

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

CRIMINAL APPLICATION NO. 140 OF 2023

1. Ravindra Nago Koli
2. Shivaji Ganpat Rana
3. Anil Devisingh Rajput
4. Sachin Panduranga Suryawanshi
5. Ganesh Pandit Shingete
6. Anil Dagadu Chavan
7. Aadil Shaha Yusuf Shaha

..APPLICANTS

VERSUS

1. State of Maharashtra
2. Pandharinath Dashrath Pawar

..RESPONDENTS

....
Mr. A.A. Reddy, Advocate for applicants
Mr. R.V. Dasalkar, A.P.P. for respondents
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 25th OCTOBER, 2023**

PER COURT :

1. Heard.
2. This application, under Section 482 of Code of Criminal Procedure, has been filed for quashment of the First Information Report ('F.I.R.'), bearing Crime No. 534 of 2022 registered with Chalisgaon Police Station, Dist. Jalgaon for the offences punishable under Sections 4, 5 and 12A of the Maharashtra Prevention of Gambling Act, 1887 ('the Act').

3. In short, the case as has been averred in the F.I.R. is that Police Inspector, Chalisgaon Police Station received a tip off that a common gaming house is being run at Unnati Shaikshanik Samajik Krida Mandal, Hirapur Road, Chalisgaon. He, therefore, asked the informant and other police officials to accompany him to effect the raid. Accordingly, the raid was effected. Some persons were found gambling. The material, in the nature of currency notes and other articles used for gambling came to be seized. Police Head Constable lodged the F.I.R. on behalf of the State.

4. Learned counsel for the applicants would submit that the raid has been conducted by an official in the rank of Police Inspector. He was authorised by Assistant Superintendent of Police to effect the raid. The concerned Assistant Superintendent of Police was however not authorised by the State Government in that regard. He took us through Section 6 of the Act to ultimately submit that there is no compliance of mandatory provisions of sub-clause (ii) of Section 6(1) of the Act. He, therefore, urged for allowing the application.

5. Learned A.P.P. would, on the other hand, brings to our notice a written authorisation dated 08th December, 2022 issued by the Assistant Superintendent of Police, Chalisgaon authorising the concerned Police Inspector to effect the raid at the very place. Then our attention has been drawn to sub-clause (iii) of Section 6(1) of the Act and then government

resolution dated 03rd July, 1973 issued in exercise of the said sub-clause to ultimately submit that there is compliance of mandatory provisions. He, therefore, urged for dismissal of the application.

6. Considered the submissions advanced. Perused the F.I.R. and related police papers.

7. Factual matrix in the matter need not be adverted to since the same is not necessary for deciding the present application. It is necessary to have a glance at Section 6 of the Act. For better appreciation, same is reproduced as under :-

“6. (1) It shall be lawful for a Police officer -

(i) in any area for which a Commissioner of Police has been appointed] not below the rank of a Sub-Inspector and either empowered by general order in writing or authorised in each case by special warrant issued by the Commissioner of Police, and

(ii) elsewhere not below the rank of a Sub-Inspector of Police authorised by special warrant issued in each case by a District Magistrate or Sub-Divisional Magistrate or by Taluka Magistrate specially empowered by the State Government in this behalf or by a Superintendent of Police or by an Assistant or Deputy Superintendent of Police especially empowered by the State Government in this behalf, and

(iii) without prejudice to the provision in clause (ii) above, in such other area as the State Government may, by notification in the Official Gazette, specify in this behalf, not below the rank of a

Sub-Inspector and empowered by general order in writing issued by the District Magistrate,

(a) to enter, with the assistance of such persons as may be found necessary, by night or by day, and by force, if necessary, any house, room or place which he has reason to suspect is used as a common gaming-house,

(b) to search all parts of the house, room or place which he shall have so entered when he shall have reason to suspect that any instruments of gaming are concealed therein, and also the persons whom he shall find therein whether such persons are then actually gaming or not,

(c) to take into custody and bring before a Magistrate all such persons,

(d) to seize all things which are reasonably suspected to have been used or intended to be used for the purpose of gaming, and which are found therein:

Provided that no officer shall be authorised by special warrant unless the Commissioner of Police, the Magistrate, the Superintendent of Police or Assistant or Deputy Superintendent of Police concerned is satisfied, upon making such inquiry as he may think necessary, that there are good grounds to suspect the said house, room, or place to be used as a common gaming-house.

(2) Notwithstanding anything in any law for the time being in force, no search made under this section shall be deemed illegal by reason only of the fact that the witnesses (if any) of the search were not inhabitants of the locality in which the house, room or place searched is situate.

6A. If any person found in any common gaming-house entered by any Magistrate or officer of Police under the provisions

of this Act, upon being arrested by any such officer or upon being brought before any Magistrate, and on being required by such officer or Magistrate to give his name and address refuses or neglects to give the same or gives any false name or address, he shall, on conviction, be punished with a fine not exceeding one thousand rupees and on the non-payment of such fine, or in the first instance if to the Court passing the sentence it shall seem fit, with imprisonment for a period not exceeding four months.”

8. Plain reading of the provisions of sub-clause (ii) of Section 6(1) read with proviso, suggests that officer below the rank of Sub-Inspector of Police is not at all authorized to enter in house, room or place, which he has reason to suspect is used as common gaming house. It is only an officer of the rank of Sub-Inspector of Police or above, who can enter in house, room or place, which he has reason to suspect is used as common gaming house, provided he is authorized by the District Magistrate or Sub-Divisional Magistrate or Taluka Magistrate especially empowered by the State Government in this behalf or Superintendent of Police or by Assistant or Deputy Superintendent of Police especially empowered by the State Government in this behalf.

9. In the case in hand, the raid has been effected by the officer of rank of Inspector of Police. He was authorised by the Assistant Superintendent of Police to effect the raid. There is however nothing to indicate the Assistant Superintendent of Police was specially empowered by

the State Government in this behalf. We, therefore, called upon learned A.P.P. to point out such authorisation issued by State Government in the name of Assistant Superintendent of Police. Learned A.P.P. could not point out the same. He relied on sub-clause (iii) of Section 6(1) of the Act and notification dated 03rd July, 1973. Close reading of sub-clause (iii) indicates that State Government by notification in the official gazette can authorise the District Magistrate (Collector) to issue such authorisation in the name of an officer in the rank of Police Sub-Inspector, Assistant Police Inspector or Police Inspector authorising them to exercise powers inferred by clause (a) to (d) of Section 6(1) of the Act. Admittedly, the raid has been effected by Inspector of Police on the basis of written authorisation issued by Assistant Superintendent of Police. As such, it is a case under sub-clause (ii) of Section 6(1) of the Act and not sub-clause (iii). Since there is nothing to indicate the State Government to have specially empowered the Assistant Superintendent of Police to authorise the Inspector of Police to effect raid in question, the same (raid) is illegal and non-est. We are, therefore, inclined to allow this application.

10. In view of above, criminal application is allowed in terms of prayer clause [A].

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD