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931 apl 578-2022

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

CRIMINAL APPLICATION (APL) NO.578 OF 2022

Shubham Ghanshyam Chavre

Vs.

The State of Maharashtra through P.S.O., P.S.Umarkhed and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.P. Kariya, Advocate for applicant
Shri N.H. Joshi, APP for non-applicant No.1/State.2

**CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.**

DATED : 06.11.2025

By this application, the applicant is seeking quashing and setting aside of the First Information Report and charge-sheet as well as proceedings arising out of the First Information Report No.0368/2019, registered with Police Station Umarkhed, under Section 12(A) of the Maharashtra Prevention of Gambling Act, 1887.

2. Brief facts which are necessary for the disposal of the application are as under :

The crime is registered on the basis of a report lodged by the Police Official Shri Sandip Sardarsing Thakur, B.No. 2020, on an allegation that he was deputed at Umarkhed Police Station, and they received secret information that some people were involved in gambling.

Therefore, he, along with the other raiding staff and panchas, visited the said spot and intercepted nine persons found playing gambling. On the basis of the said report Police have registered the crime against the present applicant.

3. After registration of the crime the spot panchanama was drawn from the applicants. Amounts are recovered as well as the playing cards are also recovered. After completion of the investigation, the investigating officer has filed the charge-sheet.

4. Heard learned Counsel for the applicant who submitted that to attract the offence punishable under Section 12 of the Maharashtra Prevention of Gambling Act, the prosecution has to establish that the applicants were involved in playing a game of a scheme or game of chance. Nothing is on record to show that they were found playing any game of scheme. Therefore, no offence is made out against the present applicant. In support of his contention, he placed reliance on ***Kundalik Shivaji Kolekar and another Vs. State of Maharashtra, 2018 All.M.R. (Cri) 1844.***

5. Per contra, learned Counsel, Additional Public Prosecutor submitted that at this stage, whether there is a *prima facie* material or not is to be looked into. The ingredients of the offence in view of Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887, that A police officer may apprehend without warrant 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], thus he submitted that in view of Section 12 Clause (a) if a person found gaming at a public place or suspected to be found gaming in any public street that is sufficient to attract the offence punishable under Section 12 of the Maharashtra Prevention of Gambling Act.

6. The recitals of the First Information Report at this stage sufficiently show that the applicants were not only found gaming but the relevant material, i.e. playing cards as well as some amounts were also seized from them and they were found playing cards at the street, where the public is having access. Thus, *prima facie* material is there, and therefore, the application deserves to be rejected.

7. Before advertng to the submissions made by the learned Counsel for the applicant, it is necessary to understand the definition of gaming. The definition of gaming is given under Section 3 which reads as under :

“3. In this Act "gaming" includes wagering or betting except wagering or betting upon (a horse race, or dog race) when such wagering or betting takes place-

(a) on the day on which such race is to run, and

(b) in an enclosure which the licensee of the race-course, on which such race is to be run, has set apart for the purpose under the terms of the

licence issued under section 4 of the Bombay Race-Courses Licensing Act, 1912, [or as the case may be, of the Maharashtra Dog Race Courses Licensing Act, 1976] in respect of such race-course [or in any other place approved by the State Government in this behalf,] and

*(c) between any individual in person, being present in the enclosure [or approved place] on the one hand, and such licensee or other person licensed by such licensee in terms of the aforesaid licence on the other hand or between any number of individuals in person in such manner and by such contrivance as may be permitted by such licence;
but does not include a lottery.”*

The explanation further says that “*the expression “instruments of gaming” includes any article used [or intended to be used] as a subject or means of gaming, [any document used] [or intended to be used] as a register or record or evidence of any gaming] [the proceeds of any gaming, and any winnings or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming.]”*

8. Section 6 entitles the police officer to enter, search in gaming houses.

9. Section 9 deals with proof of playing for money, and it deals with, it shall not be necessary, in order to convict a person of any offence against any of the provisions of sections 4 and 5, to prove that any person found was

playing for any money, wager, or stake that proof of playing for money is not required.

10. The Division Bench of this Court has already considered these provisions in the judgment of ***Kundalik Shivaji Kolekar*** (supra), referred by the learned Counsel for the applicant. Perusal of these provisions would make it clear that the basic element of wagering and betting has to be there. Further, the establishment for being branded as a Common Gaming House has to be used for the purpose of such Gaming, and a person needs to be found in such Common Gaming House for the purpose of Gaming. The ingredients of the offence under Section 12 only require a person to be found gaming at a public place that is at public street, the place at which the public have or are permitted to have access. At this stage, the recitals of the First Information Report sufficiently show that the applicants were found playing a game or found gaming when the raid was conducted, and they were found along with the articles which used for gaming.

11. In view of the observations of the Hon'ble Apex Court in the case of ***State of Haryana and others Vs. Bhajanlal and others, 1992 Supp (1) SCC 335***, we are guided by the parameters laid down in paragraph No. 102 of judgment, and more particularly Clause 1, 3 and 7 thereof :

“102.....

(1) Where the allegations made in the first information report or the complaint, even if they

are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) ...

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4)

(5) ...

(6) ...

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. Relying upon the principles laid down by the Hon'ble Apex Court, if the facts of the present case are considered, admittedly, at this stage, *prima facie* material is there on the basis of which the applicant can be tried, and therefore, the application being devoid of merits deserves to be rejected. Accordingly, we proceed to pass the following order :

ORDER

The application is rejected.

(NANDESH S. DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

Jayashree..