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

CRIMINAL APPLICATION (APL) NO.1758 OF 2025

1. Shashank s/o Arun Naik,
Aged about 35 Years,
Occupation : Service,
R/o. Vivekanand Colony,
Shrirampur, Pusad City,
District Yavatmal.
2. Pramod s/o Zita Rathod,
Aged about 36 Years,
Occupation : Service,
R/o. Near Zilla Parishad School,
Vivekanand Society,
Shrirampur, Pusad City,
District Yavatmal.
3. Ashish s/o. Premsingh Pawar,
Aged about 34 Years,
Occupation : Service,
R/o Ward No.3,
Dankeshwar Nagar, Post Pardi,
Pusad City, District Yavatmal.

.... APPLICANTS

// VERSUS //

1. The State of Maharashtra,
Through its Police Station Officer,
Police Station, Pusad City,
District Yavatmal.
2. Harshwardhan Bijje,
Aged about 42 Years,
Occupation : Assistant Police Inspector,
R/o C/o Police Station Pusad City,
District Yavatmal.

.... NON-APPLICANTS

Ms. Kirti Deshpande, Advocate with Mr. A. D. Deshmukh,
Advocate for the applicants.
Ms. Sneha Dhote, APP for non-applicant No.1/State.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
DATED : 18/11/2025

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ORAL JUDGMENT : [Per : NANDESH S. DESHPANDE, J.]

1. Heard.

2. **Admit.** Heard finally with the consent of the learned Counsel for the parties.

3. This is an application for quashing of the First Information Report bearing No. 0542/2025 dated 02.10.2025 registered with Police Station Pusad City, District Yavatmal for the offence punishable under Sections 4 and 5 of the Maharashtra Prevention of Gambling Act.

4. The First Information Report (for short 'FIR') alleges that the non-applicant No.2 received a discreet information that some persons are playing the game of '3 Cards' at a building situated at Dubewar Layout located adjoining to Durgamata Mandal at Pusad City. The Officers of the non-applicant No.1 Police Station visited the spot. They met the President of Durgamata Mandal, who informed that he had made arrangements of private premises for gambling. Furthermore, when the Officers of the non-applicant No.1 approached the building, the accused persons attempted to flee away. Thereafter, the police personnel entered in the premises wherein the applicants were found and some playing cards and cash were also found. It is on this basis that the FIR in question was lodged, which is challenged in the present application.

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5. We have heard Ms. Kirti Deshpande, learned counsel for the applicants and Ms. Sneha Dhote, learned APP for non-applicant No.1/State.

6. Learned counsel for the applicants states that the applicants have no role to play in the commission of the present crime and have been falsely implicated in the present crime. It is her submission that, even if the allegations in the FIR are taken at its face value, no offence punishable under Sections 4 and 5 of the Maharashtra Prevention of Gambling Act can be made out, therefore her submission that the FIR and the criminal prosecution lodged is an abuse of the process of Court and liable to be quashed by this Court in its inherent jurisdiction.

7. The learned APP, however, while opposing the contention advanced by the learned counsel for the applicants, she states that, admittedly, the applicants were found on the said premises and the playing cards and cash were also found on the said premises. She submits that, in that view of the matter, there is a *prima facie* case against the present applicants.

8. As per the contention of the FIR, the applicants before this Court were found on the spot playing some cards and also found along with cash. Learned counsel for the applicants submits that though the applicants were found on the spot, there is no material to show that no such averment was made in the

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FIR that the applicants were in fact, indulged in playing cards and thereby involved in the offence of betting.

9. Sections 4 and 5 of the Maharashtra Prevention of Gambling Act read as under:-

"4. "Place" defined. Keeping common gaming-house.-

[(1)] Whoever,-

(a) [opens, keeps as uses any house, room or place], for the purpose, of a common gaming house,

(b) being the owner or occupier of any such house, room or place knowingly or wilfully permits same to be opened, occupied, kept or used by any other person for the purpose aforesaid.

(c) has the care or management of, or in any manner assists in conducting the business of, or any such house, room, or place opened, occupied, kept or used for the purpose aforesaid,

(d) advances or furnishes money for the purposes of gaming with persons frequenting any such house, room or place,

[shall, on conviction, be punished] with imprisonment [which may extend to two years] [and may also be punished with fine].

Provided that,-

(a) for a first offence such imprisonment shall not be less than [three months and fine shall not be less than five hundred rupees;]

(b) for a second offence such imprisonment shall not be less than [six months and fine shall not be less than one thousand rupees; and

(c) for a third or subsequent offence such imprisonment shall not be less than [one year and fine shall not be less than two thousand rupees.]]

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[(2) Nothing contained in the provisions of the Probation of Offenders Act, 1958, or in sub-sections (1), (4), (5) and (6) of section 360 of the Code of Criminal Procedure, 1973, shall apply to any person convicted under this section.]

5. Gaming in common gaming-houses

[Whoever is found in any common gaming-house gaming or present for the purpose of gaming, [shall on conviction be punished] with imprisonment which may extend to six months [and may also be punished with fine]:

Provided that-

(a) for a first offence such imprisonment shall not be less than one month and fine shall not be less than two hundred rupees;

(b) for a second offence such imprisonment shall not be less than three months and fine shall not be less than two hundred rupees; and

(c) for a third or subsequent offence such imprisonment shall not be less than six months and fine shall not be less than two hundred rupees.]

Any person found in any common gaming-house during any gaming therein shall be presumed until the contrary [is proved], to have been there for the purpose of gaming."

10. A meaningful reading of the above provisions to reveal that the statutory provisions take into its compass every activity which is not limited to the accused persons actually playing/gambling at the time of raid. In the present matter, the applicants are found on the premises with some playing cards and cash. Even though the FIR does not allege that the applicants were involved and playing while the raid was

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conducted. In our view and more particularly in view of the fact and settled law that the FIR cannot be an encyclopedia and is a primary report which would lead the investigating agency to investigate the matter, we are of the considered view that, this is not a case where inherent powers under Section 482 of the Code of Criminal Procedure can be exercised.

11. Learned counsel for the applicants places reliance on judgment reported by this Court in **2017 SCC OnLine Bom 4176 [Gajendra s/o Shivprasad Kedia Vs. State of Maharashtra through P. S. Rajapeth, District Amravati and another]** and **2012 SCC OnLine Bom 832 [Jaywant Balkrishna Sail and others Vs. State of Maharashtra and others]**. However, after careful perusal of this judgment, it is revealed that in the said matter the applicants therein were found gambling in social club which prompted the Division Bench of this Hon'ble Court to quash the FIR registered therein. The facts in the present case can be distinguished as admittedly the applicants are not found in a social club. In that view of the matter, we are of the opinion that at this stage *prima facie* case is triable one against the applicants.

12. Thus, there is *prima facie* material on record to continue the prosecution as against the applicants. In that view of the matter, we are not inclined to entertain the present

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application at this stage. Accordingly, we proceed to pass following order:

ORDER

- (i) The application is **rejected**.
- (ii) Liberty is granted to the applicants to avail appropriate legal remedy after filing of the charge sheet.

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