

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

931 CRIMINAL APPLICATION NO.682 OF 2021

- 1 Asaram Patilba Gorde,
Age 66 yrs., Occ. Agri.,
- 2 Jayram Asaram Gorde,
Age 32 yrs., Occ. Agri.
- 3 Sonu Mohan Gorde,
Age 24 yrs., Occ. Agri.,
- 4 Ganesh Namdeo Gorde,
Age 25 yrs., Occ. Agri.,
- 5 Pradeep Pundlik Gorde,
Age 28 yrs., Occ. Agri.,
- 6 Namdeo Patilba Gorde,
Age 45 yrs., Occ. Agri.,
- 7 Vishnu Janardhan Gorde,
Age 36 yrs., Occ. Agri.,
- 8 Vinayak Sarjerao Joshi (Yadmal),
Age 45 yrs., Occ. Agri.,
- 9 Mohan Patilba Gorde,
Age 50 yrs., Occ. Agri.,
- 10 Parmeshwar Mohanrao Gorde,
Age 29 yrs., Occ. Agri.,
- 11 Suresh Damodhar Gorde,
Age 38 yrs., Occ. Agri.,
- 12 Shriram Asaram Gorde,
Age 34 yrs., Occ. Agri.,

- 13 Neelabai @ Leelabai Asaram Gorde,
Age 60 yrs., Occ. Agri.,
- 14 Rani Shriram Gorde,
Age 25 yrs., Occ. Agri.,
- 15 Shila Sainath Gorde,
Age 42 yrs., Occ. Agri.,

All are r/o Rajapur, Post Ektuni,
Tq. Paithan, Dist. Aurangabad.

... **Applicants**

... **Versus** ...

- 1 The State of Maharashtra,
Through Police Station, Pachod,
Dist. Aurangabad (Rural).
- 2 Bhagwat Sudhakar Muthal,
Age 30 yrs., Occ. Service,
R/o Sub Divisional Police Office,
Paithan, Tq. Paithan, Dist. Aurangabad.
- 3 The Superintendent of Police (Rural),
Aurangabad, Dist. Aurangabad.

... **Respondents**

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Mr. S.B. Ghatol Patil, Advocate for applicants

Mr. A.M. Phule, APP for respondent Nos.1 to 3

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CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.

DATE : 06th SEPTEMBER, 2022

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The applicants, by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973, seek quashment of the First Information Report vide Crime No.207/2020 dated 19.06.2020 registered with Pachod Police Station, Dist. Aurangabad and proceedings i.e. Regular Criminal Case No.300/2021 pending before learned Judicial Magistrate First Class, Paithan, for the offence punishable under Sections 109, 188, 143, 144, 145, 147, 148, 149, 154, 225(b), 269, 270, 332, 353, 506 of the Indian Penal Code, 1860, under Sections 4 and 5 of the Maharashtra Prevention of Gambling Act, 1887, under Section 51(b) of the Disaster Management Act, 2005, under Sections 2 and 3 of the Epidemic Disease Act, 1897 and under Section 135 of the Maharashtra Police Act, 1951.

3 Heard learned Advocate Mr. S.B. Ghatol Patil for applicants and learned APP Mr. A.M. Phule for respondent Nos.1 to 3.

4 After hearing both sides when this Court showed disinclination to grant any relief to applicant No.1, the learned Advocate for applicants, on instructions, seeks withdrawal of the application as against him and there is no hurdle in granting the same.

5 In view of the withdrawal of the application as against applicant No.1, the application was considered for the reliefs claimed by applicant Nos.2 to 15. The prosecution story in the nutshell is that - during the lock-down period certain persons in the field of one Rahul Bankar, in the shed were found gaming around 18.00 hours on 18.06.2020. About 8 to 10 persons fled away from the spot when they noticed police have come, however, it is the prosecution story that one person was caught hold of and he was applicant No.7 Vishnu Gorde. After entering the shed, the police nabbed seven persons, who had not put mask on their face. The police authorities found playing cards, amount and mobile phones. After asking those seven persons about their names and while doing further activity applicant No.1 started asking as to whether the raiding party is really police and they should show their identity card. According to the prosecution, thereby he had obstructed the Government servant from discharging his duty. Another person by name Rahul Bankar then started saying that they should be left and the point on which he was asking excuse was that he is the

husband of Deputy Sarpanch of village Adul. 15 – 20 ladies and gents were called by the other accused persons and those persons who had come there were holding sticks, sickle, axe etc. It is then stated that the applicant No.1 and other persons formed unlawful assembly. Accused Vishnu Gorde and other seven persons told the police that they should be allowed to have safe escape.

6 Now, the investigation is complete and the statements of witnesses recorded under Section 161 of the Code of Criminal Procedure would show that almost all of them are the police persons on duty. Some of them had reached the spot after the help was asked. It is also stated that Police Sub Inspector Mr. Muthal had received simple injury in the said incident. If we consider the statements of witnesses what could be gathered is that initially the police party was consisting of five police persons including PSI Mr. Muthal and the sixth was the driver of the police jeep. They state that seven persons were taken in custody at the first place and accused Vishnu Gorde was also caught hold from a distance. It is said that the other police persons came on telephonic call. In the meantime, it is said that all those eight persons by over powering the police had fled away from the spot and the statements are silent about how the ladies had fled away from the spot. The second batch of police consisted of eight police persons. Thus,

inspite of such number of police persons not a single accused has been caught hold at the spot. This raises doubt over the prosecution story. Even if we consider the statement of witnesses as it is, no specific role has been attributed to the present applicant Nos.2 to 15. They were admittedly not involved in gambling activity. Though it is stated that certain persons amongst them were holding sticks, axe and sickle, those weapons are not used at all. Who exactly caused injury to PSI Mr. Muthal is also not stated by him. Accused No.1 was thereafter arrested from Rajapur village and after making inquiry with him the names of 14 accused persons i.e. present applicants have been revealed. At the cost of repetition, it can be said that it is surprising to note that in spite of so much of police force the accused persons are stated to have managed to escape from a constructed shed. The photograph of the constructed shed would show two doors. If at all such raid was to be conducted, the police could have locked one door and after they went inside, the other door could have also been locked either from the inside or could have been managed by keeping one of the police persons at the door. Therefore, this story of all the accused persons fleeing away from the spot appears to be improbable. If we consider the charge sheet, then, it is filed against 40 accused. Presence of those 40 accused persons is not at all stated in the statement under Section 161 of the Code of criminal Procedure by the police persons. It has been stated in the charge sheet that accused

Nos.1 and 2 were running the said gambling place. Accused Nos.2 to 8 were found at the spot. Accused Nos.23 to 40 are stated to have been found gaming and they had fled away. There is no explanation in respect of the role of accused Nos.1 and 9 to 22 had formed unlawful assembly and obstructed the police staff from carrying out their duty. However, while alleging so specific act of each of the applicant has not been stated. It would be a futile exercise to ask the applicant Nos.2 to 15 to face the trial.

7 It will not be out of place to mention here that one Leelabai Asaram Gorde i.e. wife of applicant No.1 has filed various complaints against Assistant Superintendent of Police Mr. Bhamre and other police persons stating that false First Information Report has been lodged. We may not go into those allegations, but the fact that is mentioned in the same is that though there were lady accused persons, no arrangements were made for the lady police constable to accompany the informant and other police staff. This is certainly objectionable. The case is therefore made out to quash the First Information Report as well as entire proceedings against applicant Nos.2 to 15. Accordingly, following order is passed.

ORDER

1 Application stands disposed of as withdrawn as against applicant

No.1.

2 Application stands allowed in respect of applicant Nos.2 to 15.

3 The First Information Report vide Crime No.207/2020 dated 19.06.2020 registered with Pachod Police Station, Dist. Aurangabad, for the offence punishable under Sections 109, 188, 143, 144, 145, 147, 148, 149, 154, 225(b), 269, 270, 332, 353, 506 of the Indian Penal Code, 1860, under Sections 4 and 5 of the Maharashtra Prevention of Gambling Act, 1887, under Section 51(b) of the Disaster Management Act, 2005, under Sections 2 and 3 of the Epidemic Disease Act, 1897 and under Section 135 of the Maharashtra Police Act, 1951; and the entire proceedings of Regular Criminal Case No.300/2021 pending before learned Judicial Magistrate First Class, Paithan, Dist. Aurangabad stand quashed and set aside as against applicant Nos.2 to 15.

4 Rule made absolute in above terms.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)