

CRM-M-49662-2018
Date of Decision: May 01, 2023

Mehar Singh and another	...Petitioners
Versus	
State of Punjab and others	...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Sidharth Grover, Advocate for the petitioners.

Mr. Gurpreet Singh Shergill, AAG, Punjab.

DEEPAK GUPTA, J.

Prayer in this petition is to quash FIR No.267 dated 21.09.2018, registered at Police Station City, Khanna, under Section 13-A of the Public Gambling Act, 1867 (hereinafter referred as 'the Act') (Section 120-B IPC added later on) along with all subsequent proceedings.

2. As per allegations, on 21.09.2018, ASI Dimple of Police Station, City Khanna along with other police officials was present near Ambika Medical Store, opposite bus stand, Khanna, for patrolling, when they received a secret information against the petitioners that they are involved in betting and earn commission and for that purpose they had kept agents, who collect money for them. It was further alleged that they had kept an Accounts Clerk Vijay to maintain the betting accounts. It was also informed that on that day, Gurdev Singh (co-accused) was coming to give them cash received as betting money and that if a raid is conducted immediately, all of them could be apprehended red handed. Ruqqa was

sent to the police station. FIR was registered. All the petitioners were

arrested. During search, ₹3,500/- and some slips were recovered from petitioner No.1. ₹3,830/- and slips were recovered from petitioner No.2. ₹43,790/- and slip of details of accounts were recovered from co-accused Vijay Kumar and ₹9,180/- were recovered from co-accused Gurdev. After completion of investigation, challan under Section 173 Cr.P.C. was filed in the Court.

3. It is submitted by the petitioners that they have been falsely implicated by respondent No.2, who along with her subordinates forcibly broke open the main door of their house without any search warrant at 1.50 a.m. on 21.09.2018 and forcibly took away ₹1,00,000/-. Petitioner No.1 was made to write on a piece of paper and thereafter, they were detained in the police station. FIR is alleged to be nothing but abuse of process of law registered with ulterior motive, as illegal gratification demanded by the respondents, was not met.

4. Apart from the other grounds pleaded in the petition, learned counsel for the petitioners has emphasized on the plea that alleged raid is in total violation of Section 5 of the Act and so, FIR and its subsequent proceedings are liable to be quashed on this ground alone. It is alleged that under Section 5 of the Act, it is only the Magistrate of a District or other officer vested with the full powers of a Magistrate, or the District Superintendent of Police or the Deputy or the Assistant Superintendent of Police, who have the power to make search of any house, room etc., but in the present case, raid in the house of the petitioners was conducted by an officer of ASI rank.

5. Section 5 of the Act reads as under: -

“Section -5 Powers to enter and authorise police to enter and search: -

If the Magistrate of a District or other officer in
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vested with the full powers of a Magistrate, or the District Superintendent of Police or the Deputy or the Assistant Superintendent of Police, upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, room, tent, enclosure, space, vehicle, vessel or place, is used as a common gaming-house,

he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the State Government shall appoint in this behalf to enter with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, room, tent, enclosure, space, vehicle, vessel or place;

and may either himself take into custody, or authorise such officer to take into custody, all persons-whom he or such officer finds therein, whether or not then actually gaming;

and may seize or authorise such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein and also all moneys and securities for money found on the person of such persons as are found playing or gaming or found there present for the purpose of gaming within the meaning of section 4;

and may search or authorise such officer to search all parts of the house, room, tent, enclosure, space, vehicle. vessel or place which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

and may seize or authorise such officer to seize and take possession of all instruments of gaming found upon such search."

6. As is evident from the aforesaid provisions, in case there is credible information regarding the user of any house, tent, enclosure, space, vehicle, vessel or place as a common gaming house, it is only certain officers of specified ranks, who can enter any search of house, room, tent etc. Said officers with specific ranks are:

- Magistrates of a District or

- other officers vested with the full powers of a Magistrate; or
- the District Superintendent of Police; or
- the Deputy or the Assistant Superintendent of Police; or
- or any officer of police, not below such rank as the State Government shall appoint in this behalf, duly authorised by warrant.

It is only officers of the above rank, who can enter the house and have the power to take into custody or authorise officer to take into custody, all persons-whom he or such officer finds therein, whether or not then actually gaming and also the power to seize or authorise such officer to seize the instruments of gaming etc.

7. In this case, raid was conducted by ASI Dimple, who is not of the rank of officer specified under Section 5 of the Act. The separate reply filed on behalf of all the three respondents would reveal that there is nothing to show that respondent No.2-ASI Dimple had been authorised by any of the specified officer to conduct the search or seizure etc. of the house of the petitioners.

8. It is further important to notice that as per the specific allegations of the petitioners, raid was conducted of their house at 1.50 a.m. Although in the reply, all the respondents submit that raid was conducted by the police party at 3.30 am., but the reply is absolutely silent about the place of raid. It is not the case of the respondents that raid was conducted at any public place. In the absence of denial on the part of the respondents, there is no reason to disbelieve the stand of the petitioners that raid was conducted at their house in the night time, may be at 1.50 a.m. as is alleged by them or 3.30 am as alleged by the

petitioners and therefore, provisions of Section 5 of the Act were to be complied with.

9. Once, it is found that specific provisions of the Act have been violated, which is mandatory in nature, the FIR and its consequent proceedings, cannot be sustained, in view of the guidelines provided by Hon'ble Supreme Court in *State of Haryana vs Ch. Bhajan Lal: 1992 AIR 604, 1990 SCR Supl. (3) 259*.

10. As such, FIR No.267 dated 21.09.2018, registered at Police Station City, Khanna, under Section 13-A of the Public Gambling Act, 1867 (hereinafter referred as 'the Act') (Section 120-B IPC added later on) along with all subsequent proceedings qua the petitioners, are hereby quashed.

Allowed.

May 01, 2023

Sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No