



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.200 OF 2024

1. Akshay Anant Matkar
 2. Shri Datta Raju Mudde
 3. Shri Abhishek Vijay Dhotre
 4. Shri Shubhas Dadarao Naikwadi
 5. Shri Dyaneshwar Laxman Bhakte
- ... PETITIONERS

VERSUS

1. State of Maharashtra
 2. Police Inspector,
Osmanabad City Police Station
Dist. Osmanabad
- ... RESPONDENTS

...

AND

CRIMINAL WRIT PETITION NO.201 OF 2024

1. Akshay Anant Matkar
 2. Nitin Eknath Potdar
 3. Shri Kundalik Mahadev Shinde
 4. Shri Sandeep Shubhash More
 5. Shri Vishwanand Sumitr Jagtap
- ... PETITIONERS

VERSUS

1. State of Maharashtra
 2. Police Inspector,
Osmanabad City Police Station
Dist. Osmanabad
- ... RESPONDENTS

...

AND

CRIMINAL WRIT PETITION NO.203 OF 2024

1. Akshay Anant Matkar
2. Sarfaraj Mehmood Mujawar
3. Mohammad Shaikh Rashid

4. Shri Vijay Bhagawan Kamble
 5. Shri Gulab Hakkani Tamnoli
 6. Shri Somnath Manik Mane
 7. Shri Akshay Satish Tapre
 8. Shri Firroj Hahiba Fattepure
- ... PETITIONERS

VERSUS

1. State of Maharashtra
 2. Police Inspector
Osmanabad City Police Station
Dist. Osmanabad
- ... RESPONDENTS

...

AND

CRIMINAL WRIT PETITION NO.204 OF 2024

1. Akshay Anant Matkar
 2. Mahesh Devidas Pawar
 3. Shri Pradeep Eknath Potdar
 4. Shri Mahadev Pandurang Survase
 5. Shri Pandurang Ganpati Hunde
 6. Shri Jeevan @ Anubule Manik Ingle
 7. Shri Rajkumar Pralhad Gaikwad
 8. Shri Hanumant Laxman Koli
 9. Shri Nagesh @ Ganesh Changdev Gade
 10. Shri Machindra Rangrao Wadgane
- ... PETITIONERS

VERSUS

1. State of Maharashtra
 2. Police Inspector
Osmanabad City Police Station
Dist. Osmanabad
- ... RESPONDENTS

...

AND

CRIMINAL WRIT PETITION NO.205 OF 2024

1. Akshay Anant Matkar
2. Mahesh Devidas Pawar
3. Akshy Satish Tapre

4. Firoj Hajoba Mattekane
 5. Kamlakar Ambadas Tavare
 6. Amitkumar Dhanykumar Gambhir
 7. Satish Ramkrushna Gawad
 8. Satish Vittalrao Tapre
- ... **PETITIONERS**

VERSUS

1. State of Maharashtra
 2. Police Inspector
Osmanabad City Police Station
Dist. Osmanabad
- ... **RESPONDENTS**

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Advocate for petitioners in all WPs : Mr. Rushikesh C. Barge
A.P.P. for respondent/State : Mr. G.A. Kulkarni

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**Reserved On : 08.03.2024
Pronounced On : 19.03.2024**

ORDER (PER : MANGESH S. PATIL, J.) :

These are petitions filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, seeking quashment of separate crimes for different offences punishable under the Maharashtra Prevention of Gambling Act, 1887 (herein after the Gambling Act).

2. Since the facts and circumstances in all these matters are exactly the same and the offences have been registered pursuant to a raid effected by Assistant Superintendent of Police probably resorting to Section 6 (1) (ii) of the Gambling Act, in order to avoid rigmarole all these matters are being disposed of by this common judgment.

3. We have heard both the sides finally with their consent.
4. On a tip off received by the Assistant Superintendent of Police Mr. Pankaj Kumavat, the police including him, effected raids on various establishment from Osmanabad City perhaps from the same complex, one after the other between 17.45 and 19.00 on 13.05.2022. It is alleged that all these premises were being used as common gaming house. The instruments of gaming were seized. These petitioners were arrested except the petitioner No.1. Offences were registered in Writ Petition No.200/2024 under Section 12(a), whereas, in the other petitions under Section 4 and 5 of the Gambling Act.
5. It appears that the investigating machinery was suspecting that the game which was being played was known as 'WINGAME' and the petitioner No.1 having a patent and copyright of the software has been implicated. There is nothing to demonstrate that he was himself present when the raid was effected.
6. The learned advocate for the petitioners would begin with demonstrating as to how the game developed by petitioner No.1 known as WINGAME is a game involving pure mathematics and is not a game of chance. He even demonstrated that he was also implicated in a crime in Satara but a division bench in Criminal Writ Petition No.1175/2023 by the judgment and order dated 30.03.2023 has held it to be not a game of chance but involving mathematical skills and the crime has been quashed.

7. After going through the papers when we put a query to learned advocate as to from where it can be discerned that the game that was alleged by being played in the premises wherein the raids were effected in the matters in hand was a WINGAME. Neither the learned advocate for the petitioners nor the learned APP could precisely point out from the papers as to what actually was the game that was being played or suspected that it was being played at these places. If such is the state of affairs, when there are no specific and precise allegations as to what was actually the game that was being played, in our considered view, it cannot be ascertained as to if it was a game of skill or a game of chance. Merely because petitioner No.1 is a proprietor of WINGAME, the learned advocate for the petitioners seem to be taking us through the judgment in his matter, of a division bench at the Principal Seat and has made an endeavour to demonstrate as to how it is a game of mathematical skills and not a game of chance. Any such inquiry in the present matter would be redundant and would not lead us to anything.

8. In view of such peculiar state of affairs, therefore, it was imperative for the prosecution to demonstrate as to why petitioner No.1 is being implicated. No specific and precise charge has been indicated as against him. He along with the persons who were actually running the alleged gaming houses and the persons who were actually gaming at the site have been roped in, in all these crimes.

9. Independently, even if it is assumed for the sake of argument

that WINGAME was the game that was being played, apart from the fact that in that case the observations of the division bench at the Principal Seat would seal the fate of it being a game of mathematical skill, there is no provision under the Gambling Act for inventing even a game of chance. The offences therein are in respect of actual gaming and not for developing a game which can be used for gambling. Therefore, neither the offence punishable under Section 12(a) or Sections 4 and 5 of the Gambling Act could be invoked against petitioner No.1. Therefore, to his extent, it is indeed a matter which is liable to be quashed as has been done by the division bench at the Principal Seat, *albeit* we are resorting to additional reasons.

10. So far as the allegations *qua* the rest of the petitioners, suffice for the purpose to observe that they were found at the spot. The instruments have been seized as also money. Even some chits bearing numbers were found and have been seized and by virtue of Section 7 of the Gambling Act there would be a presumption regarding keeping or gaming in a common gaming house.

Section 4, 5 and 7 read as under :

“4.(1) Whoever —

- (a) opens, keeps or uses any house, room or place for the purpose of a common gaming house,*
- (b) being the owner or occupier of any such house, room or place knowingly or wilfully permits the same to be opened, occupied, kept or used by any other person for the purpose aforesaid,*
- (c) has the care or management of, or in any manner assists in conducting the business of, any such house, room or place*

- opened, occupied, kept or used for the purpose aforesaid,*
- (d) *advances or furnishes money for the purposes of gaming with persons frequenting any such house, room or place, shall, on conviction, be punished with imprisonment which may extend to two years and may also be punished with fine :*

Provided that—

- (a) *for a first offence such imprisonment shall not be less than three months and fine shall not be less than five hundred rupees ;*
- (b) *for a second offence such imprisonment shall not be less than six months and fine shall not be less than one thousand rupees ;*
and
- (c) *for a third or subsequent offence such imprisonment shall not be less than one year and fine shall not be less than two thousand rupees.*

- (2) *Nothing contained in the provisions of the Probation of Offenders Act, 1958, or in sub-sections (1), (4), (5) and (6) of section 360 of the Code of Criminal Procedure, 1973, shall apply to any person convicted under this section.*

5. *Whoever is found in any common gaming-house gaming or present for the purpose of gaming, shall on conviction be punished with imprisonment which may extend to six months and may also be punished with fine :*

Provided that—

- (a) *for a first offence such imprisonment shall not be less than one month and fine shall not be less than two hundred rupees ;*
- (b) *for a second offence such imprisonment shall not be less than three months and fine shall not be less than two hundred rupees ;*
and
- (c) *for a third or subsequent offence such imprisonment shall not be less than six months and fine shall not be less than two hundred rupees.*

Any person found in any common gaming-house during any gaming therein shall be presumed, until the contrary

is proved, to have been there for the purpose of gaming.

7. When any instrument of gaming has been seized in any house, room or place entered under section 6 or about the person of any one found therein, and in the case of any other things so seized if the Court is satisfied that the Police officer who entered such house, room or place had reasonable grounds for suspecting that the things so seized was an instrument of gaming, the seizure of such instrument or thing shall be evidence, until the contrary is proved, that such house, room or place is used as a common gaming house and the person found therein were then present for the purpose of gaming, although no gaming was actually seen by the Magistrate or the Police officer or by any person acting under the authority of either of them :

Provided that the aforesaid presumption shall be made, notwithstanding any defect in the warrant or order in pursuance of which the house, room or place was entered under section 6, if the Court considers the defect not to be a material one."

11. True it is that some of these petitioners owned the places where the raid was effected as also the paraphernalia and some of them were present therein for the purpose of gaming and consequently depending upon their such role, they could be tried either under Section 4 or 5 but that would be a matter of framing of charge/recording of plea for specific offence which is to be done by the trial court. We need not be guided by such a distinction.

12. True it is, as has been cursorily observed herein above, there seem to be no specific and precise allegations or investigation to ascertain as to what was the game being played. However, it would be a matter of evidence to be led by the prosecution which can only happen during the

trial. It is in the peculiar circumstances, as has been indicated herein above even presumption under Section 7 will have its role.

13. In these circumstances, in our considered view, these are not the fit cases where the request of the petitioners except the request of petitioner No.1 for quashment of the crime can be considered under the extraordinary powers under Article 226 of the Constitution India and Section 482 of the Code of Criminal Procedure.

14. The writ petitions are partly allowed. The Crime No.113/2022 registered with Osmanabad City Police Station, Dist. Osmanabad for the offences punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act 1887, the consequent Final Report No.53/2022 and Criminal Proceeding bearing SCC No.1450/2022 to the extent of petitioner No.1 - Akshay Anant Matkar are quashed and set aside.

15. The Crime Nos.109/2022 and 110/2022 registered with Osmanabad City Police Station for the offences punishable under Sections 4 and 5 of the Maharashtra Prevention of Gambling Act 1887, the consequent Final Report Nos.32/2022 and 43/2022, and Criminal Proceedings bearing SCC Nos.1049/2022 and 1231/2022 respectively to the extent of petitioner No.1 – Akshay Anant Matkar are quashed and set aside.

16. The Crime Nos.127/2022 and 126/2022 registered with Anandnagar Police Station, Dist. Osmanabad for the offences punishable

under Section 4 and 5 of the Maharashtra Prevention of Gambling Act 1887, the consequent Final Report Nos.57/2022 and 45/2022 and Criminal Proceedings bearing SCC Nos.1057/2022 and 769/2022 respectively to the extent of petitioner No.1 - Akshay Anant Matkar are quashed and set aside.

17. Rest of the writ petitions in respect of rest of the petitioners are dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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