

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

**CRIMINAL APPLICATION NO.1711 OF 2021**

- 1) Manik S/o Babasaheb Jogdand,
- 2) Trimbak S/o Vaijinathrao Mahajan,
- 3) Bhalchandra Ramakant Masalkar,
- 4) Rafik Pathan Shafik Pathan,
- 5) Udhav S/o Janikram Ubale,
- 6) Sham S/o Sakaharam Sarode,
- 7) Aslamkha Moinkhan Bajigar,
- 8) Ramgopal Sitaram Var,
- 9) Pavan S/o Madanlal Sharma,
- 10) Bhaskar S/o Rambhau Kale,
- 11) Ramu @ Ramrao S/o Raosaheb S,
- 12) Shivshankar Vithalrao Ghadge,
- 13) Prabhakar S/o Punjabi Darade,
- 14) Digamber S/o Dattarao Malkar,
- 15) Deepak S/o Sakharam Kolhal,
- 16) Rajesh Zaribhau Sawant,
- 17) Rashesham Shriram Sabu,
- 18) Irfankhan Maksudkhan Pathan,
- 19) Arun S/o Pandurang Jadhav,
- 20) Achyut S/o Anantrao Borade,
- 21) Sunil S/o Sonaji Mate,
- 22) Ritesh S/o Radhesham Loya,
- 23) Laxman S/o Narayan Chormale,
- 24) Manik Tryanbak Shere,
- 25) Jagannath Asaram Kakde,

- 26) Santosh S/o Veerbhan Savdekar,
- 27) Sunil Murlidhar Pawar,
- 28) Sitaram S/o Namdeo Bendre,
- 29) Keshav Bhikaji Kharabe,
- 30) Raju S/o Chhagan Waghmare,
- 31) Sarjerao S/o Bhujangarao Khadekar,
- 32) Kunal S/o Shivaji Shinde,
- 33) Prakash S/o Annasaheb Kawle,
- 34) Balaji S/o Ansiram Janje,
- 35) Sanjay S/o Sahebrao Kadam,
- 36) Ganesh S/o Baburao Lahane,
- 37) Jameerkhan Janikhan Pathan,
- 38) Anant Rodge,
- 39) Dattarao Mogal,
- 40) Kailas Suryabhan Chormare

**...APPLICANTS**

**VERSUS**

- 1) The State of Maharashtra,  
Through Police Inspector,  
Police Station, Sailu, Parbhani,
- 2) Assistant Sub-Inspector,  
Miss Sarla Kashinath Gaddekar,  
Police Station, Sailu,  
District-Parbhani.

**...RESPONDENTS**

...  
Mr.Arvind S. Deshmukh Advocate for Applicants.  
Mr.R.D. Sanap, A.P.P. for Respondents.  
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**CORAM: SMT. VIBHA KANKANWADI AND  
RAJESH S. PATIL, JJ.**

**DATE OF RESERVING ORDER : 23<sup>rd</sup> NOVEMBER 2022**

**DATE OF PRONOUNCING ORDER : 20<sup>th</sup> DECEMBER 2022**

**ORDER [PER SMT. VIBHA KANKANWADI, J.] :**

1. The Application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing the First Information Report lodged at Sailu Police Station, District-Parbhani on 9<sup>th</sup> July 2021 vide Crime No.211 of 2021 for the offence punishable under Section 12A of the Maharashtra Prevention of Gambling Act, 1887. As well as, by way of amendment it is prayed that the charge-sheet bearing No.36 of 2022 filed before the learned Judicial Magistrate First Class, Sailu, District-Parbhani on 28<sup>th</sup> February 2022 be quashed and set aside.

2. Heard Mr. Arvind S. Deshmukh, learned Advocate appearing for the applicants and Mr. R.D. Sanap, learned A.P.P. appearing for the respondents.

3. It has been contended on behalf of the applicants that in all 40 persons stood prosecuted under the said First Information Report (for short "FIR"). It is alleged that information was

received to the Police Station that illegal activity of gambling is going on in Nitin Manoranjan Club and therefore raid is stated to have been arranged by making available two panchas, who were government employees. The raid was conducted around 15.00 hours on 8<sup>th</sup> July 2021 and it is stated that the accused persons were gambling by using cards and the game was known as '*Tirat*'. It is also then stated that the persons who were playing cards, were not having any identity cards as per the rules of the club as well as the entries were not maintained in respect of the persons who had visited the club. Learned Advocate for the applicants submitted that the accused persons were in fact playing rummy which is the game of skill. In fact the District Magistrate had issued license to the said club and the said license has been renewed from time to time. It is stated that 41 persons were found at the place but only one set of playing cards (52 cards) was found and therefore it is highly impossible that any such game by name '*Tirat*' would have been going on at the said place. The amount which was seized by Police was not lying on the table but it was from the personal search of each person. Further the colour coins which were allegedly found, cannot be said to be the instruments in gaming. It is then stated that the Police had entered in the club in violation of the

Maharashtra Prevention of Gambling Act, 1887. It was mandatory on the part of the Police Officer to obtain permission from the District Magistrate or Sub-divisional Magistrate or Taluka Magistrate or even by the Superintendent of Police, therefore, it would be futile exercise to ask the applicants to face the trial. The FIR as well as the charge-sheet deserves to be set aside.

4. Per contra, the learned APP submitted that as per the secret information received, raid was conducted and prior to that the panchas were called. A detail panchnama has been prepared, including the activities those were found to be going on in the said club. The club was violating the terms of license also, as well as the rules. None of the applicants had any identity card showing that they were the members of the said club. In all the amount and articles worth Rs.3,95,840/- were found from the person of the applicants and many of them were possessing three cards. *Tirat* is a game played by giving three cards to each player. It is a game which is played for the money and it cannot be said that it is a game of skill. Statements of witnesses, which would be of course mainly the police officers who were part of the raiding activity, would show that the gambling activity was

going on and therefore, this is not a fit case where the inherent powers should be exercised.

5. Learned APP, in support of his submissions, relied on the decision of this Court in ***Criminal Application No. 707 of 2016 (Ramesh S/o Anandrao Chitale and others vs. the State of Maharashtra and another)***, decided on 10<sup>th</sup> October 2018, wherein, in respect of the game known as 'Tirat', this Court had refused to quash the FIR and the proceedings. In the said decision, it was observed that, by mistake the provision of section 12 (A) was mentioned in the First Information Report, whereas it should have been Section 12(a) of the said Act. The said typographical mistake was not considered to be of such an importance that would lead to the quashment of the FIR and the proceedings.

6. We are also of the same opinion that by mistake sometime while writing section instead of '(a)', it is written as '(A)' or vice versa and sometime the bracket is also not quoted. Those technicalities cannot be taken into consideration of such an extent that it would prompt the Court to exercise its powers under Section 482 of the Code of Criminal Procedure. Herein this

case the FIR has been written in Marathi and in the printed form Section "12A" has been mentioned in respect of the the Maharashtra Prevention of Gambling Act. We will have to go by the original FIR in which it has been specifically in Marathi that the offence that has been transpired and the informant is giving FIR for the offence punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act ( in Marathi it is written as "कलम 12 (अ) महाराष्ट्र जुगार प्रतिबंध अधिनियम" ).

7. Perusal of the FIR as well as the entire charge-sheet, especially the panchnama, would show that the place is situated on Satona road in Sailu town and it is towards the southern side. The place is "Nitin Wyayam Shala, Kala Krida Wa Sanskrutik Manoranjan Club". The statements of the witnesses would also show that many people were sitting on different tables in round position and were holding three cards and each of them had kept certain amount in the middle of the table. Now, how the game '*Tirat*' is played, would be the matter of evidence, but the further details in FIR as well as the panchnama would show that from the personal search of many applicants, mobile phones, cash amount and three cards as well as coins of different colours were seized. It would be for the applicants to prove that they were

playing Rummy at the relevant time. Taking into consideration the entire evidence collected and the circumstances put forward, it is sufficient to infer that the applicants were playing gaming activity which can be covered under Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887. We, therefore, hold that this is not a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure to quash the First Information Report as well as the proceedings and the application deserves to be rejected.

8. Accordingly, the Application stands rejected.

**[RAJESH S. PATIL]**  
**JUDGE**

**[SMT. VIBHA KANKANWADI]**  
**JUDGE**