

(2024) 03 BOM CK 0071

In the Bombay High Court

Case No : Criminal Application No.1761, 1763, 748, 749 Of 2022, 335, 336 Of 2023

Maroti And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-03-2024

Acts Referred:

Maharashtra Prevention Of Gambling Act, 1887 — Section 4, 5, 6, 6(1), 6(1)(i), 6(1)(ii), 6(1)(iii)
Code Of Criminal Procedure, 1973 — Section 4(1)(n)

Citation : (2024) 03 BOM CK 0071

Hon'ble Judges : Mangesh S. Patil, J;N.B. Suryawanshi, J;R.M. Joshi, J

Bench : Full Bench

Advocate : P.D. Bachate, ?N.D. Kendre, V.B. Madan, A.B. Girase, M.M. Nerlikar

Judgement

Mangesh S. Patil, J

1. In view of incompatible views of the two division benches, following issue has been referred for adjudication by the full bench :

"Whether an Assistant Superintendent of Police - ASP, without having been specially empowered by the State Government - SG, has an authority to exercise power covered by sub-clause (a) to (d) of the Section 6(1) of the Maharashtra Prevention of Gambling Act ?"

2. In the case of Dilip Namdev Irале Vs. State of Maharashtra & Ors.; 2019 SCC OnLine Bom 2514 it was held that Deputy Superintendent of Police who had conducted raid on a gambling house, was not specially empowered by the State Government to effect the raid in view of the specific wording of Section 6 of the Maharashtra Prevention of Gambling Act, 1887 (herein after the Gambling Act) and the raid was, therefore, illegal.

3. Whereas, in the present matters the division bench by the order dated 20.10.2023, referring to the decision of the Supreme Court in the matter of State

of Gujarat Vs. Lalsing Kishansingh ; 1980 Cri.L.J. 1413 and a judgment of a division bench of this Court in case of Emperor Vs. Abasbhai Abdulhussein ; AIR 1926 Bom. 195, disagreed with the view expressed in Dilip Namdev Irale (supra). It has expressed a view that since the raid/search was effected by the Assistant Superintendent of Police, there was no question of he being specially empowered by the State Government to exercise powers covered by sub-clauses (a) to (d).

It was also observed that the officers named therein viz District Magistrate, Sub-Divisional Magistrate, Taluka Magistrate or Superintendent of Police or Assistant or Deputy Superintendent of Police, are expressly been empowered to exercise powers under those clauses. Since, in these matters, the raid was effected by Assistant Superintendent of Police, he had the powers and the raid could not be said to be illegal.

This is how this reference.

4. We have heard the learned advocate Mr. P.D. Bachate along with Mr. N.D. Kendre and Mr. V.B. Madan, learned Public Prosecutor Mr. Girase assisted by Additional Public Prosecutor Mr. Nerlikar.

5. It would be apposite to reproduce the provision in its entirety. Section 6 of the Gambling Act reads as follows :

"6. (1) It shall be lawful for a police officer—

(i) in any area for which a Commissioner of Police has been appointed not below the rank of a Sub-Inspector and either empowered by general order in writing or authorised in each case by special warrant issued by the Commissioner of Police, and

(ii) elsewhere not below the rank of Sub-Inspector of Police authorised by special warrant issued in each case by a District Magistrate or Sub-Divisional Magistrate or by Taluka Magistrate specially empowered by the State Government in this behalf or by a Superintendent of Police or by an Assistant or Deputy Superintendent of Police especially empowered by the State Government in this behalf, and

(iii) without prejudice to the provision in clause

(ii) above, in such other area as the State Government may, by notification in the Official Gazette, specify in this behalf, not below the rank of a Sub-Inspector and empowered by general order in writing issued by the District Magistrate,

(a) to enter, with the assistance of such persons as may be found necessary, by night or by day, and by force, if necessary, any house, room or place which he has reason to suspect is used as a common gaming-house.

(b) to search all parts of the house, room or place which he shall have so entered when he shall have reason to suspect that any instruments of gaming are

concealed therein, and also the persons whom he shall find therein whether such persons are then actually gaming or not.

(c) to take into custody and bring before a Magistrate all such persons.

(d) to seize all things which are reasonably suspected to have been used or intended to be used for the purpose of gaming, and which are found therein :

Provided that no officer shall be authorised by special warrant unless the Commissioner of Police, the Magistrate, the Superintendent of Police or Assistant or Deputy Superintendent of Police concerned is satisfied, upon making such inquiry as he may think necessary, that there are good grounds to suspect the said house, room or place to be used as a common gaming house."

6. The learned advocates for the applicants would decipher the above provision and would submit that the view taken in the matter of Dilip Namdev Irle (supra) is legally sustainable. They would submit that Section 6 lays down the provision as regards the police officers who could lawfully undertake the activities like entering into any premises suspected to be a gaming house, its search, taking custody of the persons found gaming, seizure etc.

a. According to them clause (i) of Sub-Section 1 of Section 6 is applicable to the area for which the Commissioner of Police has been appointed. It provides that in such area, power under sub-clauses (a) to (d) could be exercised by a person not below the rank of Sub-Inspector and, either empowered by the general order in writing or authorized in each case, by a special warrant issued by the Commissioner of Police.

b. They would submit that clause (ii) of Sub-Section 1 of Section 6 provides that elsewhere, that is other than the area for which a Commissioner of Police has been appointed, a police officer not below the rank of Sub-Inspector of Police authorized by special warrant issued in each case by a District Magistrate or Sub-Divisional Magistrate or by Taluka Magistrate specially empowered by the State Government in this behalf or by a Superintendent of Police or by an Assistant or Deputy Superintendent of Police specially empowered by the State Government can exercise the powers under sub- clauses (a) to (d).

c) They would submit that clause (iii) of Sub-Section 1 of Section 6 provides that a Police Officer not below the rank of Sub-Inspector as may be notified by the State Government in the official gazette and empowered by general order in writing issued by the District Magistrate also can exercise the powers under sub-clauses (a) to (d).

d) They would emphasis that plain reading of clause (ii) of Sub-Section 1 of Section 6 leaves no manner of doubt that unlike clause (i) of Sub-Section 1 of Section 6 which confers a power on a Commissioner of Police, clause (ii) of Sub-Section 1 of Section 6 does not expressly authorize the Magistrate and police officers mentioned therein any power to take steps of entry and seizure etc. provided in sub-clauses (a) to (d).

e) They would submit that if at all the legislature wanted to confer the Magistrates and Police Officers mentioned in clause

(ii) to exercise the powers under sub-clause (a) to (d), there was no need to alter the wording of clause (ii) and even that could have been worded on the line similar to clause (i). The very fact that these two clauses are worded differently is indicative of the intention of the legislature not to authorize the Magistrates and the police officers mentioned in clause

(ii) with the same powers as it had conferred upon the Commissioner of Police under Clause (i).

f) In substance, according to the learned advocates the interpretation of these clauses in the matter of Dilip Namdev Irle (supra) is sustainable in law and correctly reflects intention of the legislature.

g) They would place reliance on the decisions in the matter of Emperor Vs. Udho Chandumal and Ors.; AIR 1943 SINDH 107, Emperor Vs. Savalaram Kashinath Joshi and Ors.; AIR 1948 Bom 156, Sindhi Lohana Choithram Parasram and Anr. Vs. The State of Gujarat ; 1967 CrL. Law Journal 1396, and a single bench judgment of this Court in the matter of State of Maharashtra Vs. Narayan Shamrao Landge and Ors.; 1979 Mh.L.J. 744.

7. Per contra, Mr. Girase the learned Public Prosecutor would support the view taken by the division bench in the present matters. He would submit that the only distinction between clause (i) and clause (ii) of Sub-Section 1 of Section 6 is that apart from the powers having been conferred upon the Commissioner of Police not only to himself exercise the powers under sub-clauses (a) to (d), but even he has been empowered to issue warrants in the name of the police officers to exercise those powers, which the Magistrates and the police officers mentioned in clause (ii) in other than Commissionerate areas do not have although they themselves can exercise the powers under sub-clauses (a) to (d). He would submit that it is only that the Magistrates and the police officers mentioned in clause (ii) cannot directly issue warrant to the officers subordinate to them unless they are specially empowered by the State Government to issue warrants. In other words, according to him a Commissioner of Police under Clause (i) has been conferred with the powers to issue warrants by the specific wording used by the legislature which it has not used consciously in respect of the District Magistrate and other Magistrates and the Superintendent of Police and other police officers mentioned in clause (ii). He would cite few such Government notifications, wherein, the police officers mentioned in clause (ii) have been specially empowered to issue warrants in the name of the subordinates for exercising the powers under sub-clauses (a) to (d).

8. We have carefully considered the rival submissions and perused the decisions cited at the bar. The cardinal principle of interpretation of statute is to understand and apply plain meaning to the words used which the provision conveys. It is only where the plain reading of a provision is not possible or does

not clearly indicate intention of the legislature, that various other principles of interpretation of statutes have to be resorted to.

9. To our mind the provision of Section 6 does not leave any manner of doubt and precisely conveys intention of the legislature. It lays down a provision regarding the powers of Magistrates police officer to effect entry, undertake seizure, take into custody the persons suspected to be indulging in gaming, in a place suspected to be a gaming house. Clauses (i) to (iii) of Sub-Section 1 then demarcate or distinguish the officers who could exercise powers under sub-clauses (a) to (d). Clause (i) is applicable to the area for which a Commissioner of Police has been appointed, whereas, clause (ii) takes into consideration other areas, that is the area for which a Commissioner of Police has not been appointed. Clause (iii) is in the form of an exception to clause (ii) and enables the State Government in such other areas to confer the powers to be exercised under sub-clauses (a) to (d) who also has to have a general order in writing, of the District Magistrate empowering him to exercise these powers.

10. The only distinction between clauses (i) and (ii) apparently is to the effect that a Commissioner of Police under clause (i) and the District Magistrate, the Sub-Divisional Magistrate and the Superintendent of Police under clause (ii) derive the power to take steps under sub-clause

(a) to (d), however, under clause (ii) Taluka Magistrate and the Police Officers mentioned therein cannot issue warrant to the sub-ordinates to exercise the powers under sub-clauses (a) to (d) unless they are specially empowered by the State Government, which power vests in the Commissioner of Police under clause (i).

11. Plain reading of the clause (ii) and a coherent reading of all the sub-clauses of sub-Section 1 of Section 6 leaves no manner of doubt that a Commissioner of Police derives the power to issue special warrant in the name of any Police Officer not below the rank of Police Sub-Inspector under clause (i) and the District Magistrate, Sub-Divisional Magistrate and Superintendent of Police under clause (ii) derive such power even without the State Government empowering them to do so.

12. Submissions of the learned advocates for the applicants that the District Magistrate and the Superintendent of Police and other officers named in clause (ii) even themselves cannot effect/exercise the powers under sub-clauses (a) to (d), is not a correct reading of the provision. As can be seen, all the high rank officials and Magistrates like Commissioner of Police, District Magistrate, Sub-Divisional Magistrate and Superintendent of Police have been conferred with the powers to be exercised in sub-clauses (a) to (d). It is only in respect of their power to further delegate the same, that a distinction has been made between the Commissioner of Police in a Commissionerate area in clause (i) and the Superintendent of Police, District Magistrates and Sub-Divisional Magistrate elsewhere under clause (ii). The former derives the powers to issue warrant by

operation of the statute but the latter have not been conferred with this power. They can derive such power only if they are conferred with it by the State Government. This according to us seems to be a plain understanding of these provisions.

13. We clearly find justification to such an interpretation on the basis of the observations and conclusion in the matter of Abasbhai Abdulhussein (*supra*) which is a division bench judgment of this Court of pre-independence era, relevant para to that effect is as follows :

"It is pointed out that under section 6 of the-Gambling Act the Commissioner of Police and certain other persons have power to issue special warrants of search and also of arrest, and that consequently what they may authorise by special warrant they may do personally. It is said, therefore, that this class of offence is one where the police may arrest without a warrant, because the superior officer himself such as the-Commissioner of Police may do so without a warrant. We have considered this argument and in our opinion, it is well founded. It is directly supported by a decision of the Calcutta High Court in *Queen-Empress v. Deodhar Singh* [(1899) 27 Cal. 144], which was a gambling case where it became material to consider whether the offence was a non-cognizable one. At page 150 the judgment says:—

"It is contended that the offence is a non-cognizable one within the meaning of clause (1)(n) of section 4 of the Code of Criminal Procedure.

Now, under the Gambling Act, it is not every Police Officer who can arrest without a warrant. It is only the District Superintendent of Police who can arrest or by warrant direct the arrest of persons gambling in a house. The-District Superintendent being a Police Officer who may, under a law for the time being in force, viz, the Gambling Act, arrest without warrant, we think that the requirements of clause (1)(f) of the above sections are satisfied, and that the offence in question is, therefore, a 'cognizable offence.' We cannot accept the contention that the words in that clause a 'Police Officer' mean 'any and every' Police Officer. It is sufficient if the Legislature has limited the-power of arrest to any particular class of Police Officers."

14. The Supreme Court decision in the matter of *Lalsing Kishansingh* (*supra*) is also relevant.

"10. From a plain reading of Section 6(1), it is clear that subject to the conditions of the proviso, a Commissioner of Police may empower by a general order or authorize by special warrant a police officer not below the rank of a Sub-Inspector, to do any of the acts and things enumerated in sub-clauses (a) to (d) of that sub-section, including the act of arresting a person found gambling or present in a common gaming house. It follows therefrom, by necessary implication, that the Commissioner of Police can personally do any of the aforesaid acts and things which he could authorise any other police officer of the requisite rank to do. The primary repository of the plenary power to do the

aforesaid acts and things, constituted under clause (i), is the Commissioner of Police. The clause only enables him to employ his subordinate police officers, not below the authorised rank of a sub-Inspector to execute his general order or special warrant to arrest for offences under Sections 4 and 5 of the Act.

11. It will be noted further that even under clause (iii), in an area notified by the Government, any police officer not below the rank of a Sub-Inspector empowered by the District Magistrate under a general order in writing can arrest a person found gambling or present in a common gaming house, without a warrant from a Magistrate. In short, Section 6 confers the power of arrest thereunder only on a specified class of police officers and not on any or every police officer."

15. True it is that Lalsing Kishansingh (supra) does not expressly seek to interpret clause (ii) of Sub-Section 1 of Section 6 and the issue before the Supreme Court was merely pertaining to clause (i) of Sub-Section 1 of Section 6. However, we can seek to derive some benefit by analogy, to resort to similar interpretation to infer that the District Magistrate and Superintendent of Police and other officers mentioned in clause (ii) themselves have been conferred with the powers to take recourse to the steps in sub-clause (a) and (d).

16. Though we understand that it may not be strictly speaking wholly relevant for determining the question, we are referring to the fact as to what is the understanding of the State Government of this provision. There cannot be a dispute about the fact that the Gambling Act has been in force for more than a century and a quarter. It is in this context, to our mind even a reference to the stand of the State Government has some relevance, at least to demonstrate its understanding of the provision of Section 6.

17. Both the sides have placed before us copies of few Government notifications viz. G. N., H. D., No.3842/2 dated 23rd August 1928, G.N.,H.D.,No.GBL.4255/3545/11, dated 19th July 1955, G.N.,H.D.,No.GBL.1358/25127-X, dated 07th February 1958, G.N.,H.D.,No.GBL.2260/23898-X, dated 15th November 1960, G.N.,H.D.,No.GBL.4159/109567-X, dated 10th February 1962, G.N.,H.D.,No.GBL.4163/66218-X, dated 02nd Decmeber 1963 and G.N.,H.D.,No.GBL.4266/20199-X, dated 21st September 1967. As can be seen, it is only when the State Government wanted, it has specially empowered the Taluka Magistrate and the Assistant and Deputy Superintendent of Police to issue a warrant for exercising the powers under sub-clauses (a) to (d). The parties have not pointed out any notification of the State Government showing conferment of powers under clause (ii) to the District Magistrate, Sub-Divisional Magistrate and Superintendent of Police to themselves exercise the powers under sub-clause (a) to (d). All these notifications (supra) have been issued on the premise that these latter category of officers derive such powers to be exercised under sub-clauses (a) to (d) by virtue of the provision of clause (ii) of Sub-Section 1 of Section 6. It is only when it was decided to empower these officers

to issue warrant to the subordinates, that these notifications have been issued.

18. As we have already observed, this circumstance may not be wholly relevant but cannot be overlooked as well. This consistent stand of the State Government over a period of so many years and conspicuous absence of any Government Resolution to demonstrate otherwise, this circumstance of issuing notifications from time to time, in our considered view, substantiates our inference.

19. Once having understood the provision and the distinction between the clause (i) and clause (ii) of Sub-Section 1 of Section 6 as aforesaid, we prefer to approve the view expressed in the present matters by the division bench in its order dated 20.10.2023 rather than the one expressed in Dilip Namdev Irale (*supra*).

20. Hence we answer the issue referred to us in the affirmative. Matters be now placed before the appropriate bench for adjudication.