

Court No. - 76

Case :- APPLICATION U/S 482 No. - 26740 of 2024

Applicant :- Imran Khan And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Diwan Saifullah Khan

Counsel for Opposite Party :- G.A.

Hon'ble Vinod Diwakar,J.

1. Heard Shri Rajiv Lochan Shukla, learned counsel for the applicants and Shri H.P. Singh, learned A.G.A-I, for the State and perused the entire material available on record.
2. The present application has been preferred with the prayer to quash the charge sheet dated 27.12.2022 arising out of FIR 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, whereby the applicants have been summoned.
3. The prosecution's case stems from the facts outlined herein that on June 13, 2022, Sub-Inspector Vikas Kumar, along with Constable No. 4691 Shubham, departed from the police station at 8:25 PM after making an entry in the general diary kept at the police station. They were assigned to patrol the division outpost area to check for suspicious vehicles and individuals. As soon as they reached the Mahavir drain, they received specific information from a informer that Imran and Irfan, sons of Haroon, residents of 19/158, Teela Ajmeri Khan, Police Station Mantola, District Agra, have been running an

online betting racket from their residence. Several other individuals are reportedly involved with them.

3.1. It was also informed that multiple cases have already been registered against them, but they have no fear of the law. These individuals earn lakhs and crores of rupees through online betting, leading local people in the Agra area to gamble away their earnings and suffer worsening household conditions.

3.2. Constable Shubham was sent with the informer to verify the information and to prepare a sketch of the location. A short while later, Constable Shubham reported that several individuals were indeed conducting online betting activities inside the house at 19/158, Teela Ajmeri Khan, Police Station Mantola, District Agra. He also submitted a hand-drawn sketch of the scene, and the informer left the location.

3.3 This information was reported to the Station House Officer. The Sub-Inspector- the complainant- obtained written permission for the search from the senior police officers. Afterwards, with Constable Shubham and other police personal, the investigating officer conducted a raid.

3.4. The police party explained the purpose of the search to nearby residents and requested them to act as witnesses. However, due to personal concerns or unwillingness to get involved, no one agreed to testify and left without revealing their names or addresses.

3.5. The police party reached the vicinity of house number 19/158, Teela Ajmeri Khan, Police Station Mantola, District Agra. At that moment, two individuals exited the house. One of them was holding a large mobile device. As soon as they saw the police officers, and in order to escape, began to run quickly in the opposite direction. The police chased them down the lane. During the chase, one of them

dropped a large mobile device. Upon inspection, it was found to be a black Samsung tablet with a broken screen.

3.6 Both individuals escaped by taking advantage of the darkness. When the police asked nearby people about them, they revealed confidentially that the two who fled were indeed Imran and Irfan, sons of Haroon, residents of 19/158, Teela Ajmeri Khan, Police Station Mantola, District Agra.

3.7. The tablet recovered from the scene was sealed on-site in a white cloth, duly stamped, and a sample seal was prepared. The police registered the case, and after investigation, a charge sheet was filed against the applicants under Section 3/4 of the Public Gambling Act, 1867.

4. Shri Rajiv Lochan Shukla, learned counsel for the applicants invited the court's attention to the fact that the charge-sheet has been filed under Section 3/4 Public Gambling Act, 1867 wherein the maximum sentence in case of first offence is 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 the case of any subsequent offence 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. Therefore, the offences are non-cognizable and can't be investigated without written permission from the Magistrate concerned.

5. Shri Shukla further submitted that Section 155(2) Cr.P.C. mandated that no police officer shall investigate a non-cognizable case without the order of a Magistrate having the power to try such a case or commit the case for trial. And as in the instant case police did not take permission from the learned Magistrate to commence with the investigation, thus, the entire proceedings commenced soon after registration of FIR become *void ab initio* and placed reliance upon

*Keshav Lal Thakur v. State of Bihar*¹ the relevant paragraph is extracted herein below:

"3. 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 the Act is non-cognizable and therefore the police could not have registered a case for such an offence under Section 154 CrPC. 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) CrPC 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 Explanation to Section 2(d) CrPC, 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 relates 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."

6. *Per contra*, learned A.G.A. has opposed the application and submitted that there are serious allegations of gambling against the applicants and the applicants are habitual offenders. The procedural irregularity cannot overtake the substantive law, and therefore, the said irregularity would be overlooked in view of the gravity of the offences. He next submits that there is a criminal history of 20 cases against the applicant no.1, Imran Khan, and 08 cases have been registered against the applicant no.2, Irfan Khan alias Hazi Bhola.

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

¹ (1196) 11 SCC 557

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.²

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,¹ as defined in the Indian Penal Code (45 of 1860), for any term not exceeding one month,² 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.

12. The Public Gambling Act, 1867, is a colonial-era law enacted by the British Government in India to regulate gambling activities and suppress public gambling houses. At the time of its enactment, the Act addressed conventional gambling — card games, betting on dice, and similar forms held in physical gambling houses. Under sections 3

and 4, it criminalized operating or visiting a common gaming house. The maximum penalty imposed under the Act was a fine of ₹500 or imprisonment for up to three months - a substantial deterrent in the year 1867, but negligible today.

13. The Public Gambling Act is a pre-digital law. It makes no mention of digital platforms, servers, or cross-border transactions. Its enforcement is limited to physical gambling houses and has no jurisdiction over virtual gambling environments accessed *via* mobile phones, computers, or offshore servers.

14. The Act in the Era of Online Gambling has lost its impact and relevance as there is no definition or regulation of online gambling. Negligible penalties- a maximum two thousand fine and imprisonment up to twelve months, that too for subsequent offence- do not deter large-scale illegal operations. There is a lack of clarity on the legal status of fantasy sports, poker, and e-sports. Jurisdictional issues also arise, as online platforms operate across state, national, and international boundaries.

15. The legal framework governing gambling has undergone significant transformation worldwide, particularly in response to the rapid expansion of digital platforms. The UK Gambling Act of 2005, which represents, as argued, a modern and adaptive approach to regulating both offline and online gambling activities. This legislation encompasses a wide range of provisions, including licensing requirements, age verification protocols, responsible advertising standards, and anti-money laundering measures.

15.1 A central feature of the Act is the establishment of the UK Gambling Commission, which serves as the regulatory authority overseeing gambling operators. Under this framework, online casinos and betting platforms are legal, provided they obtain the appropriate

licenses. The Act also places a strong emphasis on consumer protection, offering tools such as self-exclusion programs to promote responsible gambling.

15.2 In 2023, the UK Government proposed further reforms aimed at enhancing player safety, including affordability checks for online gamblers and stricter regulations for online slot machines, reflecting the dynamic nature of regulatory needs in the digital age.

16. Other countries have adopted varying approaches. Australia, for example, regulates online gambling under the Interactive Gambling Act of 2001, which allows certain types of online betting while prohibiting others. In contrast, the United States adopts a fragmented model, where online gambling legality is determined at the state level—states like New Jersey and Pennsylvania have fully legalized and regulated online casinos. Meanwhile, countries such as Singapore and South Korea enforce strict controls, permitting only limited and highly regulated forms of digital betting.

17. The rise of fantasy sports platforms like Dream11, MPL, and My11Circle has reshaped the Indian digital gaming landscape. In response to the sector's rapid growth and associated legal ambiguities, NITI Aayog, the Indian Government's premier policy think tank, released a policy paper titled *"Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India"* in December 2020. While the document marked a significant step in acknowledging and formalizing a fast-evolving industry.

18. *"Betting and gambling"* in India are governed under the Constitution as a "State Subject," which means that the state legislatures have the exclusive power to make laws on matters related to betting and gambling under Entry 34 of the State List in the Seventh Schedule of the Constitution of India. Therefore, the

guidelines framed are not binding at the state level. Fantasy sports in India lie in a legal grey area, straddling the line between games of skill (permitted) and games of chance (prohibited under the Public Gambling Act, 1867). Multiple High Court rulings — notably in Punjab and Haryana, Rajasthan, and Bombay — have recognized fantasy sports as a game of skill, thereby legitimizing platforms under Article 19(1)(g) of the Constitution of India -right to practice any profession.

19. The GST Council in its 50th Meeting has also imposed a 28% tax on the full face value of bets in online gaming, casinos, and horse racing represents a significant policy shift aimed at increasing tax revenues and standardizing the taxation framework in it.

20. There are other key concerns as well, ignored by the current prevailing framework in India, like:

20.1 Online gaming platforms use psychologically manipulative algorithms², reward systems, and notifications to encourage prolonged use. This has led to a rise in gaming addiction, anxiety, depression, and social isolation, especially among adolescents and young adults.

20.2 Students are increasingly distracted by online gaming, often at the cost of their academic performance and family relationships. The disruption of sleep cycles, lack of discipline, and social withdrawal are common consequences.

20.3 The illusion of "*easy money*" through real-money gaming attracts many from low- and middle-income families. Once trapped, users may incur huge financial losses, leading to loans, theft, or even suicidal tendencies.

² **"Manipulative algorithms"** refer to computer algorithms—often used in online platforms, apps, or digital services that exploit cognitive biases or psychological vulnerabilities to influence user decision-making, often in a non-transparent or coercive manner, raising concerns about fairness, autonomy, non-accountability and consumer protection.

20.4 Online gaming has been linked to cybercrime, including data theft, cheating, and even blackmail. Illegal betting rings often operate under the facade of legitimate gaming platforms.

20.5 Easy access to digital payments- through credit cards, UPI, and mobile wallets- makes it effortless to spend large sums on gaming apps. These platforms exploit dopamine-driven reward mechanisms, pushing users into a vicious cycle of debt and compulsive gambling.

20.6 Many online betting operations function outside India's jurisdiction, with servers located abroad and transactions routed through unregulated channels. This poses challenges for law enforcement and increases the risk of money laundering, financial fraud, and terror funding.

21. Therefore, modern, technology-sensitive legislation is urgently needed to address the psychological, social, and national security implications of online gaming. Comprehensive reform must include centralised regulation, age restrictions, financial controls, platform accountability, and public awareness campaigns to safeguard the well-being of India's youth and society.

22. The inherent powers of the High Court empower it to intervene when necessary to secure the ends of justice. It ensures that no injustice is caused by the rigid application of procedural laws. It reinforces the principle that the justice is not defeated because of the procedural requirements.

23. Thus, till a robust legislative framework is enacted recognizing the digital nature of gaming and imposing clear regulatory safeguards, the fines and imprisonment terms may be revised in line with inflation and the scale of operations in Uttar Pradesh by bringing necessary amendments in the existing law, thereby making the offence non-cognizable.

24. Based upon the foregoing discussions, it's high time that a legislative framework be enacted to meet the transformative changes in online betting and gaming. In the light of critical issue raised herein, this Court, exercising its writ jurisdiction and the authority vested in the High Court, takes a *suo motu* cognizance and hereby directs the State Government to constitute a High-Powered Committee, comprising Prof. K.V. Raju, Economic Advisor to the Government of Uttar Pradesh, as its chairperson, to examine all relevant factors, particularly those outlined above comprehensively to meet out the legislative necessity arising from the transformed socio-technological concerning online betting and gaming. The Committee may include the Principal Secretary, State Tax as Member Secretary, besides other experts as Members. Their collective input should be used to develop a comprehensive and well-structured legislative framework for regulating and monitoring online gaming and public betting.

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*.

27. The Registrar (Compliance) is directed to transmit a copy of this order forthwith to the Chief Secretary, Government of Uttar Pradesh for compliance.

Order Date: 12.05.2025

A. Tripathi

Vinod Diwakar, J.