IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. CRM-M-22028-2022
Reserved on : 24.11.2022
Pronounced on: 30.11.2022

SAURABH VERMA
.....Petitioner(s)

VERSUS

STATE OF PUNJAB
..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Ankur Bansal, Advocate for the petitioner.

Mr. KP Bawa, AAG, Punjab.

AMAN CHAUDHARY, J.

Prayer in this petition filed under Section 482 of the Code of Criminal Procedure is for quashing of FIR No.98, dated 25.07.2020, registered under Section 13-A of the Public Gambling Act, 1867 (hereinafter referred as 'the Act'), registered at Police Station Division No.2, Jalandhar, Annexure P-1, charge-sheet dated 06.08.2020, Annexure P-3, order dated 18.04.2022, Annexure P-5 passed by the trial Court dismissing an application filed for discharge, framing of charge dated 18.04.2022, Annexure P-6 and charge-sheet dated 18.04.2022, Annexure P-7.

Pithily put, the prosecution version is that during a private vehicle patrolling to check bad elements, the ASI who was present at the workshop chowk received a secret information that the petitioner, a resident of BSF Colony, Jalandhar, has been doing betting on cricket matches from the last few years and has kept heavy amount earned from the same. On that

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day also he was doing betting on the cricket test match between West Indies and England while sitting at his house, who can be nabbed with laptop, mobile phone and with heavy amount of Indian currency. The said ASI with police officials raided the house of the petitioner at 9.40 pm on 25.7.2020 and recovered an amount of Rs.1,23,50,000/- alleged to be gambling money from his possession alongwith laptop and mobile phone. The amount recovered was deposited with the Income Tax Department. Final report in the case was presented on 30.7.2020.

Learned counsel submitted that the application for discharge was dismissed by the trial Court vide order dated 18.04.2022 on the ground that at the time of framing of the charges only prima facie case is to be seen. Thereafter, the charges against the petitioner were framed vide order dated 18.4.2022, Annexure P-7, under Section 13-A of The Public Gambling Act (hereinafter referred to as "The Act").

Learned counsel for the petitioner opened up his arguments by making a reference to Schedule 2 of the Cr.P.C. wherein the classification of the offences against other laws in the Cr.P.C., are mentioned, as per which the offences punishable with imprisonment for less than 3 years are non-cognizable, bailable and triable by Magistrate.

Learned counsel in order to further substantiate his stance of challenge drew the attention of this Court to Sub Section 2 of Section 155 Cr.P.C. which reads thus:-

> "155. Information as to non- cognizable cases and investigation of such cases.
>
> (1)When information is given to an officer in charge of a police station of the commission within the limits of such

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> station of a non- cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.
>
> (2)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."

Learned counsel for the petitioner next contended that the offence punishable under Section 13-A of the Act under which the FIR was lodged and charges had been framed is non-cognizable as the prescribed imprisonment for it is upto one month or fine of Rs.50/-. Reference to the Section was made, which reads thus:-

> "13. Gaming and setting birds and animals to fight in public streets.—A police officer may apprehend without warrant— any person found playing for money or other valuable thing, with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill, in any public street, place or thoroughfare situated within the limits aforesaid, or any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or any person there present aiding and abetting such public fighting of birds and animals. Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month; Destruction of instruments of gaming found in public streets.—Any such police officer may seize all instruments of gaming found in such public place or on

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> the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.
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> STATE AMENDMENTS (Assam)—In section 13, for the words "fifty rupees", substitute the words "one hundred rupees". [Assam Act 18 of 1970, sec. 6 (w.e.f. 19-12-1970)]. Himachal Pradesh.—In section 13, same as that of Punjab. [Himachal Pradesh Act 30 of 1976, sec. 7 (w.e.f. 5-8-1976)]. Madhya Pradesh.—In section 13—(i)for the first three paragraphs, substitute the following, namely:— "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;(b)any person setting any birds or animals to fight in any public street, thoroughfare, or in any place to which the public have or are permitted to have access:(c)any person there present aiding and abetting such public fighting of birds and animals."

It was thus the submission of learned counsel that the offences which are non-cognizable are not permitted to be investigated without the order of the Magistrate, who was having the power to try such cases or commit the case for trial.

Learned counsel for the petitioner in order to substantiate that the ASI was not competent to conduct the raid at the house of the petitioner, 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

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> 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."

While referring to the aforesaid provision, the learned counsel submitted that as per the said Act it is only the Magistrate of a District or other officer or DSP who upon credible information and after such inquiry where he has reason to believe that the place is used as a common gaming house may either himself or by his warrant authorize any officer of police. He said that in the present case, the procedure as envisaged had not been

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followed inasmuch as no warrants were obtained by the aforesaid ASI before conducting the raid at the house of the petitioner.

The learned Counsel referred to the definition of common gaming house to submit that the requirement for an offence is that either of the instruments of gaming are found, which is not the case of the prosecution. Mere recovery of Rs.1,23,50,000/- was not sufficient to term it as having been gain or profit from wagering or betting in terms of the aforesaid definition. He submitted that the said amount was the legally earned income of the petitioner, a reference was made to copies of the Income Tax Returns for the years 2020-21 and 2021-22 along with cashbook, balance sheet and tax audit report by registered Chartered Accountant, Annexures P-9 to P-11, as per which as on 25.7.2020, an amount of Rs.1,23,54,000/- was shown as cash in hand of the petitioner. The Section-1 of The Public Gambling Act, 1867 in the interpretation clause defines the term common gaming-house, which reads thus:-

> "1. Interpretation-clause.—In this Act— "Common gaming-house".—"Common gaming-house" means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever."

Learned counsel for the petitioner submitted that the offence alleged being non-cognizable, the FIR could not have been lodged against the petitioner; consequently no investigation could have taken place, unless

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there was a complaint submitted under Section 152 Cr.P.C. before the Illaqa Magistrate by a DSP concerned in terms of Section 5 of the Act, only whereafter, the investigation could have ensued that too after conduct of inquiry. 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), **Gurmail Singh vs State of Punjab and another**, reported as 2022(2) R.C.R. (Criminal) 61.

Learned counsel for the petitioner contended that in the reply filed by the State, there is no response to the grounds raised by the petitioner in particular regarding the legal issues that in case of non-cognizable offence, FIR and consequent proceedings could not have been carried out and even the raid itself from the very inception was without jurisdiction.

Opposing the petition, learned State counsel made a reference to para Nos.4 and 5 of the reply to submit that the betting was going on when the petitioner was apprehended. The said paras read thus:

> "4. That thereafter ASI checked the laptop mark ACCER and Z account application was having admin password. The said laptop was put in a cloth parcel and was sealed with seal BS and mobile phone VIVO 1606 Black and VIVO 1820 Black was also put in the cloth parcel and was sealed with seal BS. Sample seal was prepared separately. Seal was handed over after use to ASI Ranjit Pal Singh 2184. Both the parcels were taken into possession vide separate recovery memo and witnesses

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> put their witness on it.
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> 5. That during interrogation accused Saurabh Verma @ Noni made a confessional statement before the ASI that the amount which has earned from betting on the cricket match, he has kept the said amount in the wooden almirah lying in his bed room in a yellow bag beneath the cloths. He knows about the same and can get the same recovered. Accused Saurabh verma got recovered a yellow bag from his almirah lying in the bed room and produced it before the ASI. ASI in the presence of the police officials recovered Rs. 1 crore 23 lakh 50 thousand was recovered. The said recovered amount was putin the same yellow bag and was taken into possession vide separate recovery memo and witnesses put their witness on it. Spot was inspected in the presence of the police officials and site plan was prepared. Accused Saurabh Verma @ Noni was arrested in the case on 25.07.2020.

Heard the arguments advanced by the learned counsel for the parties.

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

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> 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 a 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."

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 Magistrate first class and the offences punishable with imprisonment for less

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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 lessor 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. Thus, the Court has also carefully perused the Section 13 of the Rajasthan Public Gambling Ordinance 1949, which stipulates the fine of Rs.100 and imprisonment up to one month. Thus, the offence alleged falls under the category of minimum gravity offence and as per schedule of the Cr.P.C. shall be in the category of non-cognizable offence as Section 13 itself does not prescribe as to whether the offence is cognizable or non-cognizable. Once, this Court is of the opinion that the offence is non-cognizable then this Court deems it appropriate to allow the present misc. petition by quashing the present proceedings in FIR No.277/2015 registered at Police Station, Kotwali Sriganganagar for the offence 13 of the Rajasthan Public Gambling

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> Ordinance, 1949 as admittedly the respondents did not make a point that a proper order was obtained from the Magistrate before making any investigation in the present case.
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> 9. In view of the above, the proceedings initiated in pursuance of the impugned FIR cannot be sustained and are liable to be set aside. Consequently, the present petition is accepted and the impugned FIR is quashed along with all subsequent proceedings. However, liberty is granted to the competent authorised Officer to file a complaint in accordance with the provisions of law, if it is not barred by limitation."

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.

Adverting to the facts of the case in hand, indubitably it has not been brought out by the State that the police officer concerned was authorised to enter by way of issuance of a warrant and search the house of the petitioner, which is mandated as per Section 5 of the Act, a pre-requisite for which is that, upon receipt of credible information, the officer invested with power of Magistrate or District Superintendent of Police after conducting enquiry may either himself or by warrant authorise any other police officer to enter and search the place. The reply of the State does not disclose that there was an order passed by the Magistrate to investigate the non-cognizable offence as required under Sub Section 2 of Section 155 Cr.P.C. The procedural infirmity in this case goes to the root of the matter,

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vitiating the proceedings thus initiated. Furthermore, there is no specific reply by the State justifying the competence of the police officer, who conducted the raid based on secret information, wherein even no independent witness had been joined. The paras of the present petition particularly 5A to 5M wherein grounds have been raised to substantiate that the FIR was a clear abuse of process of law have not been specifically responded to except for stating “that the position has already been explained in the forgoing paragraphs”, which have been reproduced hereinabove in this judgment, which also merely make a reference to the alleged recovery, investigation and confessional statement but nothing justifying either the competence of the officer or the registration of FIR in a non-cognizable offence or that the raid was conducted in pursuance of an order of the concerned Magistrate, passed after due enquiry on having received credible information. The classification between cognizable and non-cognizable offences as per Schedule 2 of Cr.P.C. is provided as the lesser offence requires stronger scrutiny by the Magistrate, thus is the requirement of warrants for arrest prescribed in the definition itself, which reads thus:-

> “2. Definitions.—In this Code, unless the context otherwise requires,—(l) “non-cognizable offence” means an offence for which, and “non-cognizable case” means a case in which, a police officer has no authority to arrest without warrant;”

Hon’ble The Supreme Court of India in the case of **Jugesh Sehgal vs. Shamsher Singh Gogi,** reported as (2009)14 SCC 683, had held that to prevent abuse of process of law and to secure ends of justice, the power under Section 482 Cr.P.C. can be involved, the paras as relevant read

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thus:

> "16. The next question for consideration is whether or not in the light of the afore-mentioned factual position, as projected in the complaint itself, it was a fit case where the High Court should have exercised its jurisdiction under Section 482 of the Code?
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> 17. The scope and ambit of powers of the High Court under Section 482 of the Code has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, it is unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provision are very wide, but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist.
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> 18. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed.
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> 19. Although in Bhajan Lal's case (supra), the court by way of illustration, formulated as many as seven categories of cases, wherein the extra-ordinary power under the afore-stated provisions could be exercised by the High Court to prevent abuse of process of the court yet it was clarified that it was not possible to lay down

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> precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised."

The trial Court has committed grave error in proceeding to frame charges based on final report in this case wherein the investigation could have been done only after complying with the provisions of law, as contemplated. In view of the caveat illustrated in the afore cited decisions, the proceedings initiated against the petitioner are untenable, especially when the raid leading to lodging of FIR itself was from the threshold marred by procedural irregularity. Thus same is a ground sufficient to quash the FIR and consequent proceedings in order to prevent abuse of process of law and secure of ends of justice.

As sequel thereto, the present petition is allowed. FIR No. 98 dated 25.7.2020, Annexure P-1 and the consequent proceedings arising therefrom are hereby quashed.

30.11.2022 **(AMAN CHAUDHARY)**
gsv **JUDGE**

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No

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