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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 12 OF 2021

Harsh Rohit Trivedi ..Petitioner
vs.
The State of Maharashtra & anr. ..Respondents

Mr. Prashant Trivedi i/b. Ms. Sudha Dwivedi for petitioner.
Ms. A. S. Pai, GP a/w. Mr. A. R. Patil, Addl. PP for
respondent no.1 – State.
Mr. Mandar Soman a/w. Mr. Divakar Rai a/w. Ms. Bhavika
Solanki i/b. R. S. Rane for respondent no.2.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : JUNE 6, 2022.

P.C. :

1. The main prayer in this PIL petition is for issuance of an appropriate order of writ, order or direction in the nature of mandamus directing the respondent no.1 (State of Maharashtra) to forthwith take cognizance and initiate criminal prosecution against the respondent no.2 (M/s. Skill Games India International Enterprise) for conducting illegal online gambling/betting activities.
2. On perusal of the writ petition, we do not find that the petitioner ever approached the respondent no.1 with a

complaint that the respondent no.2 is indulging in illegal online gambling/ betting activities warranting launching of prosecution.

3. While dealing with PIL (L) No. 1553 of 2022, we have passed an order dated February 21, 2022. The relevant portion of the order reads as follows: -

“4. The prayer in this PIL petition is for a Writ of Mandamus directing the respondents 2 to 6 to conduct an inquiry. Law is well-settled that in case of an alleged breach of a mandatory duty, the salutary general rule, which is subject to certain exceptions, is that when a writ of Mandamus is asked for, the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the Mandamus desires to enforce and that, that demand was met by a refusal. We may refer to the decisions of the Supreme Court reported in AIR 1975 SC 460 [**Saraswati Industrial Syndicate vs. Union of India**], AIR 1976 SC 1654 [**State of Haryana vs. Chanan Mal**], (2013) 5 SCC 427 [**Rajasthan State Industrial Development & Investment Corporation vs. Subhash Sindhi Cooperative Sindhi Cooperative Society**] and (2013) 5 SCC 470 [**Rajasthan State Industrial Development & Investment Corporation vs. Diamond & Gem Development Corporation Limited**], which lay down the law in this regard. Perusal of the aforesaid decisions would also reveal that a demand for enforcement of a duty could be refused either by words or conduct, and it is not necessary that only when refusal is by words that a writ petition for a Mandamus could lie. If it is evinced from the conduct of the authority that the

demand would not be considered, the party aggrieved need not indefinitely wait for an express refusal. It would be sufficient for him to show that a valid demand has been made which is met with an implied refusal. However, there are exceptions to the general rule on the existence whereof a writ petition can be instituted without there being a formal demand for justice. If making of a demand would be an idle formality or if irretrievable damage will ensue if the party aggrieved were driven to demand justice first and wait for a response, the writ court in the judicious exercise of its discretion may not insist on the party approaching it to do so.

5. There is no legitimate reason as to why this salutary rule may not apply even in case of a Public Interest Litigation, where a Writ of Mandamus is claimed. After all, one of the objects of a Public Interest Litigation invoking the writ jurisdiction is to enforce public duties of the Government/authorities. The petitioner, in the present case, ought to have brought to the notice of the concerned authorities the alleged violation of the prohibitory order and demanded action against the alleged offenders as per law. There being no demand, question of a refusal either by words or conduct does not arise. On facts, we hold that it is not a case where any of the exceptions noticed above would also apply. We are, therefore, loath to exercise our jurisdiction under Article 226 of the Constitution."

4. Considering the facts and circumstances placed before us, we find no reason to take a different view. The PIL petition stands disposed of without any order as prayed for by the petitioner. However, this order of disposal shall not preclude the petitioner to explore his remedy, in accordance with law.

5. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)