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**(1997) 09 RAJ CK 0023**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Petition No. 508 of 1997

Babu Bhai and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 09-09-1997

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Rajasthan Public Gambling Ordinance, 1949 — Section 12, 13

**Citation :** (1998) CriLJ 565

**Hon'ble Judges :** P.C. Jain, J

**Bench :** Single Bench

**Advocate :** S.D. Vyas, for the Appellant; S.K. Vyas, Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

P.C. Jain, J.—The petitioners have filed this petition u/s 482, Cr. P.C. for quashing FIR No. 167 of 1997 dated 1-7-1997 of Police Station, Jalore, by which, a case u/s 13 of the Rajasthan Public Gambling Ordinance, 1949 was registered against them.

2. The brief facts leading to this petition are that petitioner Babu Bhai submitted an application for grant of licence for dramatic performance and entertainment to the District Magistrate Jalore. After the issuance of the said licence, petitioner Babu bhai started a Stall for holding dramatic performance and entertainment. Thereafter, it is alleged that on 1-7-1997 at about 11-30 p.m. Circle Inspector Gopal Ramawal while patrolling the city happened to visit the stall of the petitioner and he found that the petitioner was conducting an Arrow Dart Game and many persons of the public were participating, it. In the FIR the Circle Inspector has described the manner in which this game was being played. A square wooden board which had 900 hundred squares of six different colours was fixed up at some distance from the ground; the players who wanted to participate in the above game used to stand at a particular distance from the

target; between him and the target was a table on which were placed card board squares bearing coloured discs and the players used to choose their colours and put the rupee coins on it; he was being given four darts; if the player places all the four darts on squares of the pre-selected colour on the target, he is paid three rupees; apparently he used to get a rupee for every successful throw; total failure means loss of the stake. According to the concerned Circle Inspector, the above game was a game of chance and the above act falls within the mischief of Section 13 of the Rajasthan Public Gambling Ordinance. He, therefore, registered a case against the petitioners.

3. I have heard Mr. Sukh Deo Vyas, the learned counsel for the petitioners and Mr. S. K. Vyas, Public Prosecutor for the State and have carefully gone through the record of the case.

4. It was contended by Mr. S. D. Vyas, the learned counsel appearing for the petitioners that petitioner Babubhai made an application in which he specifically sought licence for conducting arrow dart game and his application was accepted and licence was granted by the District Magistrate, Jalore and as such, at the relevant time, the petitioner was holding the licence for conducting the above game. Hence initiation of these proceedings amounts to the abuse of the process of the Court and thus, they deserve to be set aside and quashed.

5. It was next contended by Mr. S. D. Vyas that even if the allegations made in the FIR are accepted for the sake of arguments then too this game cannot be termed as a game of chance but it is game of skill, which is saved by Section 12 of the above Ordinance. In support of this contention, the learned counsel has placed reliance on Saligram Khetry Vs. Emperor,

6. On the other hand the learned Public Prosecutor has supported the impugned actions of the Circle Inspector in initiating these proceedings.

7. I have carefully gone through the record and considered the rival submissions made at the bar.

8. At the very outset it may be stated here that though petitioner Babubhai applied for conducting the above game also as is clear from his application but while issuing the licence, the District Magistrate mentioned in column No. 6 "Bal Manoranjan Mela" which is with regard to the nature of performance of entertainment authorised to hold. Thus, it cannot be said that petitioner Babubhai was granted any licence for conducting the above game. Hence the first contention raised by Mr. S. D. Vyas has got no force and it deserves to be rejected.

9. As regards the second contention raised by Mr. S. D. Vyas, the learned counsel for the petitioners, it may be stated here that u/s 13 of the above ordinance gaming at public streets place of thoroughfare has been made actionable and the police officer has been authorised to apprehend without warrant to any person found gaming in the above places. Section 12 of the above Ordinance provides

that nothing in this ordinance shall be held to apply to any game of mere skill as distinguished from a game of chance combined, unless it is carried on in a common gaming-house.

10. The arrow dart game was also subject matter in Saligram's case (1933 Cri LJ 168) (Cal) (supra). In that case, the petitioner moved an application to the police authorities for grant Of permission to carry on the above game at 124, Bow Bazar Street, Calcutta for a period of three months. The permission was granted to the petitioner but later on, the police authorities countermanded the sanction regarding arrow dart game on the ground that it did not belong to the classes of game which are predominantly games of skill. After analysing the elements of "skill" and "chance" it was observed as under :

In this particular case, there can be no doubt, I think, that the likelihood of success is well within the control of any particular player, provided he possesses the necessary skill. No doubt success would demand a high degree of skill or at any rate what is generally described as knack which is only another way of saying that the person playing must have an aptitude and must have a certain amount of experience and expertness in the play of the particular game. Here it is clearly possible for a person with sufficient expertness to hit any particular square or at any rate a line of squares. I say line of squares because the colours were arranged in lines drawn diagonally. There is nothing in the playing of the game which could not be foreseen and anticipated.. The players in the game so far as any outside circumstance or fortuitous factors are concerned, are masters of the situation. If one seeks a criterion upon the question whether the game is one of mere skill or not. I think one can only say that the real test is: is there any external thing or fortuitous circumstance which may interpose between the action of the player and the result to be attained, are the media or instruments of the operation all ascertained the moment the game begins. As I have already said that it is undoubtedly the case that in this particular game there was a possibility and indeed probability that a player might be unwillingly successful by hitting a line of the colour selected other than the particular line which he intended or was supposed to aim at. But on the other hand as I have already said it was undoubtedly possible for the person with the requisite skill to hit the actual point on the target selected by him beforehand. Accordingly giving the words "mere skill", a reasonable construction and not interpreting the qualifying adjective, the word "mere" as if it meant pure in the sense in which that word might be used in a scientific experiment.

11. Thereafter, it was held that the case falls within the proviso of Section 50-A of the Calcutta Police Act, 1866.

12. In these circumstances, I am also of the view that the observations and reasonings given in Saligram's case 1933 Cri LJ 168) fully apply to the instant case. I, therefore, hold that the game "arrow dart" is not a game of chance but is a game of skill which is saved by Section 12 of the Ordinance. Thus, if the above FIR is allowed to stand, it would occasion failure of justice and would

result in miscarriage of justice. Hence, the FIR deserves to be quashed.

13. For the above reasons, I accept this misc. petition and quash the FIR No. 167 of 1997 of Police Station, Jalore. In the circumstances of the case, it is further ordered that the cash and other implements of the game which were seized by the police may be returned to the petitioner forthwith.