa v. M.A. Tulloch & Co. :AIR** (1964) SC 1284; **Bharat Coking Coal v. State of Bihar**, (1990) 2 Scale 256; **M/s Orissa Cement Ltd. v. State of Orissa and ors.:**, AIR (1991) SC 1676 (para 51 to 54)."*

__12.__ Accordingly, I hold that the said Act is ultra vires the Constitution of India, so far as lotteries __organised__ by the Central Government or any other State Government is concerned, as it lacks legislative competency to that extent. A declaration is made to that extent. __I make__ it clear that there is no lack of legislative competency so far as other lotteries are concerned."

The learned coordinate Bench of this Court has, however, in paragraph '7' of its judgment recorded as under:-

"7. In the aforesaid background Section 268 as well as 420 of the IPC would also disappear because of the fact that selling of lottery ticket, on account of declaration of the Bihar Ban on Lottery Act ultra vires could not be perceived as cheating by personnation as well as the sale of the ticket will any way create law and order problem more

particularly when the material has not been collected during course of investigation as is evident from the case diary. Moreover, at the time of conduction of raid there was nothing at the spot being committed at the hands of petitioners which could attract Section 268 of the IPC on account of public nuisance.”

This Court finds that in view of the Hon’ble Division Bench judgment of this Court it cannot be said that the Act of 1993 itself has been held ultra vires. There is a declaration to the limited extent which is crystal clear from bare reading of paragraph ‘12’ of the judgment of Hon’ble Division Bench.

In the opinion of this Court, the point raised on behalf of the petitioner would fail.

Let investigation be completed.

This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading ‘Judicial Orders Passed During The Pandemic Period’.