

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

CRIMINAL APPLICATION NO. 4085 OF 2022

Sandeep Mohan Shinde & Anr.

...Applicants

Versus

The State of Maharashtra

...Respondent

.....

Mr. Rahul M. Jade – Advocate for the applicants

Mr. G. O. Wattamwar – APP for respondent/State

.....

CORAM : MANGESH S. PATIL

AND

M. M. SATHAYE, JJ.

DATED : 14.03.2023

PER COURT : -

. We have heard learned advocate for the applicants and the learned APP.

2. The applicants are seeking quashment of the First Information Report No. 0052 of 2022 and the consequent criminal case being S.C.C. No. 143 of 2022 pending before the Civil Judge Junior Division and Judicial Magistrate First Class, Shrigonda registered against the applicants for the offence punishable under Sections 12A of the Maharashtra Prevention of Gambling Act, 1887 [in short ‘Gambling Act’].

3. The learned advocate for the applicants submits that the applicants are the law abiding citizens and have been running a Video

Game Parlor by obtaining necessary license under the Bombay Entertainments Duty Act, 1923. He has not played any role much less indulged in gambling.

4. He would submit that assuming that the electronic machine fitted in his parlor was used by some individuals to gamble, he cannot be attributed any role. Being a gaming machine, it can only be used for playing the games. The ingredients for constituting the offence cannot be made out.

5. Learned APP submits that, at this juncture, no such inference as is being submitted by the learned advocate for the applicants can be drawn. Admittedly, they have been running a video game parlor. They were found at the spot. It is a matter of evidence to be led during the trial. The nature of the machine has no relevance if the people use it for playing a game of chance.

6. This Court in exercise of the powers under Section 482 of the Code of Criminal Procedure has inherent limitations. It is trite that these powers are to be used sparingly and in rarest of rare cases. This is not the stage to decipher the material collected by the Investigating Officer. So long as the ingredients for constituting the offences can be discerned from the allegations and the material collected by the Investigating Officer that should the end of the matter.

7. Bearing in mind the aforementioned limitations on the powers of this court, if we go through the papers, it is abundantly clear that the applicants were found present in the Video Game Parlor where electronic machine was fitted and the allegations are that those were being used to play game of chance. Obviously, it would be a matter of evidence to be led before the trial court and to reach a conclusion if the petitioners were involved in the crime for which they are being charged. The aforementioned material for the time being is sufficient and explicitly make out the ingredients for the offence punishable under Section 12A of the Gambling Act.

8. The application is rejected.

[M. M. SATHAYE]
JUDGE

[MANGESH S. PATIL]
JUDGE

SGP