

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-13900-2021
Reserved on 01.04.2024
Pronounced on : 03.04.2024
2024:PHHC: 044297

ROHIT KUMAR AND OTHERS

. . . . Petitioners

Vs.

STATE OF PUNJAB AND ANOTHER

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ishan Gupta, Advocate, with
Mr. Harita Panthey, Advocate, for the petitioners.

Mr. Amandeep Singh, DAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioners pray for quashing of FIR No.99 dated 23.09.2010 under Sections 13(A) of the Public Gambling Act, 1867; Section 420 of IPC; and Sections 4 & 5 of the Prize Chit and Money Circulation Schemes (Banning) Act, 1978, registered at Police Station Gidderbaha, District Sri Muktsar Sahib; and summoning order dated 25.04.2019 passed by the Ld. SDJM, Gidderbaha, as well as all other consequential proceedings arising therefrom against the petitioners.

2.1 Ld. counsel contends that FIR was lodged on the basis of secret information received by SI Makhan Singh to the effect that many people were inducing the general public to indulge in *Dara Satta* (gambling) on the price of gold, silver and bronze through internet and that if M/s Kamal Trading Company is raided, the accused could be nabbed. Representation was also

received from one Harbans Singh on this issue. SI Makhan Singh conducted the raid and recovered computer set, two leads connecting Monitor 'LG', CPU, mouse etc. besides the printer. Petitioners were arrested.

2.2 Ld. Counsel submits that as petitioners were falsely implicated, they made representation Annexure P2 to DSP, Gidderbaha for conducting fair inquiry. After conducting the necessary inquiry, cancellation report (Annexure P3) was submitted by the SHO, Police Station, Gidderbaha stating therein that petitioner No.2-Vinay Kamal @ Vijay Kumar was the proprietor of M/s Kamal Traders and authorised dealer of Bhagyashree Commodity and Derivatives Private Limited and that no offence as mentioned in the FIR was made out against the petitioners. A letter dated 29.09.2010 (Annexure P4) was also issued to this effect by Bhagyashree Commodity and Derivatives Private Limited. Ld. counsel contends further that certificate of membership dated 25.08.2004 (Annexure P5) issued by the National Commodity and Derivatives Exchange Limited to Bhagyashree Commodity and Derivatives Private Limited was also submitted along with cancellation report, which was duly approved by DSP, Gidderbaha vide his report dated 10.01.2011 (Annexure P6). SSP, Sri Muktsar Sahib approved the same on 14.03.2011 vide Annexure P7). On the directions of SSP, Sri Muktsar Sahib, statement of Sh. Vikram Jain, Manager Bhagyashree Commodity and Derivatives Private Limited was also recorded under Section 161 CrPC, copy of which is Annexure P9 and then cancellation report was again sent to SSP, Sri Muktsar Sahib, who approved the same vide his letter dated 08.11.2011 (Annexure P12).

2.3 The said cancellation report was then submitted to Id. SDJM, Gidderbaha. However, Id. SDJM, Gidderbaha summoned the complainant-respondent No.2 - SI (Retired) Makhan Singh, who did not agree with the

cancellation report and rather, moved a protest petition (Annexure P13). Ld. Magistrate rejected the cancellation report and took cognizance vide impugned order dated 25.04.2019 (Annexure P14).

2.4 Contention of ld. counsel for the petitioners is that SI Makhan Singh was not empowered to conduct any search in the premises of the petitioners as per Section 5 of the Public Gambling Act, 1867, which fact has been duly admitted by the respondent-State in its reply. Ld. counsel also refers to a decision of this Court rendered in ***Mehar Singh and another Vs. State of Punjab and others, 2023(3) RCR (Criminal) 504.***

2.5 Ld. counsel also contends that ingredients of Section 420 IPC are not made out, as there is nothing in the evidence collected by the Investigating Agency that any person from the general public made a complaint to have been cheated on the basis of wrong representation. Further, the provisions of Prize Chit and Money Circulation Schemes (Banning) Act, 1978, are not at all attracted to the case, as Bhagyashree Commodity and Derivatives Private Limited is a member of National Commodity and Derivatives Exchange Limited and that M/s Kamal Traders is the authorised dealer of Bhagyashree Commodity and Derivatives Private Limited.

3. Respondent N: 2 SI Retd. Makhan Singh was duly served but did not appear to contest the petition.

4. Ld. State counsel could not refute any of the contentions as raised by counsel for the petitioners. Rather, the reply filed by way of affidavit dated 22.07.2021 of Sh. Narinder Singh, PPS, Deputy Supdt. of Police, Sub Division Gidderbaha, District Muktsar Sahib, supports the entire case of the petitioners.

It will be relevant to reproduce para No.5 of the preliminary submissions of the reply filed by the respondents, which reads as under: -

“That it is submitted that the FIR in question was registered on 23.09.2010 and upon enquiry, the petitioners were found innocent and the cancellation report was prepared on 24.12.2010. Since **during the enquiry, the occurrence was not found to have taken place**, so the fact that SI Makhan Singh was having any warrant of the competent authority or not, was not considered during the enquiry. However, as per the police record, SI Makhan Singh (now retired) did not get issued the warrant from the concerned authority for raiding the premises in the present case and had proceeded to conduct the raid. Now the case is pending before the learned SDJM, Gidderbaha. No cause of action has accrued to the petitioners to file the present petition.”

5. It is evident from the aforesaid reply, as submitted by the respondent-State, that on inquiry, even the occurrence in itself was not found to have been taken place, due to which the cancellation report was prepared. So much so, SI Makhan Singh was not having any warrant of the competent authority so as to conduct the alleged raid in the premises of the petitioners.

6. In the case of *Mehar Singh and another (supra)*, after referring to Section 5 of the Public Gambling Act, 1867, it has been held by this Court as under: -

“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.”

7. In the present case also, it is conceded by the respondent-State that SI Makhan Singh was not authorised to conduct the raid. Besides, in view of the documents as placed on record by the petitioners and as conceded by the State, M/s Kamal Traders of petitioners being the authorised dealer of Bhagyashree Commodity and Derivatives Private Limited, which is a member of National Commodity and Derivatives Exchange Limited, so no offence under Sections 4 & 5 of the Prize Chit and Money Circulation Schemes (Banning) Act, 1978 is made out. Ingredients under Section 420 IPC are completely missing.

8. Consequently, the present petition is allowed, as continuation of proceedings will be a gross misuse of the process of law. As such, FIR No.99 dated 23.09.2010, under Sections 13(A) of the Public Gambling Act, 1867, Section 420 of IPC and Sections 4 & 5 of the Prize Chit and Money Circulation Schemes (Banning) Act, 1978, registered at Police Station Gidderbaha, District Sri Muktsar Sahib; and summoning order dated 25.04.2019 passed by the Ld. SDJM, Gidderbaha, as well as all other consequential proceedings are hereby quashed qua the petitioners.

03.04.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No