HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 47661 of 2026

Kulkant Singh Fauzdar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Kiran Tiwari, Mahesh Chandra Tiwari
Counsel for Opposite Party(s) : G.A.

Court No. - 73

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. Heard learned counsel for the applicant and learned AGA for the State.

2. Present application has been filed to quash the entire criminal proceedings of the Case No.1948 of 2023 (State vs. Babbi and Choudhary and others), arising out of Case Crime No.123 of 2022, under Section 3/4 of the Public Gambling Act, 1867, Police Station New Agra, District Agra, pending in the Court of Chief Judicial Magistrate, Agra as well as impugned Chargesheet dated 22.04.2022, cognizance order dated 19.01.2023.

3. It is submitted by the learned counsel for the applicant that the FIR has been lodged in the present matter by the opposite party no.2 against the present applicant on 17.04.2022, under section 3/4 of the Public Gambling Act, 1867 (hereinafter referred to as the Act, 1867) at Police Station New Agra, District Agra alleging therein that the applicant was involved in betting game inside a car. It is also submitted by the learned counsel for the applicant that the police was not authorized to lodge the first information report against the applicant under section 3/4 of the Act, 1867 since the offence is a non-cognizable offence and the police cannot investigate the matter without taking prior permission of the Magistrate concerned, under section 155(2) Cr.P.C. or Section 174(2) BNSS as the case may be. The Investigating Officer wrongly and illegally conducted investigation in the matter and submitted chargesheet in this case on 22.04.2022 and the learned Magistrate without following the provisions

contained under Section 2(d) Cr.P.C. or Section 2(1) (h) of BNSS as the case may be, proceeded against the present applicant. It is further submitted that the learned Magistrate has wrongly and illegally framed charge on 03.02.2005 and he did not follow the procedure of trial of summons- cases as provided under Chapter XX of Cr.P.C. or Chapter XXI of BNSS. It is also submitted that charge cannot be framed in summon-cases and only statement of accused should have been recorded as per provisions of Section 251 Cr.P.C. or Section 274 BNSS as the case may be. It is lastly submitted by the learned counsel for the applicant that the entire proceedings against the applicant are abuse of process of court and the same are liable to be quashed by this Court.

4. It is further contended by the learned counsel for the applicant that Section 155(2) Cr.P.C. or Section 174(2) BNSS mandated that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial and as in the instant case police did not take permission from the learned Magistrate to commence the investigation and the FIR was lodged in an illegal manner and the learned Magistrate did not follow the correct procedure thus the entire proceedings commenced as soon as after registration of FIR becomes void ab initio. For substantiating his argument, learned counsel for the applicant has relied upon the judgment dated 12.05.2025 rendered by a Co-ordinate Bench of this Court in the case of Imran Khan and Another vs. State of U.P. and Another passed in Application under Section 482 Cr.P.C. No.26740 of 2024. In reference to the said judgment, the learned counsel for the applicant submitted that the said case is identical to that of applicant and as such applicant seeks parity with the same .

5. Per contra, learned AGA vehemently opposed the prayer sought through instant application but could not dispute the arguments raised by the learned counsel for the applicant with respect to the judgment rendered by Co-ordinate Bench of this Court in the case of Imran Khan (supra). Before proceeding further, it would be apposite to reproduce relevant extract of judgment rendered by a co-ordinate Bench of this Court in the case of Imran Khan (supra).

7. After hearing learned counsel for the applicants and learned A.G.A. for the State and on perusal of FIR, charge sheet and impugned summoning order, it is admitted position that the charge sheet has been filed under Section 3/4 of Gambling Act, 1867 and the maximum punishment under Section 3/4 Public Gambling Act, 1867 read with State Amendments to a fine not exceeding two thousand rupees nor less than five hundred rupees and to rigorous imprisonment for a term not exceeding twelve months nor less than three months even for subsequent offence, means the offences are cognizable.

8. For clarity, Sections 3 and 4 of the Public Gambling Act, 1867 are reproduced herein below:

> *"3. Penalty for owning or keeping, or having charge of a gaming-house.?Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room or place situated within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house; and whoever, being the owner or occupier of any such house, walled enclosure, room or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house; and whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and whoever advances or furnishes money for the purpose of gaining with persons frequenting such house, walled enclosure, room or place; shall be liable to a fine not exceeding two-hundred rupees, or to imprisonment of either description,1 as defined in the Indian Penal Code (45 of 1860), for any term not exceeding three months.*
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> *4. Penalty for being found in gaming-house.-Whoever is found in any such house, walled enclosure, room or place, playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise,*

shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code (45 of 1860), for any term not exceeding one month, and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming."

9. In 1952, in Section 3 for the words "two hundred rupees" substituted by the words "five hundred rupees by U.P. Act 34 of 1952 and by the U.P. Act of 21 of 1961 the last paragraph of section 3 has been substituted by "shall be liable - in case of first offence to fine not exceeding five hundred rupees nor less than two hundred rupees and to rigorous imprisonment for a term not exceeding three months; and in case of any subsequent offence to fine exceeding two thousand rupees nor less than five hundred rupees and to rigorous imprisonment for a term not exceeding twelve months nor less than three months".

10. In section 4 of the Act, for the words "one hundred rupees", substitute the words three hundred rupees" by U.P. Act, 34 of 1952 w.e.f. 5.12.1952 and words beginning with "shall be liable to a fine" and ending with "exceeding one month" was deleted and substituted by "shall be liable" in case of a first offence to a fine not exceeding three hundred rupees nor less than one hundred rupees or to rigorous imprisonment for any term not exceeding one month, and in the case of any subsequent offence to a fine not exceeding five hundred rupees nor less than two hundred rupees and to rigorous imprisonment for a term not exceeding six months or less than one month".

11. Lastly, the state of Uttar Pradesh had enhanced the sentence in corresponding sections in the year 1961 by bringing state amendment through U.P. Act of 21 of 1961 in the Public Gambling Act, 1867, whereby the punishment was

enhanced accordingly; for a first offence, the offender may have to pay a fine between rupees one hundred and three hundred and may be awarded rigorous imprisonment for up to one month. For any later offences, the maximum fine shall be two thousand rupees, and the offender may be awarded rigorous imprisonment for twelve months.

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25. So far as merits of the present case is concerned, I find force in the argument of learned counsel for the applicants that the investigation has been barred by section 155 (2) Cr.P.C., therefore, the entire exercise undertaken by the police stands vitiated in law, thus, the impugned charge sheet dated 27.12.2022 arising out of Case Crime No. 69 of 2022, under Section 3/4 Public Gambling Act, 1867, registered at P.S. Mantola, District Agra, as well as impugned summoning order dated 23.05.2023, passed by the Judicial Magistrate-I, Agra are hereby quashed with the liberty to police to initiate fresh investigation after complying with existing provisions of law.

26. Accordingly, the present application stands allowed."

6. In view of the aforesaid facts and circumstances of the case, it is crystal clear that the applicant's case is squarely covered with the judgment dated 12.05.2025 passed in the case of Imran Khan (supra), wherein it has been held that the investigation conducted by the authorities concerned is barred by Section 155 (2) Cr.P.C. (174(2) BNSS) and as such in the light of the aforesaid judgment, this Court finds force in the argument of learned counsel for the applicant that in the present case also no compliance of Section 155(2) Cr.P.C. has been made by the authorities concerned and as such the entire exercise undertaken by the police stands vitiated in law. Secondly, the chargesheet was submitted in a non-cognizable offence and the Magistrate concerned before proceedings further should have complied provisions of Section 2(h) of BNSS or 2(d) of Cr.P.C. and the police officer by whom such report was made, was expected to proceed in accordance with the provisions of the complaint case. Lastly, the Magistrate did not explain as to how he has framed charge on 03.02.2025 in a summon case and as to why he did not proceed

further as per provisions of Chapter XXI of BNSS or Chapter XX of the Cr.P.C.

7. The learned Magistrate was obliged to record statement of accused under Section 274 BNSS or 251 Cr.P.C. instead he framed charge on 03.02.2025. From the order-sheet, appended along with the present application, it is clear that the Magistrate did not exercise his power under Section 282 BNSS or 259 Cr.P.C. Thus, the impugned charge-sheet dated 22.04.2022 arising out of Case Crime No.123 of 2022, under Section 3/4 of the Act, 1867, Police Station New Agra, District Agra as well as Summoning/Cognizance order dated 19.01.2023 and Charge dated 03.02.2025 framed by learned CJM, Agra are hereby quashed with liberty to the police to initiate fresh investigation after complying with existing provisions of law.

8. In case, after obtaining permission from the learned Magistrate concerned under Section 174(2) BNSS or 155(2) Cr.P.C. as the case may be, the charge-sheet is filed by the Investigating Officer, the learned Magistrate will follow the procedure of complaint case contained under Chapter XVI and XVII of the BNSS or Chapter XV and XVI of the Cr.P.C. and the accused would be tried under Chapter XXI of the BNSS or Chapter XX of the Cr.P.C. as the case may be.

9. Accordingly, the present application stands **allowed**.

(Dr. Gautam Chowdhary,J.)

October 29, 2026
CP.sahani

Digitally signed by :-
CHANDRA PRAKASH SAHANI
High Court of Judicature at Allahabad