

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 683 OF 2021
WITH
CRIMINAL WRIT PETITION NO. 453 OF 2021
WITH
CRIMINAL WRIT PETITION NO. 677 OF 2021
WITH
CRIMINAL WRIT PETITION NO. 684 OF 2021
WITH
CRIMINAL WRIT PETITION NO. 682 OF 2021
WITH
CRIMINAL WRIT PETITION NO. 679 OF 2021
WITH
CRIMINAL WRIT PETITION NO. 680 OF 2021
WITH
CRIMINAL WRIT PETITION NO. 681 OF 2021**

SDS Broking and Trading Auctioning
Center & Anr.

... Petitioners

Versus

The State of Maharashtra & Ors.

... Respondents

Mr. M. K. Kocharekar i/by Adv Uday Gavali for the Petitioners in all
Writ Petitions.

Mrs. S. D. Shinde, APP for the Respondent No.1-State

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ**

DATED : 26th JULY, 2023

P.C.:

1. In all these Petitions the Petitioners are same. The prayer is for
quashing of following FIRs:

SN	First Informant Report No. & Date	Offences	Name of Police Station.
1	FIR No. 175/2020	IPC: 420, 34	(CID), Branch-4,

	dated 21.12.2020	Maharashtra Lottery Act: 3, 4, 5, 6 Information Technology Act, 66(D)	Antophill Wadala, Mumbai
2	FIR No, 324/2020 dated 21.12.2020	IPC: u/s 420, 294(A), 114 r/w. 34 Maharashtra Lottery Act: u/s. 7(3) & 9(1). Maharashtra Gambling Act: u/s. 3, 4 Information Technology Act: u/s. 66(D)	Matunga Police Station Mumbai
3	FIR No. 513/2020 dated 25.12.2020	IPC: u/s. 420, 294(A), r/w. 34. Maharashtra Lottery Regulation: u/s 7(3) & 9(1). Maharashtra Gambling Act: 4(a) & 5 Information Technology Act: 66(D)	Byculla Police Station Mumbai
4	FIR No. 514/2020 dated 25.12.2020	IPC: u/s. 420, 294(A), 114 r/w. 34. Maharashtra Lottery Regulation: u/s. 7(3) & 9(1). Maharashtra Gambling Act: 4(a) & 5 Information Technology Act: 66(D)	Byculla Police Station Mumbai
5	FIR No. 569/2020 dated 25.12.2020	IPC: u/s. 420, 294(A), 114 r/w. 34 Maharashtra Lottery Regulation: u/s 7(3), 9(1) Maharashtra Gambling Act: u/s. 5 Information Technology Act: 66(D)	Nagpada Police Station, Mumbai
6.	FIR No. 002/2021 dated 01.01.2021	IPC: u/s. 420, 294(A) r/w. 34	Crime Branch (Central

		Maharashtra Gambling Act: u/s. 4(a) & 5 Information Technology Act: 66(D)	Department New Mumbai)
7.	FIR No. 1607/2020 dated 31.12.2020	IPC: u/s. 420, 294(A) r/w. 34. Maharashtra Gambling Act: u/s. 4 & 5 Information Technology Act: 66(D)	Sadar Bazar Police Station Solapur
8.	FIR No. 1333/2020 dated 08.12.2020	IPC: u/s. 420, 465, 468, 471 r/w. 34. Maharashtra Lottery Regulation: u/s. 4(1), 7(3). Maharashtra Gambling Act u/s. 4 & 5	Sakinaka Police Station, Mumbai

2. The Petitioners claims that they are into the business of online food grain auctioning. It is claimed that the businesses is carried out under the valid government procedural registration and licenses. The Petitioner No. 1 is the Managing Director, the Petitioner No. 2 is the business developer of the company which was incorporated under the Companies Act, 2013 under the certificate of incorporation dated 17/07/2019.

3. The Petitioners claim to be registered under the GST from 17/08/2019 and are holding license under the Food Safety & Standard Act, 2006 for e-commerce under the Maharashtra State Tax on Profession, Trades, Callings and Employment Act, 1975.

4. According to the Petitioners they are in receipt of Electronic submission of International Patent Application on 30/06/2020 at International Bureau of World Intellectual Property Organization and are also have copy rights dated 04/06/2019.

5. It is claimed that they have made certain inventions in the matter of broking and trading auction of rice, lentils perishable commodity, food grain etc. It is claimed that after successful auction is conducted the food grain is delivered. It is further claimed that persons wining the auction is handed over the commodity at his door steps once his auction money is deposited.

6. It is further claimed that the Petitioners are selling the product as may be applicable to multi-level marketing issued by the Government of India, Department of Consumer Affairs. According to the Petitioners, they have invented and patented and also published the SDS broking and auctioning center so as to facilitate trading amongst the remotely located customers, fast trading into commodities, trading with reduction of the cost associated with marketing and advertisement of tradable commodities.

7. According to the the Petitioners, the Respondents registered aforesaid offence punishable u/s 420 r/w. 34 of IPC & u/s. 3, 4, 5 & 6 of Maharashtra Lottery Act and u/s. 66(D) of the Information

Technology Act.

8. It is claimed that the aforesaid offences registered after the raid was carried out and the Petitioners are also questioning the act of raiding carried out by the Respondents as such raid is illegal and contrary to section (6) of the Maharashtra Prevention of Gambling Act, 1987 (hereinafter referred to as "the Gambling Act"). According to the Petitioners if the raid is to be conducted under the provisions of the Gambling Act the Police Inspector first is required to obtain the search warrant which is absent in the present case. According to him, the business of the Company of which the Petitioners are office bearers is in accordance with Members of Association.

9. The invention made by the broking and auction was published by the patent office, intellectual property rights journal no. 08/2012 dated 24/02/2012. As such, it is claimed that the entire business of auctioning is conducted in most transparent manner and as such, there is no element of violation of Lottery Act, the provision of Section 420 of IPC and provision of the Gambling Act.

10. Learned Counsel for the Petitioners so as to substantiate the claim submits that the allegations contained in the complaint even if are taken true as its face value still it does not discloses the offence. So as to substantiate the said claim support is drawn from the

judgment of the Apex Court in the matter of ***Veer Prakash Sharma vs Anil Kumar Agarwal & Anr*** reported in ***(2007) 7 SCC 373***. He would submit that the act of the Petitioners cannot be termed as "Gambling" within the meaning of Section 3 of the Gambling Act and so as to substantiate the same he has drawn support from the Division Bench of this Court in the matter of ***Kundalik s/o. Shivaji Kolekar & Anr vs. State of Maharashtra Criminal Application No. 3740 of 2017*** decided at Bench at Aurangabad dated 10/11/2017.

11. According to him, for making out the case under the Gambling Act, the establishment can be granted as common gambling house provided it is used for such purpose i.e. gambling and the person needs to be found in such common gambling house for the purpose of gambling.

12. Learned Counsel would urge that necessary ingredients of the Sections (3) to (5) of the Act are not fulfilled and the issue squarely covered by the aforesaid judgments.

13. Learned APP would urge that the raid that was conducted by the Police Officer on receiving secret inputs about the conduct of the online lottery carried out by online trade of rice. Accordingly the place Kailash Lottery Center was raided and it was found that the

participation by the participants was by selecting the figures after payment of Rs.124/- against which four receipts were issued. The receipt are specifically reflected in the chart which is the part of the FIR. The perusal of the said chart and the mode and manner in which the Petitioners were conducting the business *prima facie* gives an impression of illegal online lottery being conducted by the Petitioners. It was also noticed that the Petitioners were indulged into the online gambling on the pretext of carrying out online trading of rice. The FIR *prima facie* depicts that the Petitioners are involved in the offence by not only playing online lottery but also gambling under the pretext of conducting online auction of various commodities. The fact remains that the Petitioners were conducting online auction of commodity like Rice etc. that too for a very small quantity which runs in single figure as against very small bid amount, as can be gathered from the material recovered during raid. The very conduct of the Petitioners as reflected and inferred from the investigating material sufficiently prompts this Court to believe that under the pretext of online trading of grocery items Petitioners were conducting illegal online lottery business.

14. In this background, the claim putforth by the Petitioners that there was no sanction or raid ought not to have been conducted can

not be gone into at this stage of proceedings particularly when the investigation is in progress. In case during the investigation it is noticed that the Petitioners are not involved in the offence, the investigating officer can file appropriate report before the Court of Magistrate. However, in case if the Petitioners are charge-sheeted it shall always open for them to question the same

15. The Apex Court has already ruled in catena of judgment that the Court should be slow in causing interference in exercise of the inherent powers u/s 482 of Cr.P.C. and under Article 226 and 227 of the Constitution if investigation is at nascent stage.

16. Keeping the right of the Petitioners open to question the charge-sheet in case if they are so charge-sheeted, for the reasons recorded, we do not see any reason to cause interfere.

17. All these Petitions as such lacks merits and accordingly stands dismissed with liberty as observed hereinabove.

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)