

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

CRIMINAL APPLICATION (APL) 1003 OF 2022

Amol s/o. Ramdas Bunde,
Aged about 26 yrs, Occ. Service,
R/o. Junegaon, Chohatta Bazar,
Tahsil Akot, District Akola.

.....**APPLICANT**

...V E R S U S...

1. State of Maharashtra,
through Police Station, Dahihanda,
Tahsil and District Akola
2. Shivilal s/o. Uttam Nikade,
aged about 53 yrs, Occ. Police Constable
C/o. Anti Terrorist Squad Akola
Office of Superintendent of Police,
Akola, Tahsil District Akola,

...**NON-APPLICANTS**

Mr. J.B. Kasat, counsel for applicant.
Mr. M.K. Pathan, APP for non-applicant 1/State.

CORAM:- ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATED :- 21.10.2022

ORAL JUDGMENT (Per: Rohit B. Deo, J.)

The applicant is implicated in Crime 61/2022,
registered at Police Station Dahihanda, for offence
punishable under Section 12A of the Maharashtra Gambling

Prohibition Act, 1997 (“Gambling Act”). Final Report under Section 173 of the Code of Criminal Procedure (“Code”) is submitted and Summary Criminal Case 1816/2021 is pending on the file of Judicial Magistrate First Class, Akot.

2. The applicant is seeking quashing of the proceedings and the short submission is that even if the entire material in the chargesheet is taken at face value, the ingredients of the offence is not made out.

3. We heard the learned counsel Mr. J.B. Kasat for the applicant and the learned APP Mr. M.K. Pathan for State on 7.10.2022 and passed the following order, which is self-explanatory.

“We have heard learned counsel, Mr. Kasat and learned Additional Public Prosecutor, Mr. Pathan for some time.

2. Other than the information received by the police that what was played with the pack of cards was not a game of skill like, Rummy but a game of chance “three cards”, there does not appear to be any material in the charge-sheet to

support the allegation that the applicant was involved in gambling.

3. *We call upon learned Additional Public Prosecutor, Mr. Pathan to address us on the nature of prima facie material which is required to be placed on record to justify trial.*

4. *Stand over to 21-10-2022.”*

4. With his usual fairness, Mr. M.K. Pathan has invited our attention to the decision in ***Narayan Vs. State of Maharashtra, 1968 ALLMR ONLINE 242*** which relies on the Full Bench decision in ***Emperor Vs. Somabhail***. The said decision emphasizes that even a reasonable suspicion that the accused is indulging in gaming, is not sufficient to prove charge under Section 12 of the Gambling Act and that the prosecution must establish that as a fact the accused was gaming or gambling. We have not come across any material in the chargesheet to prima facie show that the applicant was as a fact gaming or gambling. The offence is registered on the basis of report lodged by police constable Mr. Shivilal Nikhade. According to Mr. Shivilal Nikhade, secret

information was received that some persons are playing “three cards” in front of the residential house of Mr. Gajanan Pandav. Acting on the secret information, Mr. Shivlal Nikhade and panchas claimed to have watched the spot from a distance and to have been convinced that the said persons are gaming with cards. Mr. Shivlal Nikhade then states that the spot was raided and five persons were apprehended who were playing cards. Spot and seizure panchanama was recorded.

5. Every card game is not gambling. Illustratively, Rummy which is played with 52 cards is a game of skill. We have not come across any material which if translated into evidence, will establish that the applicant was as a fact gambling. The secret information received and the reasonable suspicion arrived at is not substitute for evidentiary material.

6. Considering the total absence of incriminatory material, trial would be an empty and ritualistic formality

and an abuse of process of law.

7. We, therefore, quash the proceedings and allow the application in terms of prayer clause A, which reads thus:

A. Quash the charge sheet / final report no. 318/2021 dated 25.10.2021 in Crime No. 61/2021 dated 25.2.2021 at Annexure B by Police Station, Dahihanda, Tq. and Dist. Akola for the offence under section 12A of the Maharashtra Gambling Prohibition Act, 1887 and the continuation of Summary Criminal Case No. 1816/2021 pending on the file of JMFC Akot in relation to the applicant in the interest of justice.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)

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