



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION NO.111 OF 2023

1. Anup s/o Subhashchandra Agrawal,
Aged about 36 years, Occupation :
Business, R/o Kasturba Ward, Desaiganj,
District Gadchiroli.
2. Kapil s/o Prakash Bhaiya, aged about 38
years, Occu. Business, R/o Mata Ward,
Desaiganj, Gadchiroli, Dist. Gadchiroli.
3. Santosh Ramulal Agrawal, aged about
48 years, Occupation : Business, R/o
Patel Ward Desaiganj, Gadchiroli, Dist.
Gadchiroli.
4. Bharat Ashok Fapat, aged about 45
years, Occu. Business, R/o Shivaji Ward,
Desaiganj, District Gadchiroli.
5. Vinit Pradip Kejadiwal, aged about 35
years, Occupation : Business, R/o Shivaji
Ward, Desaiganj, District Gadchiroli.

... APPLICANTS

VERSUS

1. State of Maharashtra, through Police
Station Officer, Police Station
Desaiganj, District Gadchiroli.

... NON-APPLICANT(S).

Shri R.M. Patwardhan, Advocate for the applicants.
Shri S.S. Doifode, Additional Public Prosecutor for the
non-applicant/State.

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.
DATE : 01.04.2025.

JUDGMENT : (Per : Pravin S. Patil, J.)

Heard. **ADMIT.**

2. The matter is taken up for final disposal by consent of the parties.

3. By this application filed under Section 482 of the Code of Criminal Procedure, the applicants are challenging the First Information Report ('FIR') No.01 of 2023 registered with the Desaijanj Police Station, District Gadchiroli, for the offence punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887 (for short hereinafter referred to as 'the Act').

4. In short the case of the prosecution is, that on 01.01.2023, when they were on patrolling duty, they received a secrete information at about 00.30 a.m., that some persons are playing gambling on money behind the Jejani Rice Mill ('the Mill'), on a public place. On this

information, and under the directions of the Police Inspector, they went on the backside of the Mill at Desaiganj Lakhandur road and from distance it was noticed by them that some persons in the light of electric bulb playing gambling on money. They have raided and caught 5 persons who were playing gambling to gain money and after recording their names, took search and found some amount from the gambling place. At that time they seized two wheeler (moped) in the presence of Panch. Accordingly, the offence under Section 12(a) of the Act was registered against them.

5. The applicants challenged the FIR before this Court by raising the ground that the patrolling party which had visited the place, did not give any opportunity to them to explain their stand and deliberately took them to the Police Station without their being any fault on their part. It is further submitted that behind the Mill there is an agricultural land of Dr. Madhukar Meshram. The said land is a private property of Dr. Meshram wherein neither there is a public street nor thoroughfare where anybody can have access. Hence such place is not covered within the meaning of Section 12 of the Act. In support of their submission, the applicants have relied upon the judgment of this Court in *Criminal Application No.275 of 2018 decided on 19.06.2021 (Deepakkumar s/o Sukhdeo Bansod vs. State of Maharashtra and anr.)*.

6. Learned Additional Public Prosecutor vehemently opposed the application by stating that as per the Spot Panchanama, raid was conducted to the eastern side of the Mill. Spot of the incident is behind the Mill, where there is an open space about 50 x 100 sq. meters. Hence Section 12(a) of the Act is attracted in the matter. It is further submitted by the learned Addl.PP that investigation is complete in the matter. However, as this Court by order dated 25.01.2023 directed not to file a charge sheet without leave of this Court, the same is not filed till date.

7. We have perused the record and considered the submissions made by the learned Counsel for the applicants and learned Addl.PP.

8. In the present case, considering the allegations made in the FIR and the reply filed by the non-applicant, it will be appropriate to consider the relevant provisions i.e. Section 12(a) of the Act, which read as under :

“12. 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;

(b)

(c).....”

From the perusal of this provisions, it is clear that the offence is attracted if any person found gaming or reasonably suspected to be gaming in any public place or street or thoroughfare, or in any place to which the public have or are permitted to have access to such place. From the allegations in the FIR and the reply filed by the Investigating Agency, it appears that present applicants were found to be engaged in gambling activities at open place behind the Mill, which is situated at Desaiganj, Lakhandur road. From the allegation in the FIR, it appears that said open place behind the Mill is the agricultural land of Dr. Meshram. Section 12(a) of the Act requires that a person is guilty of the said offence only when such persons is found gaming on a public place/street or any place to which the public have access.

9. The allegations in the FIR and the reply demonstrate that the premises where the applicants were found carrying out gambling activity, was not a place where public have access as the said place is the agricultural land owned by a private person. Therefore, we are satisfied that, even if, the allegations in the FIR are accepted at its face value, the essential ingredients to constitute an offence under Section 12(a) of the Act, are not fulfilled.

10. In the circumstances continuation of the prosecution against the applicants is the abuse of the process of law, and therefore, same is liable to be quashed and set aside. Hence, we proceed to pass the following order :

ORDER

(a) The Criminal Application is allowed.

(b) First Information Report No.01 of 2023 registered with the Desaignanj Police Station, District Gadchiroli, for the offence punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887 against the present applicants is hereby quash and set aside.

11. The Criminal Application stands disposed of accordingly.

(PRAVIN S. PATIL, J.)

(ANIL S. KILOR, J.)

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