

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1034 CRIMINAL APPLICATION NO.367 OF 2020

Kadarmiya Dinmohammad Chendwal

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. Vinod Nagnath Sane

..RESPONDENTS

...

Advocate for Applicant : Mr. D.M. Shinde
APP for Respondent/State : Mr.M.M. Nerlikar

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 13th SEPTEMBER, 2023.**

PER COURT :-

. Heard.

2. This application has been filed for quashing of the First Information Report (FIR) being Crime No.259 of 2019 registered with Palam Police Station, Parbhani for the offence punishable under sections 4 and 5 of the Maharashtra Prevention of Gambling Act and consequential charge-sheet, being Summary Criminal Case No. 41 of 2020 pending before the Judicial Magistrate, First Class, Palam, Dist. Parbhani.

3. The challenge is mainly on the ground of authorization of Police Officer, who has effected the raid at so called social club, licence whereof has been issued in the name of the applicant.

4. Perused the FIR and related papers. It is the case of the prosecution that under a guise of running a social club, a common gaming house was being operated from the very premises. The raid, therefore, was effected on 01.12.2019. During the raid, it was found that persons present there were playing cards with monetary betting. All those articles found were seized under the panchanama and FIR was lodged.

We are not concerned with the factual matrix of the matter.

5. Section 6 of the Maharashtra Prevention of Gambling Act reads thus :-

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 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 of 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 of not exceeding four months."

6. Plain reading of the provisions of sub-clause (ii) of clause 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 by Superintendent of Police or by Assistant or Deputy Superintendent of Police especially empowered by the State Government in this behalf.

7. In the case in hand, admittedly the raid has been conducted by the Officer in the rank of Assistant Police Inspector (API). Close perusal of the papers of investigation will suggest that there is no

authorization issued by the Government in the name of Deputy Superintendent of Police authorizing him to issue warrant authorizing the concerned API to enter in house, room or place, which he has reason to suspect is used as common gaming house. The FIR records that it was Shri Mule Sir, a Deputy Superintendent of Police, who had issued a written order to enter and effect raid at Lucky Sports Club and Entertainment Centre. Although, the Deputy Superintendent of Police is authorized to issue special warrant in the name of Officer not below the rank of the Sub-Inspector of Police to effect a raid at a common gaming house, there is no record to indicate the said Deputy Superintendent of Police was especially empowered by the State in this behalf. As such, there is violation of mandatory provisions of section 6 of the Maharashtra Prevention of Gambling Act and as such, the prosecution based thereon is impermissible/bad in law. We, therefore, allow the application in terms of prayer clauses "B" and "G".

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

sga/