

**CRM-M-26354-2023(O&M)****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****115****CRM-M-26354-2023(O&M)****Date of Decision: 29.01.2026****AMARDEEP AND ANR****.....PETITIONERS****VERSUS****STATE OF HARYANA AND ANR****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE H.S.GREWAL**

Present: Mr. Kshitiz Goel, Advocate for the petitioners.
Mr. Tapan Masta, Addl. Advocate General, Haryana.

**********H.S. GREWAL, J. (ORAL)**

1. This petition has been filed under Section 482 of Cr.P.C for quashing of FIR No. 82 dated 16.04.2023 under Section 13 A of the Public Gambling Act, 1867 registered at Police Station Nathu Sarai Chopta, District Sirsa along with all the consequential proceedings arising therefrom.

2. Brief facts of the case are that a secret information has been received by one ASI Ashok Kumar that the petitioners were betting in the IPL T-20 cricket match on internet using their mobile phones while sitting in a car parked in front of the house of one Jaibir Godara. Thereafter acting upon the secret information, the police raided the said vehicle whereupon the petitioners were apprehended along with their mobile phones.

3. Learned counsel for the petitioner submits that an FIR under the Gambling Act could not have been registered by the police officials since the said Act is a Special Act. He further submits that non-cognizable offences are not permitted to be investigated without an order of the Magistrate, who has the power to try such cases and commit the case for trial. Learned counsel for



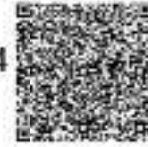
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the petitioner in order to substantiate that the ASI was not competent to conduct the raid, referred to [Section 5](#) of the Act, which reads thus:-

"Powers to enter and authorise police to enter and search. If the Magistrate of a district or other officer invested with the full powers of a Magistrate, or the District Superintendent of Police, upon credible information, and 4 of 14 after such enquiry as he may think necessary, has reason to believe that any house, walled enclosure, room or place, is used as a common gaming-house, he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the State Government shall appoint in this behalf to enter with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, walled enclosure, room or place, and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming; and may seize or authorize such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein. and may search or authorize such officer to search all parts of the house, walled enclosure, room or place which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody: and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search."

4. He further submits that provisions of Section 13-A of the Gambling Act have not been complied with and no independent witness has joined in the search and seizure, therefore the FIR was registered with procedural irregularity and is therefore liable to be quashed. Learned counsel for the petitioner relies upon judgments in the cases of *Narayan Prasad vs. State of Rajasthan reported as 2017(2) WLC (Raj) (UC) 544*, *Aatma Ram vs. State of Bihar, CRM No.44568 of 2017 (Patna)*, *Mallu @ Mallappa vs. State of Karnataka Crl.P. No.101935 of 2021 dated 10.1.2022 (Karnataka)*,



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Gurmail Singh vs State of Punjab and another, reported as 2022(2) R.C.R. (Criminal) 61.

5. I have heard the counsel for the parties and perused the record.

6. It is considered necessary to recapitulate the law as enunciated by Hon'ble The Supreme Court of India in case of ***Keshav Lal Thakur vs. State of Bihar, 1997 SCC (Cri) 298***, wherein it was held as under:

"We need not go into the question whether in the facts of the instant case the above view of the High Court is proper or not for the impugned proceeding has got to be quashed as neither the police was entitled to investigate into the offence in question nor the Chief Judicial Magistrate to take cognizance upon the report submitted on completion of such investigation. On the own showing of the police, the offence under Section 31 of 8 of 14 the Act is non cognizable and therefore the police could not have registered a case for such an offence under Section 154 Dr. P.C. of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 155 (2) Dr. P.C. but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the proviso to Section 2 (d) Dr. P.C., which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' of the police officer concerned, but that explanation will not be available to the prosecution here as that related to a case where the police initiates investigation into a cognizable offence - unlike the present one - but ultimately finds that only a non- cognizable offence has been made out."

7. In the case of ***Naryana Parsad*** (*supra*), the ***Rajasthan High Court*** relating to the ***Gambling Act*** has held thus:-

"7. After hearing counsel for the parties, this Court finds that the Cr.P.C. categorically mentions classification of offences against other laws and definition. The offences punishable with more than 7 years broadly as cognizable offences and to be tried by session whereas the offences having imprisonment 3 years to up to 7 years are also cognizable triable by



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Magistrate first class and the offences punishable with imprisonment for less 9 of 14 than three years or with fine are non- cognizable offences triable by any magistrate. The offence for non- cognizable offences show that the arrest shall not be made in the cognizable offence without a warrant. Thus, the bifurcation between the cognizable and non-cognizable as per the Cr.P.C. is that the lesser offence as scheduled in the classification of the Cr.P.C. shall require more stronger scrutiny by the Judicial Magistrate and therefore, in the definition itself, the need of warrant for arrest has been prescribed. It is further noted that Section 155 of Sub-section 2 of the Cr.P.C. also clearly reads that in case of non-cognizable cases, the investigation cannot be done by the police without the order of the Magistrate having power to try such cases or committed the case for trial.

8. As is apparent from the perusal of the afore referred provisions and the judgments that the investigation in a non-cognizable offence at the hands of the police without permission of the competent Magistrate is impermissible.

9. Therefore, this Court is of the opinion that the proceedings initiated in pursuance of the impugned FIR cannot be sustained and are liable to be set aside. Consequently, the present petition is allowed and impugned FIR is quashed along with all subsequent proceedings arising therefrom.

10. Pending applications, if any, shall also stand disposed of.

29.01.2026

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(H.S.GREWAL)
JUDGE

Whether speaking/ reasoned :
Whether Reportable :

Yes/No
Yes/No