

IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH

BEFORE : JUSTICE SHIVASHANKAR AM ARAN N AVAR

PRADEEP REDDY - PETITIONERS

versus

STATE OF KARNATAKA and others - Respondents.

Criminal Petition No. 101615/2021

21.09.2021

CrPC, S. 155(1) and (2) - Whenever there is a non-cognizable offence, which is to be investigated, it is the duty of the concerned Police Officer to enter the details of the same in the Station House Diary and send the information to the concerned Magistrate under Section 155(1) of the Cr.P.C. and in terms of Section 155(2) of the Cr.P.C., permission has to be obtained from the jurisdictional Magistrate to initiate the investigation and to proceed further in the matter - Government Pleader submits that requisition has been filed seeking permission to Investigate a non-cognizable offence, that no order has been passed on the said requisition - Perusal of the record shows that no such permission from the jurisdictional Magistrate has been obtained - There being a substantive violation of the mandatory procedural law proceedings cannot be continued against the petitioners Proceedings initiated for the offence punishable under Sections 79 and 80 of the Karnataka Police Act, 1963, quashed.

ORDER

The petitioners/accused Nos. 10, 14 and 15 are before this Court seeking quashing of the proceeding before the learned Principal Civil Judge and JMFC Court, Gangavathi, in CC No. 1422/2021 initiated against the petitioners and others for the offence punishable under Sections 79 and 80 of the Karnataka Police Act, 1963 (hereinafter referred to as the 'KP Act', for short).

2.The case of the prosecution is that on 29.11.2020 at about 6.00pm, the police received credible information regarding playing of mataka and joojata in a shed present in the land belonging to one Chandrappa Agasar situated at Chikkajantakal of Gangavathi talk and after obtaining permission of the higher authorities, the complainant secured his staff and panchas and went to the said spot at 8.15pm in a Government vehicle and observed motorcycles, cars at the spot and also observed, people gathered were sitting in circle and putting money for betting and playing Andar Bahar. At about 8.45pm upon making raid, some people ran away from the shed and seven people were caught hold. In the presence of panchas, they seized 12 motorcycles, 3 cars and arrested 7 persons and conducted panchanama and registered a case against 7 persons for the offence under Sections 79 and

80 of KP Act,

3. After investigation,, charge-sheet has been filed and a case came to be registered in CC No. 1422/2021 pending on the file of the learned Principal Civil Judge and JMFC Court, Gangavathi.

4. Learned counsel for the petitioners would contend that the offences alleged against the petitioners are completely false. The complaint being that the petitioners were engaged in gambling is incorrect, however, he further submits that the reference to “common gaming-house” has to be considered with respect of Section 2(3) of the KP Act. The roof shed would not come within the said definition. He further relies on the decision of this Court in the case of **Sri.K.N.Suresh v. State of Karnataka and Another** reported in ILR 2012 KAR 1443, wherein this Court has held that ‘Andar Bahar” is not a game of skill and is mere game of chance. Therefore, the offence punishable under Section 79 and 80 of the KP Act, are not attracted and also that the place where the game was played do not come within the definition of “common gaming-house” as defined under Section 2(3) of KP Act, and there being no complaint which had been filed against the accused therein, this Court had quashed the proceedings. Learned counsel would submit that the said decision is equally applicable to the present facts and the proceedings are also required to be quashed.

5. Learned High Court Government Pleader for the respondents would contend that the accused were playing Andar-Bahar and amount was seized which indicates that they were gambling, therefore, the proceedings ought not be quashed.

6. There is considerable force in the submission of the learned counsel for the petitioners that the game of Andar-Bahar, as held by this Court in several cases, is not a game of skill and is mere game of chance and therefore this Court hold that Sections 79 and 80 of the Karnataka Police Act are not applicable.

7. Learned counsel for the petitioners submits that the Investigating Officer has not obtained permission of the jurisdictional Magistrate in terms of Section 155(2) of Cr.P.C.

8. Learned High Court Government Pleader submits that requisition has been filed seeking permission to investigate a non-cognizable offence. That no order has been passed on the said requisition.

9. A perusal of Section 155(1) and (2) of Cr.P.C. would indicate that, whenever there is a non-cognizable offence, which is to be investigated, it is the duty of the concerned Police Officer to enter the details of the same in the Station House Diary and send the information to the concerned Magistrate under Section 155(1) of the Cr.P.C. and in terms of Section 155(2) of the Cr.P.C., permission has to be obtained from the jurisdictional Magistrate to initiate the investigation and to proceed further in the matter.

10. A perusal of the record available would indicate that no such permission from the jurisdictional Magistrate has been obtained. Therefore, there being a substantive violation of the mandatory procedural law, the proceedings cannot be continued against the petitioners herein.

11. In view of the above, I pass the following order:

The petition is allowed. The proceedings initiated against the petitioners in CC No. 1422/2021 pending on the file of the learned Principal Civil Judge and JMFC Court, Gangavathi, for the offence punishable under Sections 79 and 80 of the Karnataka Police Act, 1963, are hereby quashed so far as the petitioners are concerned.