

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1134 OF 2018

Sanjay Sonba Chitnis	]	Applicant
Versus		
The State of Maharashtra	]	Respondent

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Mr. Sarang S. Aradhye a/w Ms. Dnyaneshwari S. Utpat and Mr. Shantanu Gurav, for Applicant.

Ms. Veera Shinde, A.P.P, for Respondent – State.

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CORAM : M.S. KARNIK &
SHARMILA U. DESHMUKH, JJ

DATE : 30th SEPTEMBER, 2025.

ORAL ORDER: [PER JUSTICE M.S. KARNIK, J.]:

1. Heard Mr. Aradhye, learned Counsel for the petitioner and Ms. Shinde, learned A.P.P, for respondent – State.

2. The facts of the case in brief are that a raid was conducted on 2nd February, 2018 by the Assistant Police Inspector (for short “A.P.I”) of the Special Police Squad on information that a gambling club was being run by Vijay Zend and the applicant herein. In the said raid, the Squad found that in

the tin shed and in a room by the side thereof situated adjacent to Pandharpur Railway Police Chowky, the accused Santosh Shamrao Kamble and 18 others were found playing a game named as “Manna”. Accordingly, a member of the Squad by name Amrut Rohidas Khedkar, Police Naik lodged a complaint against all the accused who were found playing a game as well as the present applicant and one another who were running the said gambling club. A crime bearing C.R No.121 of 2018 came to be registered with Pandharpur City Police Station for the offences punishable under sections 4 and 5 of the Maharashtra Prevention of Gambling Act (for short “the said Act”).

3. Learned Counsel for the petitioner submitted that the raid conducted is illegal as the same is contrary to the provisions of section 6 of the said Act. Section 6 of the said Act reads thus;

“6, Entry, search, etc., by police officers in gaming houses

[(1)] It shall be lawful for a Police Officer—

(i) [in any area for which a Commissioner of Police has been appointed] not below the rank of a Sub-Inspector and either empowered by general order in writing or authorised in each case by special warrant issued by the Commissioner of Police, and

(ii) elsewhere not below the rank of a Sub-Inspector of Police authorised by special warrant issued in each case [by a District Magistrate or Sub-Divisional Magistrate or by a Taluka Magistrate specially empowered by the State Government in this behalf or by a [Superintendent of

Police] or by an Assistant or Deputy Superintendent of Police especially empowered by [the State Government] in this behalf, [and]

(iii) without prejudice to the provision in clause (ii) above, in such other area as the State Government may, by notification in the Official Gazette, specify in this behalf, not below the rank of a Sub-Inspector and empowered by general order in writing issued by the District Magistrate.]

(a) to enter, with the assistance of such persons as may be found necessary, by night or by day, and by force, if necessary, any house, room or place which he has reason to suspect is used as a common gaming-house,

(b) to search all parts of the house, room or place which he shall have so entered, when he shall have reason to suspect that any instruments of gaming are concealed therein, and also the persons whom he shall find therein whether such persons are then actually gaming or not,

(c) to take into custody and bring before a Magistrate all such persons

(d) to seize all things which are reasonably suspected to have been used or intended to be used for the purpose of gaming and which are found therein:

Provided *that no officer shall be authorised by special warrant unless the Commissioner of Police, the Magistrate, [the Superintendent of Police] or Assistant or Deputy Superintendent of Police concerned is satisfied upon making such inquiry as he may think necessary, that there are good grounds to suspect the said house, room, or place to be used as a common gaming-house.]*

(2) Notwithstanding anything contained in any law for the time being in force, no search made under this section shall be deemed illegal by reason only of the fact

that the witnesses (if any) of the search were not inhabitants of the locality in which the house, room or place searched is situate.]

4. So far the present case is concerned, the same would be governed by sub clause (ii) of section 6 (1) of the said Act.

5. Learned Counsel for the petitioner submits that in the present case there was no warrant issued by the District Magistrate or Sub Divisional Magistrate or by a Taluka Magistrate specially empowered by the State Government in this behalf or by a Superintendent of Police or by an Assistant or Deputy Superintendent of Police especially empowered by the State Government in this behalf.

6. Learned A.P.P invited our attention to the affidavit-in-reply filed by Ganesh Rajaram Shinde, Additional Superintendent of Police, Pune Railway Police, Pune dated 12th September, 2023 which is duly affirmed. In paragraph 2 of the said affidavit, it is mentioned that on the basis of information received and oral order of then Superintendent of Police, Solapur, API Dhande from the special squad of Superintendent of Police, Solapur conducted the said raid in the tin shed and in a room by the side thereof situated adjacent to Pandharpur Railway Police Chowky. The affidavit is silent as to whether API Dhande was authorized by special warrant and as to whether the Superintendent of Police is especially empowered by the State Government to enter and search the gaming

house and to take action against the gaming house. In the affidavit-in-reply, the only stand is that on the oral order of then Superintendent of Police, the raid was conducted. The petition, therefore, deserves to succeed as the raid conducted is in breach of section 6 of the said Act.

7. Learned A.P.P submitted that the trial has commenced. However, in our opinion, as raid is contrary to the provisions of section 6 of the said Act which is fatal to the investigation process, commencement of trial is not a reason to deny the petitioner relief in this petition. We have no hesitation in holding that raid conducted on the gaming house on 2nd February, 2018 is unlawful and bad in law.

8. The petition is, therefore, allowed in terms of prayer clause (b).

[SHARMILA U. DESHMUKH, J.]

[M.S. KARNIK, J.]