



IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 25th OF APRIL, 2025

MISC. CRIMINAL CASE No.1033 OF 2025

ASHOK JAIN

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Amit Raj, Advocate for the petitioner.

Shri Romil Verma, Govt. Advocate for the respondent/State.

ORDER

1. This petition under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 is filed for quashing of FIR registered at Crime No.937 of 2024, Police Station Industrial Area Dewas, District Dewas (M.P.) with consequential proceedings.

2. The exposition of the facts giving rise to the present petition is as under :-

(a). The Sub-Inspector Rakesh Narwariya of P.S. Kotwali received secret information on 10.11.2024 that some persons are gambling with



the help of cards at Remon Sports Society Club, Dewas near Hotel Madani Darbar. Accordingly, a raid was planned. The police party conducted raid at Remon Sports Society Club, Dewas. The playing cards, 148 tokens and cash Rs.6,350/- were recovered and seized from the 24 persons, who were found playing card on five tables at the Remon Sports Society Club. Their statements were recorded. They informed that they had received the token in lieu of cash amount and they were playing rummy game by betting on the cards. The P.S. Dewas registered FIR at Crime No.937 of 2024 for the offence punishable under Sections 3 and 4 of the Public Gambling Act, 1867 against 24 accused, who were found playing card game rummy by betting through tokens. Ashok Lakhwani, Director of Remon Sports Society Club and Babla @ Izhar Ali were also apprehended. They informed that they provided coloured tokens in lieu of cash to the customers, who were playing card game rummy by betting through these tokens. On completion of investigation, the final report was submitted before the Chief Judicial Magistrate, Dewas. The trial is underway.

3. The impugned FIR is assailed in present petition on following grounds :-



(i) There is no material to show that the petitioner was playing any game of chance.

(ii) As alleged, the petitioner was playing rummy which is a game of skill and does not constitute any offence under the Public Gambling Act. Even if the petitioner was playing a skill-based game with money at stake, no offence is made out under the Public Gambling Act (the Madhya Pradesh amendment) Act,1976.

(iii) The prosecution is *mala fide*. The offence has been registered due to enmity between the present and former members of the Society.

4. On these grounds, it is requested that the impugned FIR be quashed.

5. The Public Gambling Act, 1867 (with Madhya Pradesh amendments) defines "**Common gaming-house**", **Gaming**" and

"Instrument of Gaming" as under :-

"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.

"Gaming" includes wagering or betting but does not include a lottery. Any transaction by which a person in any capacity whatever employs another in any capacity whatever or engages for another in any capacity whatever to wager or bet with another person shall be deemed to be 'gaming'.



The collection or soliciting of bets receipt or distribution of winnings or prizes in money or otherwise in respect of wagering or betting or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt or distribution shall also be deemed to be 'gaming'.

“Instruments of gaming”- *The expression “Instruments of gaming” includes any article used or intended to be used as a subject or means of gaming, any document used or intended to be used as a register or record or evidence of any gaming, the proceeds of any gaming and any winnings or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming.*

6. Sections 3, 4, 6, 9 and 12 of the Public Gambling Act, 1867 (with Madhya Pradesh amendments) reads as under :-

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, situate 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 willfully 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 gaming 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, as defined in the Indian Penal Code(45 of 1860), for any term not exceeding three months.

In its application to the State of Madhya Pradesh, in Section 3-

(i) for the words house, walled enclosure, room or place, wherever they occur substitute the words “house, room, tent, enclosure, space, vehicle, vessel or place”.(C.P. Act 3 of 1927 Section 4.)

(ii) for the last paragraph, substitute the following, namely: “shall be punished-

(a) for a first offence with imprisonment which may extend to six months or with fine which may extend to one thousand rupees;

(b) for a second offence with imprisonment which may extend to one year and,



in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, shall not be less than fourteen days, either with or without fine which may extend to two thousand rupees; and

(c) for a third or subsequent offence with imprisonment which may extend to one year and, in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, shall not be less than four months, together with fine which may extend to two thousand rupees.”[C.P. Act 3 of 1927, Section 5 and Madhya Pradesh Act 25 of 1950, Section 3 (w.e.f. 3-11-1950)].

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.

In its application to the State of M.P. In Section 4-

(i) for the words “house, walled enclosure, room or place”, wherever they occur, the words “house, room, tent, enclosure, space, vehicle, vessel or place” shall be substituted.[C.P. Act 3 of 1927, Section 4]

(ii) for the words “one hundred rupees”, the words “five hundred rupees” and for the words “one month”, the words “four months” shall be substituted. [Madhya Pradesh Act 25 of 1950, Section 4 (w.e.f. 3-11-1950)].

After Section 4 of the Principal Act, in its application to the State of Madhya Pradesh, the following section shall be inserted, namely:-

“Section 4-A. Punishment for printing or publishing digits, figures, signs, symbols or pictures relating to Worli Matkas or other form of gaming.

(1) Whoever prints or publishes in any manner whatsoever any digits or figures or signs or symbols or pictures or combination of any two or more of such digits or figures or signs or symbols or pictures relating to Worli Matka or any other form of gaming under any heading whatsoever or by adopting any form or device, or disseminates or attempts to disseminate or abets dissemination of information relating to such digits or figures or signs or symbols or pictures or combination of any two or more of them shall be punishable with imprisonment which may extend to six months and with fine which may extend to one thousand rupees.

(2) Where any person is accused of an offence under sub-section (1), any digits or figures or signs or symbols or pictures or combinations of any two or more of such digits or figures or signs or symbols or pictures in respect of which the offence is alleged to have been committed shall be presumed to



relate to Worli Matka gaming or some other form of gaming unless the contrary is proved by accused.”

6. Finding cards, etc., in suspected houses, to be evidence that such houses are common gaming-houses-

When any cards, dice, gaming tables, cloths, boards, or other instruments of gaming are found in any house, walled enclosure, room or place, entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure, room or place, is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police officer, or any of his assistants.

In its application to the State of Madhya Pradesh, in Section 6-for the words “house, walled enclosure, room or place”, wherever they occur, the words “house, room, tent, enclosure, space, vehicle, vessel or place” shall be substituted. [(C.P. Act 3 of 1927, Section 4)].

9. Proof of playing for stakes unnecessary-*It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager or stake.*

12. Act not to apply to certain games-*Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.*

7. The states of Punjab, Haryana, Manipur, Himachal Pradesh, and Uttar Pradesh have repealed Section 12 of the Act through corresponding state amendments. However, no such repeal has been incorporated by a state amendment in Madhya Pradesh. The unamended provision contained in Section 12 has an overriding effect on all preceding provisions. Therefore, any game of mere skill, wherever played, would not constitute offence under preceding Section 3 and 4 of the Act.



8. In the case of ***R.M.D. Chamarbaugwalla & Another Vs. Union of India & Another*** reported in ***1957 SCC OnLine SC 11***, the Supreme Court , while explaining the distinction between competitive success on skill and chance, observed as under :-

23. Applying these principles to the present Act, it will not be questioned that competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories. The difference between the two classes of competitions is as clear-cut as that between commercial and wagering contracts. On the facts, there might be difficulty in deciding whether a given competition falls within one category or not ; but when its true character is determined, it must fall either under the one or the other. The distinction between the two classes of competitions has long been recognised in the legislative practice of both the United Kingdom and this country, and the courts have, time and again, pointed out the characteristic features which differentiate them. And if we are now to ask ourselves the question, would Parliament have enacted the law in question if it had known that it would fail as regards competitions involving skill, there can be no doubt, having regard to the history of the legislation, as to what our answer would be. Nor does the restriction of the impugned provisions to competitions of a gambling character affect either the texture or the colour of the Act; nor do the provisions require to be touched and re-written before they could be applied to them. They will squarely apply to them on their own terms and in their true spirit, and form a code complete in themselves with reference to the subject. The conclusion is therefore inescapable that the impugned provisions, assuming that they apply by virtue of the definition in [s. 2\(d\)](#) to all kinds of competitions, are severable in their application to competitions in which success does not depend to any substantial extent on skill.

9. In the case of ***State of Andhra Pradesh Vs. K. Satyanarayan & Others*** reported in ***1967 SCC OnLine SC 333***, the Supreme Court explained effect of a *pari matria* provision of Section 14 of the



Hyderabad Gambling Act as under :-

12. We are also not satisfied that the protection of Section 14 is not available in this case. The game of Rummy is not a game entirely of chance like the 'three-card' game mentioned in the Madras case to which we were referred. The 'three card' game which goes under different names such as 'flush', 'brag' etc. is a game of pure chance. Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is, no skill involved in it. Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home. In this case, these elements are missing and therefore we think that the High Court was right in accepting the reference it did.

10. While examining *pari materia* provisions of the Section 49 of the Police Act and Section 11 of the Gaming Act, in the case of **DR. K.R. Lakshmanan Vs. State of T.N. & Another** reported in (1996) 2 SCC 226, the Supreme Court interpreted the expression “game of mere skill”, as under :-

19. We may now take-up the second question for consideration. Section 49 of the Police Act and Section 11 of the Gaming Act specifically provide that the penal provisions of the two Acts shall not apply to the games of "mere skill wherever played". The expression "game of mere skill" has been interpreted by this Court to mean "mainly and preponderantly a game of skill". In State of Andhra Pradesh vs. K.



Satyanarayana & Ors. (1968) 2 SCR 387, the question before this Court was whether the game of Rummy was a game of mere skill or a game of chance. The said question was to be answered on the interpretation of Section 14 of the Hyderabad Gambling Act (2 of 1305-F) which was pari materia to Section 49 of the Police Act and Section 11 of the Gaming Act. This Court referred to the proceedings before the courts below in the following words:

"The learned Magistrate who tried the case was of the opinion that the offence was proved, because of the presumption since it was not successfully repelled on behalf of the present respondents. In the order making the reference the learned Sessions Judge made two points:

He first referred to s.14 of the Act which provides that nothing done under the Act shall apply to any game of mere skill wherever played and he was of opinion on the authority of two cases decided by the Madras High Court and one of the Andhra High Court that the game of Rummy was a game of skill and therefore the Act did not apply to the case."

This Court held the game of Rummy to be a game of mere skill on the following reasoning:

"We are also not satisfied that the protection of s.14 is not available in this case. The game of Rummy is not a game entirely of chance like the 'three-card' game mentioned in the Madras case to which we were referred. The 'three card' game which goes under different names such as 'flush', 'brag' etc. is a game of pure chance. Rummy, on the other hand requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it."

20. *The judgments of this Court in the two Chamarbaugwala cases and in the [Satyanarayana](#) case clearly lay-down that (i) the competitions where success depends on substantial degree of skill are not 'gambling' and (ii) despite there being an element of chance if a game is*



preponderantly a game of skill it would nevertheless be a game of "mere skill". We, therefore, hold that the expression "mere skill" would mean substantial degree or preponderance of skill.

11. Thus, the Supreme Court held that the games involving considerable skill are games of "mere skill". Consequently, the games predominantly based on skill are not gambling, even if they contain some element of chance. Therefore, the game of "Rummy" which involves strategic elements, is not regarded as gambling under the prevailing legal statutes.

12. The material on case diary does not reveal the manner in which the petitioner/ accused was involved in the betting or gaming through cards. According to the statements of accused recorded under section 27 of the Evidence Act, they were playing card game "Rummy". The game of "Rummy" being, mainly and preponderantly, a game of skill would not constitute "gaming" in view of the provision contained in the section 12 of the Act, 1867. Consequently, the offence punishable under Sections 3 and 4 of the Public Gambling Act, 1867 is not made out against the petitioner.

13. In view of the aforestated discussion, further prosecution of the petitioner would be an abuse of process of the Court. Therefore, the



inherent powers of this Court u/S 528 of BNSS, 2023 are invoked for ends of justice and the FIR registered at Crime No. 937/2024, P.S. Industrial Area, Dewas Distt. Dewas is quashed with all consequential proceedings with reference to the petitioner 'only'. The petitioner stands discharged.

14. However, before parting with the order, it is considered appropriate to forward a copy of this order to the Principal Secretary, Department of Law and Legislative Affairs, Govt. of M.P. for intimation and deliberations, at appropriate forum, on the effect of Section 12 of Public Gambling Act, 1867 as it exists today and its social ramification.

(Sanjeev S. Kalgaonkar)
Judge