HIGH COURT OF MADHYA PRADESH:
BENCH AT INDORE
M.Cr.C.No.20916/2017
(Achal Ramesh Chaurasia Vs. The State of M.P. & Others)

Indore, Dated: 13.08.2018

Shri R.K. Gondale, learned counsel for the applicant.

Shri Bhuwan Gautam, learned GA for the respondent/State.

The petitioner has filed the present petition under Section 482 of the Cr.P.C seeking quashment of FIR registered under the Crime No.12/2016 420, 465, 468, 470 read with Section 120 B of Indian Penal Code at P.S. Crime Branch, Indore.

During pendency of this petition, investigation has been completed and final report has been filed.

The Officer in Charge of Crime Branch Police Station received an information that Rafik Tention, Shahid Ranga and Dhiraj Yadav are indulging into gambling activities through online games at Anand Bajar, Opposite Canara Bank, Palasia, Indore. They are cheating with dishonest intention to the people by luring them to win Rupees 9 against Rupee 1 and Rupees 36 against Rupee 1. In order to enquire, the team of Crime Branch visited the spot and arrested the accused and registered an FIR No.12 of 2012 under Sections 420, 465, 468, 470 read with Section 120 B of Indian Penal Code. The Police recorded the statements of the aforesaid accused persons and also made Mr. Rahul Chaurasia and present petitioner as co-accused in the FIR .

According to the petitioner, he is a Director of Private Limited Company incorporated under the provisions of Indian Companies Act, 1956 having its registered office at Flat No.2701 C, Lodha Belismo Delie Road, Mumbai. The Company is registered in the name of "Gameking Pvt. Ltd.". The Memorandum of Association of the Company is filed as Exhibit C along with present M.Cr.C. The company is engaged in manufacturing of amusement Video Game machines, designing and providing software and gaming solutions both online and offline. The Company is ISO 9001 certified company carrying on its business since the year 1991. The said company, in the course of its business providing software and technological support to run the Video Games both online and offline to various parties viz. Card games, Rummy, Five Cards India Poker, Skill Wheel Game etc. The said games can be played at cyber cafe, Video Parlours or even at home through mobile or computer. The player is require to obtain an online account and thereafter, he can download the game from the website of the company or he can play the same either at cyber cafe, video parlour, or can download on his computer, iPad or mobile phone. According to the petitioner, all the games are voluntary in nature and no one is compelled to play the games and all the games are purely for amusement and entertainment. The company only charges to give ID and the person playing the game gets points after winning stage by stage.

The petitioner has granted various franchises agreement to various Cyber Cafes and Video Parlours and as per Clause

8.3 of the agreement, the points won by the members in the Gameking Games section are to be used by them for surfing or playing more games. These points do not have any cash value, but a member can gift the same to other member.

The petitioner has been made accused only on the basis of statements recorded under Section 27 of the Indian Evidence Act. No material has been collected against the petitioner. In support of his case, the applicant has placed reliance over the letter dated 27.02.2017 written by the DIG (Complaints), Headquarter Bhopal by which he has advised for filing of closure report.

Learned counsel for the petitioner has also placed reliance over the judgement passed by the High Court of Judicature at Bombay in Criminal Application No.911/2012, decided on 12.12.2012 in which similar FIR has been quashed. Relevant portion of the aforesaid judgement is reproduced below:

> ***"3. The applicant Achal or his Company entered into franchisee agreement with Original Accused No.5 – Sudhir Hegde for providing franchisee of his chain of cyber cafes. An Internet Cafe was allegedly conducted by Original Accused No.5 under the name and style Royal Video Game at Bandra (West), which was raided by the Respondent on 09.05.2011.***
>
> ***4. Considering the limited role of the Applicant to be a Director of supply of the machine of Video Game to franchisee, no personal role can be attributed to him. His case deserves for discharge.***
>
> ***5. In identically placed matter in Criminal Application No.1109 of 2011 by Ramesh Chaurasia (father of the present Applicant), a Director in the same Company, this Court has quashed and set aside the prosecution arising out of same events dated 09.05.2011."***

Shri. R.K. Gondale, learned counsel for the petitioner submits that in view of the above, present petition deserves to be allowed and FIR registered against the applicant is liable to be quashed with cost. In support of his contention he has placed reliance over para 10 of the judgement passed by the Apex Court in case of ***M.J. Sivani and Others Vs. State of Karnataka and Others,*** reported in ***1995 6 SCC 289*** which is reproduced below:

> ***"10. Gaming, therefore, is an inclusive definition which includes a game of chance and skill combined or a pretended game of chance or of chance and skill combined. Gaming house would mean any house, room, tent etc. whether enclosed or open or any place whatsoever in which the instruments of gaming are kept or used for profits or gain by the person occupying, using or keeping such house, room, tent etc. whether by way of charge or otherwise. The instrument of gaming would include any article used or intended to be used as a subject of means of gaming, any document used or intended to be used as a register or record or evidence of gaming, the profits of any gaming or any winnings or prizes in money or otherwise distributed or intended to be distributed or money's worth in gaming. Place would include a building or a tent etc. whether permanent or temporary or any area whether enclosed or open. Place of public amusement means any place where any gain or means of carrying on the gain is provided in which the public are admitted and includes a road or a street or a way whether a thoroughfare or not and a landing place in which the public are granted access or have a right to resort or over which they have a right to pass. The elements of gaming are the presence of prizes or consideration, chance and prizes are reward and games includes a contrivance which has for its object to furnish sport, recreation or amusement. Amusement would mean diversion, pastime or enjoyment or a pleasurable occupation of the senses, or that which furnished it. A common gaming house is a place or public place kept or used for playing therein any game of chance, or any mixed game of chance and skill, in which the organiser keeps one or more of the players. It is also a place in which any game is played, the chances of which are not favourable alike to all the players. Gaming is to play any game whether of skill or chance for money or money's worth and the act is not less gaming because the game played is not in itself unlawful and***

whether it involved or did not involve skill".

Shri Bhuwan Gautam, learned GA for the respondent/State submits that the present case is distinguishable from the case before the High Court of Judicature at Bombay. In the case in hand, there is specific allegation and material available on record which shows that the petitioner has designed the game in such a way that there would be no chance of winning by the player and he is bound to loose his money. There is enough material available in the case diary and challan to establish that the money is being siphoned to the Company Gameking Pvt. Ltd. The statements of the complainants have been recorded who have categorically stated that by playing these games they have lost Rs.15,000/- to Rs.20,000/- and some of them have lost upto Rs.50,000/-. The gambling is prohibited in the state of Madhya Pradesh, therefore, no case for interference by the High Court in a petition under Section 482 of the Cr.P.C is made out.

Before appreciating the facts of the case in hand it would be trite to observe the legal position with regard to exercise of jurisdiction by the High Court under section 482 of Cr.P.C. for quashing the First Information Report and other consequential proceedings.

The Hon'ble Supreme court of India time and again has held that the power under Section 482 of Cr.P.C. is extra ordinary in nature and this power has to be exercised sparingly and with great care and caution only to give effect to an order under the Code or to prevent abuse of process of the Court or

to otherwise secure the ends of justice and only in the cases where attaining facts and circumstances satisfy that possibilities of miscarriage of justice will arise in case of non-use of power. In quashing the proceeding, the High Court has to see whether the allegations made in the complaint, if proved, make out a *prima facie* offence. in such a situation only the High Court should entertain the Petition under section 482 otherwise must relegate the applicant to face the trial. At this stage before the High court sifting or weighing of the evidence is neither permitted nor expected. While considering the petition under Section 482 of Cr.P.C., the Courts have to be strictly confined to the scope and ambit of the provision.

It is held in ***Krishnanan Vs. Krishnaveni (1997 AIR SCW 950 : AIR 1997 SC 987)*** that when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power. It may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings.

In ***Inder Mohan Goswami And Another Vs State of Uttaranchal and others (2007) 12 SCC 1*** Hon'ble the Apex Court observed:

> ***27.The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.***

The Apex Court in case of ***Gian Singh Vs State of Punjab, reported in (2012)10 SCC 303*** has held as under :-

> ***53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.***

54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided."

The Hon'ble Supreme Court in case of ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 (1992 AIR SCW 237 : AIR 1992 SC 604***) explained the circumstances under which such power of sec.482 could be exercised, where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. It is observed in para 102 as under:

"102. In the backdrop of the interpretation of the

various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(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) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific

> ***provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.***
> ***(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."***

This propositions of law are being followed in the judgments passed in a case of ***Mahesh Chaudhary v. State of Rajasthan (2009) 4 SCC 443), Shakson Belthissor v. State of Kerala and Anr, AIR 2010 SC (Supp) 864 and Mosiruddin Munshi v. Md. Siraj AIR 2014 SC 3352*** and in many other cases.

Similar view has been taken by apex court in case of in ***Paramjeet Batra Vs State of uttarakhand and others (2013) 11 SCC 673.*** Relevant para of this judgement reads thus:

> ***7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.***

In case of ***C.B.I Vs K.M Sharan reported in 2008(4) SCC 471 & in Mahesh Choudhary Vs State of Rajasthan***

reported in 2009(4) SCC 439 also the principles and scope of the inherent power under Section 482 Cr.P.C. to quash charge-sheet and held that the High Court is not supposed to "embark upon the inquiry whether the allegations in FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations" High Court should have limited its considerations to "... Whether allegations made in the FIR and the charge-sheet taken on their face value and accepted in their entirely would prima facie constitute an offense for making out a case against the accused"

In the case of ***Vijayander Kumarb Vs State of Rajasthan reported in 2014(3) SCC 389*** it has again been reiterated the same principles. Para 8 of the judgement is as follows

> ***8. On behalf of the appellants reliance has been placed upon judgments of this Court in the case of Thermax Limited and Others Vs. K.M.Johny and Others[1] and in case of Dalip Kaur and Others vs. Jagnar Singh and another[2]. There can be no dispute with the legal proposition laid down in the case of Anil Mahajan vs. Bhor Industries Limited[3] which has been discussed in paragraph 31 in the case of Thermox Limited (supra) that if the complaint discloses only a simple case of civil dispute between the parties and there is an absolute absence of requisite averment to make out a case of cheating, the criminal proceeding can be quashed. Similar is the law noticed in the case of Dalip Kaur (supra). In this case the matter was remanded back to the High Court because of non-consideration of relevant issues as noticed in paragraph 10, but the law was further clarified in paragraph 11 by placing reliance upon judgment of this Court in R.Kalyani vs. Janak C.Mehta[4]. It is relevant to extract paragraph 11 of the judgment which runs as follows:***
>
> ***"11.There cannot furthermore be any doubt that the***

> ***High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in R. Kalyani v. Janak C. Mehta is attracted, which are as under:***
> ***"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.***
> ***(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.***
> ***(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.***
> ***(4) If the allegation discloses a civil dispute, the same by itself may not be ground to hold that the criminal proceedings should not be allowed to continue."***

The Apex court has made it clear in the case of ***Sathish Mehra Vs. State of N. C. T. of Delhi AIR 2013 SC 506*** that powers under section 482 of the Cr.P.C. is exercisable at threshold as well as at advanced stage of trial. Para 15 of the judgement reads thus:

> ***15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof Will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra-ordinary in nature***

> ***has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.***

The contention of learned counsel for the applicant is that there is no involvement of money in these games and the winner gets the points only after crossing the stage successfully.

As per the prosecution story, the details of the bank account of the accused and the company have been collected and from which the prosecution is trying to establish that the money is being transferred to the company/accused persons in a regular manner by a franchisee/Video Parlours. Apart from this, the prosecution has recorded the statements of the complaints and the victims under Section 161 of the Cr.P.C in which they have clearly disclosed that by playing the online games i.e. “Casino” from the “Dream World Parlour”, he lost Rs15,000/- to Rs.20,000/-. He was given the lure of getting Rs.9/- by investing Rs.1/- in the game. One of the statement

recorded by the prosecution for example is reproduced below:

" विलास पिता रामनाथ कुटे उम्र 36 साल, व्यवसाय – कोरियर का काम, निवासी म.नं.–8, न्यू जायफलवाडी तारदेव, तारदेव पुलिस कम्पाउण्ड के पीछे थाना तारदेव, मुम्बई 4000034 मोबाईल नम्बर 9029387152 9987341939

मैं उक्त पते पर जन्म से निवास करता हूँ। मैं कक्षा 10 वी तक पढ़ा हूँ और कोरियर का काम करता हूँ। मैं सेमसंग का गेलेक्सी नोट 3 वी का उपयोग करता हूँ। जिसका आय.एम.ई.आय. नम्बर 358021057539607 है। मेरे परिवार में पत्नी गीता मोबाईल नम्बर 9594519227 है तथा दो लड़की है। तारदेव में घांसवाला कम्पाउण्ड में रमेश चौरसिया एवं अचल चौरसिया द्वारा फनगेम के नाम से केसिनों का काम किया जाता था। पूर्व में वीडियो केसिनों खेला करता था। लगभग ढेड वर्ष पूर्व एण्ड्राईड बेस्ड एप आ जाने से उनके द्वारा मेरे सेमसंग मोबाईल में एण्ड्राईड एप फनगेम डाउनलोड किया गया था मगर इससे मोबाईल गरम होने से यह गेम मैने बाद में अपने मोबाईल से डिलीट कर दिया। अब मैं इस गेम को खेलने के लिए उनके पार्लर में जाता हूँ जहां कम्प्यूटर पर यह गेम खिलाया जाता है इसके लिए वहां एक आय.डी. व पासवर्ड रखा जाता है जिसको उपयोग कर मैं गेम खेलता हूँ। इस आय.डी. के माध्यम से मैने फन गेम में 1 प्वाईंट के 9 प्वाईंट मिलते थे इसमें मैं लगभग रूपये 50 हजार रूपये हार चुका हूँ। मुझे 1 रूपये के 9 रूपये मिलने का प्रलोभन देकर मेरे मोबाईल में यह गेम डाउनलोड कराया गया था। घांसवाला कम्पाउण्ड टूटने के बाद गुलाब भवन में ड्रीमवर्ल्ड के नाम से यह पार्लर चल रहा है आज दिनांक 28.6.2016 को मैं यह गेम खेलने के लिए गुलाब भवन स्थित ड्रीमवर्ल्ड पार्लर पर आया था जिसके मैनेजर संजय चौरसिया है। फनगेम में प्वाईंट डालने का काम संजय चौरसिया और सुरेन्द्र कुमार चौरसिया करता है। यह कथन अपनी पूर्ण जानकारी के आधार पर पूर्णतः सत्य दे रहा हूँ। कथन पढे सही होने पर हस्ताक्षर किये।"

The applicant/company has designed the fun game in the name of "Casino" or "Teen Patti" etc. by coding/decoding in PL/SQL language in which which there is a master ID and further provision of generation of minor Ids. The company generates the password for minor IDs by way of recharge and some percentage of the said amount goes to the master ID and then there is a provision of betting of particular number in a wheel and after investment of money in all the numbers, the wheel stops on a particular number in which less amount is invested and by doing this the company make money out of it. It is all gambling in which the skill is not involved. The gambling is absolutely prohibited in the state of Madhya Pradesh. That enough material is available in the case diadry that points earned by the players are being converted into money by the co-accused. That applicant has appointed his

son as Manager in the Indore City as earlier Manager was not efficient in respect of promotion of the Game. The Video Parlours are being run as Casinos. Police has earlier registered number of cases under the Gambling Act in these Video Parlours run by the co-accused. Apart from this it is a matter of evidence which can be proved by the prosecution by way of evidence, therefore, it is not a fit case in which the high Court can exercise its power under Section 482 of the Cr.P.C. to quash the FIR.

So far as the letter dated 27.02.2017 written of DIG is concerned, the respondents in their return has clearly stated that the aforesaid letter was written only on the basis of statements of the complainants, but other material were not available with the same authority and now the investigation has been completed and challan has been filed on 22.01.2018, therefore, that letter would not help the applicant. No case for interference is made out.

Present petition is accordingly **dismissed.**

(VIVEK RUSIA)
Judge

jasleen