

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMP No. 916 of 2022

Prasant Kumar Behera* *Petitioner

Mr. Kaushal Hussain, Advocate

-versus-

State of Odisha* *Opp.Party

Mr.A. Das

Addl. Government Advocate

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
26.07.2022**

Order No.

01. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

This is an application under Articles 226 and 227 of the Constitution of India filed by the petitioner for quashing the first information report and order of taking cognizance dated 12.02.2018 passed by the learned S.D.J.M., Deogarh in C.T. Case No.29 of 2018 for offence under section 3 of Orissa Prevention of Gambling Act, 1954 (hereafter '3 of 1955') Act.

The prosecution case as per the first information report is that when P.C. Majhi, S.I. of Barkote police station along with other police officials were conducting night patrolling duty on

19.01.2018 at about 11.30 p.m., they got reliable information that gambling by betting money was going on at village Kalla near Harijan Sahi and Kuda Sahi and accordingly, they rushed to the spot along with two independent witnesses and found that the gambling was going on the road and the petitioner and other co-accused persons were present at the spot and they were gambling by betting money without any license or authority. Two of the accused persons fled away from the spot but the petitioner and four other co-accused were caught hold and from the possession of the petitioner, cash of Rs.900/- was seized so also the playing cards and other incriminating articles were seized from the spot.

During course of investigation, witnesses were examined and on completion of investigation, charge sheet was submitted under section 3 of the 1955 Act and accordingly, the learned Magistrate has been pleased to take cognizance of the offence.

Learned counsel for the petitioner contended that there is absolutely no material on record that the petitioner was involved in gambling activities and merely because he was present at the spot and cash of Rs.900/- was seized from his possession, it cannot be said that offence under

section 3 of the 1955 Act is made out.

Learned counsel for the State on the other hand contended that the witnesses examined during course of investigation have stated about the participation of the petitioner in the gambling activities and whether the petitioner was an actual participant in the gambling activities or not can be ascertained during course of the trial after the witnesses are examined and at this stage, it cannot be said that there is no prima facie material for submission of charge sheet or for taking cognizance.

Section 3 the Odisha Prevention of Gambling Act, 1955 reads as follows:-

"3. Penalty for gambling or gaming-
Whoever takes part in gambling or gaming shall on conviction be punishable with imprisonment which may extend to one month or with fine which may extend to one hundred rupees or with both."

'Gambling or gaming' has been defined under section 2(b) of 1955 Act. It states that it does not include lottery and means a play or game for money or other stake and includes betting and wagering and other act, game and contrivance by which a person intentionally exposes money or things of value to the risk or hazard of loss by chance.

On the available material on record, it cannot

be said that accepting the entire prosecution case as per the charge sheet no offence under section 3 of the 1955 Act is made out. At this stage of cognizance, the Court is concerned with the involvement of the person and not of his innocence and therefore, any version in defence of the accused is not to be seen. Therefore, I find no infirmity or illegality in the impugned order.

Accordingly, the CRLMP application being devoid of merits, stands dismissed.

A copy of the order be communicated to the learned trial Court.

(S.K. Sahoo)
Judge



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