

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1737 OF 2022**

Arun Madhukar Sankhe	]	Petitioner
Vs.		
State of Maharashtra	]	Respondent

.....
Mr. Pratik Ingale, for Petitioner.

Mr. K.V. Saste, A.P.P, for Respondent-State.

.....
**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 12th JANUARY, 2023.

P.C.

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith, with the consent of the parties and the petition is taken up for final disposal.

3. Learned A.P.P waives notice on behalf of the respondent – State.

4. By this petition, preferred under Article 226 of the Constitution of India and under section 482 of the Code of

Criminal Procedure (for short "Cr. P.C"), the petitioner seeks quashing of the First Information Report (for short "F.I.R") registered vide C.R. No.40 of 2012 with the Oshiwara Police Station, Mumbai, for the alleged offences punishable under sections 4 and 5 of the Prevention of Gambling Act, 1977.

5. Learned Counsel for the petitioner submits that taking the prosecution case as it stands, no offences as alleged under sections 4 and 5 of the Prevention of Gambling Act are disclosed as against the petitioner. Learned Counsel for the petitioner submits that case of the petitioner is squarely covered by the decision of the Apex Court in the case of **State of Haryana and others Vs. Bhajanlal and others**¹. He submits that even in view of section 468 of Cr. P.C, the Court is barred from taking cognizance of the offences.

6. Learned A.P.P fairly states that no role of the petitioner is seen in the commission of the offence. He submits that there is no allegation that the petitioner was playing cards or that the flat was owned by the petitioner.

¹ 1992 Supp (1) Supreme Court Cases 335

7. Perused the papers. According to the original complainant - Namdev Mahadev Jadhav, he was on duty at the relevant time i.e on 8th July, 2012. He has stated that he received a wireless message asking him to report to A.C.P Dhobale at Evershine Green Society. Pursuant thereto, he reached the said location and reported to Mr. Dhobale. He has further stated that he was informed that some people were playing cards in Flat No.1402, 14th Floor and that a raid was to be conducted in the said flat. Pursuant thereto, a raid was conducted in the said flat. Five people were seen playing cards including two women and three men. Four women were watching the said game. In the adjoining room, eight persons were playing cards, two persons were watching the said game and one person was distributing the cards. All the said persons were arrested.

8. As far as the petitioner is concerned, a perusal of papers shows that no specific role has been attributed except that he was present at the place where cards were being played. It is not the prosecution case that the petitioner had participated in the game of playing cards.

9. It is also pertinent to note that the case is of the year 2012 and charge-sheet in the said case was filed only in January, 2023, i.e after more than ten years. Considering the mandate of section 468 (2) (b) of the Cr. P.C, the Court is now barred from taking cognizance of the offence. Section 468 reads thus;

"468. Bar to taking cognizance after lapse of the period of limitation_.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation;

(2) The period of limitation shall be_

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment".

10. Thus, considering both i.e the nature of the allegations and taking the prosecution case, as it stands and the bar of section 468 (2) (b) of the Cr. P.C, we are of the view that petitioner's case is squarely covered by the judgment of the Apex Court in the case of **State of Haryana and others Vs. Bhajanlal and others** (supra), and hence, there is no impediment in allowing the petition.

11. The petition is accordingly allowed. The F.I.R bearing No. C.R. No.40 of 2012 registered with the Oshiwara Police Station, Mumbai, for the alleged offences punishable under sections 4 and 5 of the Prevention of Gambling Act, 1977, *qua* the petitioner, is quashed and set aside.

12. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

13. All the parties to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.

[REVATI MOHITE DERE, J.]