

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (APL) NO. 609 OF 2022

Amol s/o Narayan Lad and Ors.

Vs.

State of Maharashtra, Thru. PS Badnera, Tq. & Dist. Amravati and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. J.B. Kasat, Advocate for applicants.
Mr. S.M. Ghodeswar, APP for respondent No.1.

**CORAM : MANISH PITALE, &
VALMIKI SA MENEZES, JJ.**

DATE : 24.08.2022.

By this application, the applicants who are accused Nos.1, 13 and 14 have approached this Court praying for quashing of the FIR No.258/2022 registered at Badnera Police Station, Amravati, for offences under Section 4 and 5 of the Maharashtra Prevention of Gambling Act, 1887, as also the charge-sheet filed against them in pursuance of registration of the said FIR.

2. It is the case of the applicants that in terms of law laid down by this Court, even if the contents of the FIR and the charge-sheet along with

accompanying documents are taken as it is, no offence under the said provision is made out against the applicants. It is submitted that in the oral report leading to registration of the FIR, as also the material that came on record upon investigation and filing of charge-sheet, the cash amount recovered is not relatable to the alleged game that was being played. Attention of this Court is invited by Mr. Kasat, learned counsel appearing for applicants to the spot/seizure panchnama, wherein it is recorded that the cash amount was recovered from a drawer on the ground floor where office of the applicant No.1 is located.

3. It is submitted that the applicants are members of a club called Shri Gajanan Maharaj Krida Manoranjan Mandal, and there is not a shred of material brought on record during investigation to indicate that a game of chance was being played at the time of the incident. It is submitted that, the report does not even state as to what was the nature of the game being played and that in these circumstances, the case of the applicants is covered under judgment of this Court in case of ***Jaywant Balkrishna Sai Vs. State of Maharashtra, (2012) SCC Online Bombay 832*** and another judgment of the

Division Bench of this Court dated 13.06.2017 passed in *Criminal Writ Petition No.544/2016 (Gajendra s/o Shivprasad Kedia Vs. State of Maharashtra and anr.)*.

4. Mr. Ghodeswar, learned APP invited attention of this Court to the contents of the FIR, charge-sheet and the documents filed therewith. It was submitted that there were plastic coins of different colours that were recovered during the raid which lead to registration of the FIR. It is submitted that the said coins were recovered along with pack of cards, thereby indicating that the prima facie case was made out for trial against the applicants under the provisions of the said Act.

5. We have perused the oral report leading to the registration of the FIR, as also the charge-sheet and the accompanying documents. We have also perused the spot/seizure panchanama executed in the matter.

6. We find from these documents on record that during the raid plastic coins of different colours were recovered. The reference to recovery of cash is not found from the spot where the applicants were allegedly found indulging in gambling. The cash

amount as per the panchnama itself is shown to be recovered from the ground floor office of applicant No.1.

7. There is no statement or material brought to our notice as to what was the nature of game allegedly played by the applicants. It is also not stated that the game allegedly being played was a pure game of chance and there was no skill involved. In this connection, the learned counsel appearing for the applicants is justified in referring to Section 13 of the said Act, which specifically indicates that nothing in the said Act shall apply to any game of skill wherever played. Therefore, we are of the opinion that in order to make out a *prima facie* case against the applicants, the material on record ought to at least indicate that according to the Investigating Authority it was a game chance being played at the time when the raid was conducted. Merely because some plastic coins of different colours were recovered, it cannot indicate a *prima facie* case that the applicants had indulged in offences registered against them under the said Act.

8. We find that a Division Bench of this Court in the case of ***Jaywant Balkrishna Sail vs.***

State of Maharashtra (supra) found that even in a case where the accused were playing Rummy, they could not be hauled up under the provisions of the said Act, because it was found to be a game of skill.

9. In the case of *Gajandra Vs. State of Maharashtra*(supra), the facts appear to be closer to the present case, as there was recovery of various items, including false table counters etc. and yet this Court found it fit to quash the FIR and charge-sheet for the reason that there was not even an iota of material to indicate as to the nature of the game allegedly being played and as to whether it could be *prima case* said to be a game of chance.

10. Applying the said position of law to the admitted facts in the present case, we are convinced that power under Section 482 of the Cr.P.C. can be he exercised in favour of the applicants. Accordingly, the application is allowed, only insofar as the applicants are concerned in terms of prayer clauses (A) and (A1), which reads as follows :-

“A. Quash the FIR in Crime No.0258/2022 registered by Police Station, Badnera, Amravati, Tq. And Dist. Amravati for the offences under Section 4 and 5 of the Maharashtra Gambling

Prohibition Act, 1887, at Annexure E in the interest of justice;

A1. Quash the final report/charge-sheet No.111/2022 dated 22/04/2022 for the offences under Section 4 and 5 of the Maharashtra Gambling Prohibition Act, 1887 in Crime No.0258/2022 by the Police Station Badnera, Dist. Amravati in the interest of justice.”

[VALMIKI SA MENEZES, J.]

[MANISH PITALE, J.]