



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.124/2024

Mr. Rajesh S/o Shivram Maske
aged about 51 Yrs., Occ. Teacher,
R/o Shivaji Nagar, Post Dhamni,
Manora, Professor Colony, Karanja
Lad, District Washim.

... Petitioner

- Versus -

1. State of Maharashtra, through its
Secretary, Department of Home,
Mantralaya, Mumbai 32.
2. Superintendent of Police, Washim
Post Office Road, Near Bus Stand,
Washim, Maharashtra.
3. Sub-Divisional Police Officer,
Karanja Lad, Qazipura, Karanja,
Maharashtra.
4. State of Maharashtra, through its
Police Station Officer, Police station
Manora, District Washim
5. Mr. Sunil S/o Jagatrao Nemane,
Buckel No.1132, Aged About 42
Yrs., Occ. Government Servant
(Police Constable attached to Manora
Police Station, District Washim),
R/o Manora Police Station,
District Washim.

6. Mr. Yogesh Manwar, Police Staff
223, aged about: 40 Yrs.,
Occ. Government Servant
(Attached as Writer to Manora
Police Station, District Washim),
R/o Manora Police Station,
District: Washim.

... Respondents

Mr. Sumedh R. Kadam, Advocate for the Petitioner
Mr. S.M. Ukey, A.P.P. for Respondent Nos.1 to 4.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT : 19.6.2024.
DATE OF PRONOUNCING THE JUDGMENT : 4.7.2024.

ORAL JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard Mr. Sumedh R. Kadam, learned Advocate for the
petitioner and Mr. S.M. Ukey, learned A.P.P. for respondent Nos.1
to 4. **Rule.**

2. The petitioner seeks to quash criminal proceedings S.C.C.
No.85/2024 arising out of Crime No.0800/2023 registered with
Police Station Manora, District Washim for the offence

punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act (for short "Act").

3. On receipt of secret information, the informant-Naik Police Constable Sunil Nemane, with police staff and panchas raided the place, some people were playing gambling game of a deck of 52 cards on which money was being bet. Rajesh S/o Shivram Maske, the petitioner, who was working as a primary school teacher at Jamdari (Ghoti), Manora, District, Washim was caught hold of along with accused No.2-Pralhad S/o Parnu Manwar, aged 82 years, an ex-army personnel.

4. Respondents No.5 and 6 lodged F.I.R. against the petitioner. During investigation it transpired that petitioner has given false name at the time of raid, therefore, offence under Section 182 of the Indian Penal Code (for short "I.P.C.") is registered against this petitioner while filing final report i.e. chargesheet. However, as per section 195 of Code of Criminal Procedure (for short "Cr.P.C."), the Court cannot take cognizance

of any offence punishable under sections 172 to 188 (both inclusive) of the I.P.C. unless a complaint in writing has been made to the Magistrate by the public authority concerned.

5. Shri Kadam, learned counsel for the petitioner submits that name of the petitioner in the F.I.R. is mentioned as Ramesh S/o Tukaram Maske where as the real name of the petitioner is Rajesh S/o Shivram Maske. This goes to show that the investigating authority did not even checked the aadhar card of the petitioner before registering the F.I.R. which was filed against both the accused. He argues that if the story of the investigating agency is true, there has to be immediate recovery of entire 52 cards from the spot of incident which has not been done and that the informant is himself the investigating authority.

6. Respondent No.5 put his hand in the petitioner's pocket and took out Rs. 11,320/- and kept it in his pocket and started to slap and verbally abused the petitioner in front of the entire school. In addition, respondent No.6 made a demand to the

petitioner that if he gives Rs.20,000/- they will not register an F.I.R.

7. The petitioner as a part of his duty had gone to meet accused No.2 to discuss regarding the issue of getting village children admitted to his school. They were standing near a Buddha Vihar, little away from where the unknown persons were gambling.

8. He also states that the police personnel reached the spot in civil clothes and this raises the question that if they were not in uniform then there was no reason for the people to run away. This shows the imaginative nature of the F.I.R.

9. Shri Ukey, learned A.P.P. for the respondents, vehemently opposed the submissions of the petitioner and contended that when the personal search was conducted, it was found that playing cards and cash of Rs. 1320/- was in possession of the present petitioner and other cash was also found with co-accused Pralhad Manvar.

10. He submits that the aadhar card of the petitioner reveals his real name as Rajesh S/o Shivram Maske. Thus the petitioner has given false information with *mala fide* intention and hence offence under section 182 of the I.P.C. is added in the present crime. Moreover, the petitioner failed to make out any case for relief as prayed. The case of the petitioner also does not fall within seven exceptions carved out by the Hon'ble Supreme Court in the judgement reported in State of Haryana v. Bhajanlal reported in ***AIR 1992 SC 604.***

11. Heard both sides. Perused the record.

12. Initially the offence under Section 12(a) of the Act was registered. During investigation it was found that the petitioner has given the false name as Ramesh Tukaram Maske. On verification of the aadhar card it is found that name of petitioner is Rajesh Shivram Maske. He has intentionally given the wrong name and, therefore, the offence under Section 182 (a) of the

I.P.C. is registered against the petitioner. Section 182 of the I.P.C.

reads as follows:-

“182. False information, with intent to cause public servant to use his lawful power to the injury of another person - Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

13. Section 195 of the Cr.P.C. provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the I.P.C. except any complaint in writing of the public servant or of some other public servant to whom he is administratively subordinate. For this purpose we have to consider the definition of complaint. Section 2(d) defines complaint to mean any allegation made orally or in writing to a

Magistrate, with a view to his taking action under this Code, that some person, whether unknown or known, has committed an offence but does not include a police report.

14. In the case in hand there is no dispute that the chargesheet is filed before the learned Magistrate but it is not a complaint in writing of a public servant concerned. It is contended that the petitioner has given the false name when he was arrested at the time of raid for registering the crime. In the event of absence of any complaint in writing of the concerned public servant the F.I.R. being registered, the Magistrate will not be in a position to take cognizance of offence under Section 182 having a clear-cut bar created by provisions of Section 195 Cr.P.C. For this reason the petitioner will be entitled to relief in terms of prayer clause IV-B insofar as the offence under Section 182 of the I.P.C. is concerned.

15. Learned Advocate for the petitioner has relied on the judgment of this Court in the case of Mr. Pankaj S/o Dhyaneshwar Nighot V/s. State of Maharashtra reported in 2022

ALL MR (Cri) 898 wherein this Court has relied on the judgment in the case of C. Muniappan and others V/s. State of Tamil Nadu reported in 2010 ALL SCR 2611 in which the Hon'ble Supreme Court after considering the scheme of provisions of Section 195 of Cr.P.C. has held that Section 195(a)(i) of Cr.P.C. bars Court from taking cognizance of any offence punishable under Section 188 of I.P.C. unless there is a complaint in writing of the public servant concerned. The object of this provision is to provide for a particular procedure in case of giving false information. The Court lacks competence to take cognizance in certain types of enumerated offences therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will, or frivolity of disposition and to save the time of the criminal Courts by being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained in Section 190 of Cr.P.C. that any person can set the law in motion by making the complaint, as it

prohibits the Court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Having regard to the clear and cogent provisions of Section 195(1)(a) of the Cr.P.C. and above decision of the Hon'ble Supreme Court, relief will have to be granted to the present petitioner insofar as he is sought to be prosecuted for the charge punishable under Section 182 of the I.P.C.

16. The petitioner is also charged for the offence punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act which reads as under:-

“12. Power to arrest without warrant for gaming and setting birds and animals to fight in public streets

A Police Officer may apprehend and search without warrant-

(a) any person found gaming or reasonably suspected to be gaming in any public street, or thoroughfare, or in any place to which the public have or are permitted to have access or in any race-course.”

The wordings of this section starts with power to arrest without warrant. On conviction in said offence punishment would be fine which may extend to Rs.300/- or imprisonment

which may extend to three months. The First Schedule of the Cr.P.C. Part II classifies the offences against several laws i.e. offences other than specified in the I.P.C. Therein it is provided that if the offence against other laws is punishable with imprisonment for less than three years or with fine only then the same will be non-cognizable.

17. The provision of Section 6 lays down a provision regarding the powers of Magistrates, Police Officer to effect entry, undertake seizure, take into custody the persons suspected to be indulging in gaming, in a place suspected to be a gaming house. Sub-clauses of Sub-Section 1 of Section 6 leaves no manner of doubt that a Commissioner of Police derives the power to issue special warrant in the name of any Police Officer not below the rank of Police Sub-Inspector under clause (i) and the District Magistrate, Sub-Divisional Magistrate and Superintendent of Police under clause (ii) derive such power even without the State Government empowering them to do so.

18. Full Bench of this Court in the case of Shri Maroti S/o Gangaram Nendane V/s. The State of Maharashtra and another in Criminal Application No.1763/2022 decided on 8.3.2024 with connected matters has held as follows:-

“13. We clearly find justification to such an interpretation on the basis of the observations and conclusion in the matter of Abasbhai Abdulhussein (supra) which is a division bench judgment of this Court of pre-independence era, relevant para to that effect is as follows:

“It is pointed out that under section 6 of the - Gambling Act the Commissioner of Police and certain other persons have power to issue special warrants of search and also of arrest, and that consequently what they may authorise by special warrant they may do personally. It is said, therefore, that this class of offence is one where the police may arrest without a warrant, because the superior officer himself such as the - Commissioner of Police may do so without a warrant. We have considered this argument and in our opinion, it is well founded. It is directly supported by a decision of the Calcutta High Court in Queen-Empress v. Deodhar Singh [(1899) 27 Cal. 144], which was a gambling case where it became material to consider whether the offence was a non-cognizable one. At page 150 the judgment says:-

“It is contended that the offence is a non-cognizable one within the meaning of clause (1)(n) of section 4 of the Code of Criminal Procedure.

Now, under the Gambling Act, it is not every Police Officer who can arrest without a warrant. It is only the District Superintendent of Police who can arrest or by warrant direct the arrest of persons gambling in a house. The District Superintendent being a Police Officer who may, under a law for the time being in force, viz, the Gambling Act, arrest without warrant, we think that the requirements of clause (1)(f) of the above sections are satisfied, and that the offence in question is, therefore, a 'cognizable offence.' We cannot accept the contention that the words in that clause a 'Police Officer' mean 'any and every' Police Officer. It is sufficient if the Legislature has limited the power of arrest to any particular class of Police Officers."

14. The Supreme Court decision in the matter of Lalsing Kishansingh (supra) is also relevant.

"10. From a plain reading of Section 6(1), it is clear that subject to the conditions of the proviso, a Commissioner of Police may empower by a general order or authorize by special warrant a police officer not below the rank of a Sub-Inspector, to do any of the acts and things enumerated in sub-clauses (a) to (d) of that sub-section, including the act of arresting a person found gambling or present in a common gaming house. It follows therefrom, by necessary implication, that the Commissioner of Police can personally do any of the aforesaid acts and things which he could authorise any other police officer of the requisite rank to do. The primary repository of the plenary power to do the aforesaid acts and things, constituted under clause (i), is the Commissioner of Police. The clause only enables him to employ his subordinate police officers, not below the authorised rank of a Sub-Inspector to

execute his general order or special warrant to arrest for offences under Sections 4 and 5 of the Act.

11. It will be noted further that even under clause (iii), in an area notified by the Government, any police officer not below the rank of a Sub-Inspector empowered by the District Magistrate under a general order in writing can arrest a person found gambling or present in a common gaming house, without a warrant from a Magistrate. In short, Section 6 confers the power of arrest thereunder only on a specified class of police officers and not on any or every police officer.”

19. In view of the law laid down by the Full Bench of this Court in the above case the Police Officer can authorize or delegate the powers to arrest in case of gambling i.e. for the offence under Section 12(a) Gambling Act which is cognizable and we leave it to the Court of Magistrate to decide whether the powers were delegated. Therefore, we do not find this case to quash F.I.R. for offence under Section 12(a) of Gambling Act.

20. For the aforesaid reasons, we partly allow the writ petition in the following terms:

- (i) The criminal proceedings S.C.C. No.85/2024 arising out of Crime No.0800/2023 registered with Police Station Manora, District Washim is quashed and set aside only to the extent of the offence punishable under Section 182 of the Indian Penal Code.
- (ii) The petitioner to face the trial for the offence under Section 12(a) of the Maharashtra Prevention of Gambling Act.

With the above directions writ petition stands disposed of.

(MRS.VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)