

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2514 OF 2023

Dnyaneshwar Prakash Kharmate, Age 34 years,
R/o.Room No.401, 4th floor, H-Wing, Police Line,
Gulistan Compound, Chirag Nagar,
Ghatkopar (W), Mumbai-400 076.

Petitioner

versus

1. The State of Maharashtra
2. PSI Amol Ramesh Sawant, Age 32 years,
Warje Police Station, Malawadi,
Gridhar Nagar, Warje, Pune.

Respondents

Mr.Ganesh Gupta with Jamal Khan, Rameez Shaikh, Jagrut Patil,
Sahil Ghorpade, Madan Khansole i/by G.G.Legal Associates for
Petitioner.

Mr.VA.Kulkarni, APP, for State.

PSI S.Pawar, Matunga Police Station, present.

CORAM : PRAKASH D. NAIK AND
N.R.BORKAR, JJ.

DATE : 18th March 2024

PC :

1. Petitioner has invoked writ jurisdiction of this Court under Article 226 of Constitution of India challenging proceedings in C.C No.PS/3910/2019 pending before the Court of learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai.

2. The FIR was registered on 26th June 2019 with Matunga Police Station for offences u/s.4(a), 5 of Maharashtra Prohibition of Gambling Act and Section 25(c) of Indian Telegraph Act. It was registered at the instance of Police Sub Inspector attached to Matunga Police Station.

3. The brief allegations in the FIR and the charge sheet is that on 25th June 2019 the first informant received the information that betting is conducted in respect to world cup cricket match at Hotel Rami. Raiding party was formed. Panch witnesses were called. Information was received that one Mikin Shah is indulging in betting on the world cup cricket match between Australia and England at Rami Hotel situated at Dadar, Mumbai. The raiding team reached the place of incident. They proceeded towards room no.706 on 7th floor of hotel. The room was opened. The raiding team reached the spot at around 20.55 hours. Three persons were sitting in the room. They were watching cricket match played between Australia and England. They were talking on cell phone. One of them was sending whats app messages. Another person was sitting on the bed and watching match.. All the four persons were informed the purpose of raid. The cell phones of the persons in the room were checked and it was noticed that there were whats app chats with various persons. Petitioner was found present in the room where betting was conducted. He was found in possession of cash of Rs.40,000/- and cell phone. The FIR was registered. Investigation was conducted. Accused were arrested and granted bail. Charge sheet was filed. Supplementary charge sheet was filed.

4. Learned advocate for Petitioner submitted that there are serious discrepancies in the evidence. Petitioner is working as PSI. He has been falsely implicated in the case. He has been appointed as PSI in the year 2014. He is rendering his service in police department. Nothing incriminating was found in possession of Petitioner. Presence of Petitioner at the place of incident is doubtful. Investigating agency has not followed proper procedure while raiding the premises. The documents on record would indicate that

first informant ought not to have been present at the place of incident at the time of raid. Section 6 of Maharashtra Prevention of Gambling Act provides that it is obligatory on police party to have order in writing or authorised in each case by special warrant issued by Commissioner of Police to exercise such power as delegated to Assistant Commissioner of Police u/s.11 of the Act. Police raided the premises and arrested accused without general order in writing or authorised by special warrant issued by Assistant Commissioner of Police. PSI Maruti Shelke had made a station diary no.54/2019 in different C.R No.76/2019 dated 25th June 2019 which shows that he was present at the police station at the time of raid. Thus, he should not have been present at the time of raid at the hotel premises. The FIR proceeds with the allegation that Petitioner was one of the person who was present in the hotel premises. Whereas supplementary charge sheet was filed and statement of first informant was recorded on 26th February 2021 wherein it is stated that on 25th June 2019 raid was conducted at Hotel Rami where three persons namely Mikin Shah, Manish Singh and Prakash Bankar were found. All of them were watching cricket match. They were found in possession of cell phones. They were chatting on cell phones. At that time first informant received call from Petitioner who inquired with him whether he had any tip. The first informant told him that he has been to the place in routine check up. First informant was suspicious about the call made by Petitioner and gave information to Senior Inspector of Police. One of the inmate of premises had sent a message to the Petitioner-accused about arrival of police which prompted the Petitioner to make the call. If this version is accepted, the entire case of prosecutions fails on ground as subsequent statement would indicate that Petitioner was not present

at the premises at the time of raid and only act attributed to the Petitioner is that he made a call to the first informant. There are several other discrepancies in the evidence collected by police which creates doubt about prosecution case. The station diary entries and the officers who were purportedly present during the raid, the tower location of Petitioner collected during investigation would indicate that Petitioner and the members of raiding party could not have been present at the place of incident.

5. Learned advocate for Petitioner has relied upon following decisions :

- (i) Janardan Vs. The State of Maharashtra
(AIR-1978-SC-1234);
- (ii) State Vs. Durlabhji Anadji and other
AIR-195-Saurashtra-81

6. Learned APP submitted that charge sheet is filed. The FIR indicate that Petitioner was present at the place of incident. He was arrested. His cell phone was seized. He was granted bail. Subsequent statement of first informant which contradicts his version in the FIR will have to be tested during trial and this is not the stage to evaluate the evidence.

7. Petitioner is working as PSI with Mumbai Police. The FIR indicate that he was present in the premises when raid was conducted. Assuming that he was present, no overt act has been attributed to him. There is no incriminating evidence to show that he was betting on the cricket match. The cell phone does not indicate that there were messages of betting. The supplementary statement of first informant was recorded which is completely in contract with his version in the FIR. The said statement would

indicate that Petitioner was not at all present in the premises when raid was conducted. The only overt act attributed to the Petitioner is that he made a call to the complainant inquiring about raid conducted by police and whether he has received any tip for it. That would not amount to any offence as alleged. It is true that generally the contradictions would be a matter of evidence. However, considering the fact that Petitioner was working in police department, even in the FIR no overt act is attributed to him, no incriminating evidence is found against him, there is no cogent reason to establish that he was betting and in the light of the fact that statement of first informant itself who is also a police official indicate that Petitioner was not present in the premises, Petitioner cannot be prosecuted for any offence. There is no evidence to establish that he was involved in committing the offence under Maharashtra Prevention of Gambling Act or acting in furtherance of common intention with accused.

ORDER

- (i) Criminal Writ Petition No.2514 of 2023 is allowed and disposed off;
- (ii) The proceedings in C.C No.PS/3910/2019 pending before the Court of Metropolitan Magistrate, 30th Court, Kurla, Mumbai arising out of FIR dated 26th June 2019 bearing Special LAC No.109 of 2019 registered with Matunga Police Station, Mumbai, is quashed and set aside.

(N.R.BORKAR, J.)

(PRAKASH D. NAIK, J.)