



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31ST DAY OF JULY 2014

BEFORE

THE HON'BLE MR. JUSTICE S.N.SATYANARAYANA

CRIMINAL PETITION NO.3317 OF 2014
C/W CRIMINAL PETITION NO.4129 OF 2014

IN CRL.P.NO.3317/2014:

BETWEEN:

Sri.Hariraj Shetty,
S/o B.Vasanthram Shetty,
Aged 50 Years,
No.15, Basement,
Cunningham Road,
BANGALORE - 560 052

.. PETITIONER.

(By Sri.Vinod Kumar.M, Adv.)

AND:

State of Karnataka,
Rep. by Upparpet Police Station,
Bangalore,
Represented by the
State Public Prosecutor,
High Court of Karnataka,
Vidhana Soudha,
BANGALORE - 560 001.

... RESPONDENT.

(By Sri.Keshava Murthy,
Addl. SPP)

This petition is filed under Section 482 of Code of Criminal Procedure, praying to quash the entire proceedings in Crime No.150/2014 of Upparpet Police Station, pending on the file of Metropolitan Magistrate Traffic Court V, Bangalore.

IN CRL.P.NO.4129/2014:

BETWEEN:

Sri.Hariraj Shetty,
S/o B.Vasanthram Shetty,
Aged 50 Years,
No.15, Basement,
Cunningham Road,
BANGALORE - 560 052

.. PETITIONER.

(By Sri.Vinod Kumar.M, Adv.)

AND:

1. State of Karnataka,
Rep. by Vayalikaval Police Station,
Bangalore,
Represented by the
State Public Prosecutor,
High Court of Karnataka,
Vidhana Soudha,
BANGALORE - 560 001.

2. Central Crime Branch Police,
N.T. Pet, Mysore Road,
Bangalore - 560 002,
Represented by the
State Public Prosecutor,
High Court of Karnataka,
Vidhana Soudha,
BANGALORE - 560 001.

... RESPONDENTS.

(By Sri.Keshava Murthy,
Addl. SPP for R-1)

This petition is filed under Section 482 of Code of Criminal Procedure, praying to quash the entire proceedings in Crime No.114/2014 of Vayalikaval Police Station, pending on the file of VIII ACMM Court, Bangalore.

These petitions coming on for Admission this day, the Court made the following:

ORDER

The common accused No.1 – Sri.Hariraj Shetty, S/o B.Vasanthram Shetty, in Crime No.114/2014 registered with Vayalikaval Police, Bangalore, and Crime No.150/2014 registered with Upparpet Police, Bangalore, has come up in these two criminal petitions seeking to quash the same. Admittedly, both crimes are registered against the common petitioner and others for the offences punishable under Sections 78(1)(a)(vi), 79, 78(i)(b) of the Karnataka Police Act, 1963, and Section 188 of the Indian Penal Code. These two petitions were heard for admission on different dates and disposed off by common order.

2. Learned counsel appearing for the petitioner, who is seeking quashing of the aforesaid complaints, tried to substantiate his prayer in these two petitions relying upon the orders rendered by Co-ordinate Bench of this Court in the

matter of M/s.Rajeshwari Association Vs. State of Karnataka, in an unreported decision dated 18.12.2013 passed in W.P.No.57021/2013 (GM-Police) and followed by the decision of another Co-ordinate Bench in the matter of Pool N Club Vs. State of Karnataka in W.P.No.27530/2013 (GM-Police) disposed of on 27.06.2013 and in the matter of M/s.Rajeshwari Association Vs. State of Karnataka, in an unreported decision dated 14.03.2014 passed in W.P.No.12290/2014 (CM-Police). Incidentally, it is seen that the accused in all the earlier proceedings is one M/s.Rajeshwari Association, a recreation club, represented by its President, D.N.Niranjan and another is Pool N Club, represented by its President, Hariraj Shetty, who is petitioner in these two petitions.

3. It is seen that aforesaid clubs/associations are run by a group of persons, i.e., the petitioner in these two criminal petitions, who is also President of Pool N Club and also the Members Lounge, which is petitioner in W.P.No.27530/2013, disposed of on 27.06.2013 and Member in M/s.Rajeshwari Association, which is petitioner in W.P.No.12290/2014 and

W.P.No.57021/2013. It is seen that the so called M/s.Rajeshwari Association, Pool N Club, the Members Lounge and other associations are registered under the Societies Act, claiming themselves having laudable objects as stated in the Memorandum of Association. The Aim and Objects of the Members Lounge stated in the memorandum of association, which is produced as Annexure – “D” reads as under:

- a. To promote outdoor and indoor games the playing of skill oriented games the Snooker, Shuttle Cock, Sudko, Skating, Motor Racing, Carum, Chess, Billiards, Fantastic Three, Video games, Cricket, Hockey, Valley-Ball, Wall Game, Poker, Table Tennis Darts Game, Ping Pong Ball Game and other skilled games, etc., (Except Gambling)
- b. To promote Sports, Adventure Programmes, Social, Educational, Cultural and Recreational activities and conduct Taluk, District and State level motor race.
- c. High, Low altitude Trekking Cycling, Wildlife, Camps, Parasailing, Micro Light Flying, Water Sports, Team Building activities.
- d. To open Health Club, Swimming pool, Resorts and free reading room and library.
- e. To promote Music, Dance and Drama activities.
- f. To conduct National festivals like independence Day, Republic Day, etc.
- g. To Promote vocational training programmes.

- h. To encourage fine arts and cultural activities in Music, Dance and Drama.
 - i. To promote District, State and National level competitions of all types of sports.
 - j. To promote awareness and environment programmes.
 - k. To promote awareness and education on primary health and hygiene, Environmental sanitation, and population issues.
 - l. To create social awareness among the members and general public by promoting various activities.
 - m. To conduct seminar conferences, lectures, workshops, for the educational benefit of the members and general public.
2. The income of the Association by whatever means shall be utilized for the objects of the Association and shall not be distributed among its members or anybody.
 3. The President of the Association is authorized to correspond with the Registrar of Societies.

4. It is further seen that the aforesaid societies also have different set of objects as could be seen from the documents, which are produced by the prosecution along with a memo, which are said to have secured from the office of the Registrar of Societies, where M/s.Rajeshwari Association is registered. The object of said Society, which is in Kannada, is reproduced as under:

ಜ್ಞಾಪನಾ ಪತ್ರ

1. ಸಂಘದ ಉದ್ದೇಶಗಳು -

ಎ. ಸ್ಥಳೀಯ ನಾಗರಿಕರ ಕುಂದುಕೊರತೆಗಳಿಗೆ ಸ್ಪಂದಿಸುವುದು ಮತ್ತು ಅವರ ಸಮಸ್ಯೆಗಳನ್ನು ಸಂಬಂಧಪಟ್ಟ ಅಧಿಕಾರಿಗಳ ಗಮನಕ್ಕೆ ತರುವುದು.

ಬಿ. ಸ್ಥಳೀಯ ನಾಗರಿಕರಲ್ಲಿ ಶಾಂತಿ, ಸಮಾನತೆ, ಸಹೋದರತೆ ಮತ್ತು ಸಹಬಾಳ್ವೆ ಮೊದಲಾದ ಉನ್ನತ ಭಾವನೆಗಳನ್ನು ಏರ್ಪಡಿಸುವುದು.

ಸಿ. ಸ್ಥಳೀಯ ನಾಗರಿಕರಿಗೆ ಸರ್ಕಾರ ಮತ್ತು ಇತರೆ ಇಲಾಖೆಗಳಿಂದ ದೊರೆಯಬಹುದಾದ ಮೂಲಭೂತ ಸೌಲಭ್ಯಗಳ ಕುರಿತು ಸಂಬಂಧಪಟ್ಟ ಅಧಿಕಾರಿಗಳಲ್ಲಿ ವ್ಯವಹರಿಸುವುದು.

ಡಿ. ಬಡಮಕ್ಕಳ ವಿದ್ಯಾಭ್ಯಾಸಕ್ಕೆ ಸಹಾಯಕವಾಗುವ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳುವುದು.

ಇ. ಸ್ಥಳೀಯ ನಾಗರಿಕರ ಸಭೆ ಸಮ್ಮೇಳನಗಳು ಮತ್ತು ವಿಚಾರ ಸಂಕೀರ್ಣಗಳನ್ನು ಏರ್ಪಡಿಸುವುದು ಸ್ಥಳೀಯ ನಾಗರಿಕರಿಗೆ ಆಹಾರ ನಾಗರಿಕರ ಸೌಲಭ್ಯಗಳನ್ನು ಕಲ್ಪಿಸುವುದು.

ಎಫ್. ಪ್ರತಿ ವರ್ಷ ರಾಷ್ಟ್ರೀಯ ಮತ್ತು ನಾಡ ಹಬ್ಬಗಳನ್ನು ಆಚರಿಸುವುದು. ಸಂಘದ ವ್ಯಾಪ್ತಿಗೊಳಪಡುವ ದೇವಸ್ಥಾನಗಳ ಅಭಿವೃದ್ಧಿ ಮತ್ತು ಜೀರ್ಣೋದ್ಧಾರ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳುವುದು. ದೇವಸ್ಥಾನಗಳಲ್ಲಿ ವಿಶೇಷ ಪೂಜೆ, ಮೂರ್ತಿ ಉತ್ಸವ, ಜಾತ್ರೆ ಮತ್ತು ಮಹೋತ್ಸವ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳುವುದು.

ಜಿ. ಸಮಾಜದಲ್ಲಿನ ಬಡವರು, ಅಂಧರು, ಅಂಗವಿಕಲರು, ವೃದ್ಧರು ಮತ್ತು ಅನಾಥರ ಕ್ಷೇಮಾಭಿವೃದ್ಧಿ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳುವುದು ಮತ್ತು ಅವರಿಗಾಗಿ ಆಶ್ರಮಗಳನ್ನು ಸ್ಥಾಪಿಸುವುದು.

ಹೆಚ್. ಉಚಿತ ವಾಚನಾಲಯ ಮತ್ತು ಗ್ರಂಥಾಲಯಗಳನ್ನು ಸ್ಥಾಪಿಸುವುದು ಸಂಘದ ವ್ಯಾಪ್ತಿಗೊಳಪಡುವ ಪ್ರದೇಶದಲ್ಲಿ ನೀರು, ರಸ್ತೆ, ಬೀದಿ ದೀಪ ಮತ್ತು ಉದ್ಯಾನವನಗಳ ನಿರ್ವಹಣೆ ಕುರಿತು ಸಂಬಂಧಪಟ್ಟ ಅಧಿಕಾರಿಗಳೊಂದಿಗೆ ವ್ಯವಹರಿಸುವುದು.

ಐ. ಉಚಿತ ಆರೋಗ್ಯ ತಪಾಸಣಾ, ನೇತ್ರ ಚಿಕಿತ್ಸೆ ಮತ್ತು ರಕ್ತದಾನ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳುವುದು.

ಜೆ. ಪರಿಸರ ಸಂರಕ್ಷಣೆ, ಜಲಸಂರಕ್ಷಣೆ, ಅರಣ್ಯ ಸಂರಕ್ಷಣೆ, ವನ್ಯಜೀವಿ ಸಂರಕ್ಷಣೆ ಮೊದಲಾದ ಸಾಮಾಜಿಕ ಕಲ್ಯಾಣ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳುವುದು.

ಕೆ. ಸ್ಥಳೀಯ ಪ್ರದೇಶದಲ್ಲಿನ ದೇವಸ್ಥಾನಗಳ ಅಭಿವೃದ್ಧಿ ಮತ್ತು ಜೀರ್ಣೋದ್ಧಾರ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳುವುದು.

ಎಲ್. ಒಳಾಂಗಣ ಮತ್ತು ಹೊರಾಂಗಣ ಕ್ರೀಡೆಗಳಾದ ಕೇರಂ, ಚೆಸ್, ಸ್ನೂಕರ್, ಸ್ಕಿಲ್ ಗೇಮ್, ವೀಡಿಯೋ ಗೇಮ್, ಫೆಂಟಾಸ್ಟಿಕ್-3, ಬಿಲ್ಡಿಯರ್ಸ್, ಕ್ರಿಕೆಟ್, ವಾಲಿಬಾಲ್, ಹಾಕಿ ಮೊದಲಾದ ಆಟಗಳನ್ನು ಪ್ರೋತ್ಸಾಹಿಸುವುದು ಮತ್ತು ರಿಕ್ರಿಯೇಷನ್ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳುವುದು.

ಎಂ. ಸಂಘದ ವತಿಯಿಂದ ನರ್ಸರಿ, ಪ್ರೈಮರಿ, ಹೈಸ್ಕೂಲ್, ಕಾಲೇಜು (ಕಲಾ, ವಾಣಿಜ್ಯ ಮತ್ತು ವಿಜ್ಞಾನ), ಮೊದಲಾದ ವಿದ್ಯಾ ಸಂಸ್ಥೆಗಳನ್ನು ಸ್ಥಾಪಿಸಿ, ಕನ್ನಡ ಮತ್ತು ಇಂಗ್ಲೀಷ್ ಮಾಧ್ಯಮಗಳಲ್ಲಿ ನಡೆಸಿಕೊಂಡು ಬರುವುದು.

ಎನ್. ಕೈಗಾರಿಕಾ, ತಾಂತ್ರಿಕ, ವೈದ್ಯಕೀಯ ಕಾನೂನು, ಡೆಂಟಲ್, ಫಾರ್ಮಸಿ, ಪ್ಯಾರ ಮೆಡಿಕಲ್, ಡಿ.ಇಡಿ ಶಿಕ್ಷಕರ ತರಬೇತಿ ಕಾಲೇಜು, ಸ್ಕೂಲ್ ಆಫ್ ನರ್ಸಿಂಗ್, ಕಾಲೇಜು ಆಫ್ ನರ್ಸಿಂಗ್ ಮೊದಲಾದ ವಿದ್ಯಾಸಂಸ್ಥೆಗಳನ್ನು ಸ್ಥಾಪಿಸುವುದು.

ಒ. ಇಂದಿನ ಯುವ ಜನಾಂಗದ ಜ್ಞಾನಾರ್ಜನೆಗೆ ಅವಶ್ಯಕವಾದ ಎಲ್ಲಾ ರೀತಿಯ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳುವುದು.

2. ಸಂಘದಲ್ಲಿ ಉತ್ಪತ್ತಿಯಾಗುವ ಹಣವನ್ನು ಸಂಘದ ಅಭಿವೃದ್ಧಿಗಾಗಿ ಉಪಯೋಗಿಸುವುದು ಯಾವುದೇ ಕಾರಣದಿಂದ ಆ ಹಣವನ್ನು ಸದಸ್ಯರಿಗೆ ಹಂಚಲಾಗುವುದಿಲ್ಲ.

3. ಈ ನಿವೇದನಾ ಪತ್ರಿಕೆ ಮತ್ತು ನಿಬಂಧನೆಗಳನ್ನು ಸಲ್ಲಿಸಲು ಹಾಗೂ ನೋಂದಣಾಧಿಕಾರಿಗಳೊಂದಿಗೆ ಪತ್ರ ವ್ಯವಹಾರ ಸಂಘದ ಅಧ್ಯಕ್ಷರವರಿಗೆ ಅಧಿಕಾರವನ್ನು ನೀಡಲಾಗಿದೆ.

5. These two petitions are filed by the 1st accused in aforesaid crimes seeking quashing of the complaints, which are registered by Vayalikalval Police and Upparpet Police

against the petitioner and others for conducting gambling within the limits of two police stations. It is stated that on the basis of the information, which is given by the higher officials, a raid was conducted by the Inspector of Police on these places, i.e., M/s.Rajeshwari Association, which is situated within the limits of Upparpet Police Station and M/s.The Members Lounge, which is situated within the limits of Vayalikaval Police. It is seen that at the time of raid, police said to have noticed several persons involved in the activity of gambling in the said place, which the petitioner tried to explain as skilled game as defined under Section 2(7) of the Karnataka Police Act. The petitioner asserted that the said activity is not gambling, attempt to book a case against them under Section 78(1)(a)(vi), 78(i)(b) and 79 of the Karnataka Police Act, is contrary to the provisions of Sections 79, 80 and 81 of the Karnataka Police Act and also opposed to the Judgments rendered by the Co-ordinate Bench of this Court in the aforesaid writ petitions.

6. The learned Additional SPP opposed the same bringing to the notice of this Court the manner in which gambling activity is being carried on by the petitioner, who is said to be the President of one of the Associations and Member of another association, in conducting gambling activity in the guise of conducting skilled game, getting the so called association and club registered as an association under the Societies Registration Act. It is also brought to the notice of this Court that the objects which are stated to the Registrar of Societies at the time of forming this association and the subsequent activities, carried on in said association are totally different and contradictory. It is also brought to the notice of this Court that on earlier occasion when W.P.Nos.27530/2013, 57213/2013 and 12292/2014 were filed and orders were secured in the said proceedings, the Court was misled to believe that the police are unnecessarily harassing these associations, which are conducting skilled game for the benefit of their Members, pursuant to registration secured from the Registrar of Societies. They tried to demonstrate before the Co-ordinate Bench that the

police are trying to create trouble in stalling the skilled game, which is going on within the premises of the Society among its members.

7. To substantiate that the petition averments are false and to prove that the petitioner and other accused were involved in the activity of gambling at the time of raid, learned Additional SPP produced a CD, wherein one of the staffs of M/s.Rajeshwari Association explaining the manner in which the said skilled game is conducted in the said premises. It is necessary to place on record that though the Association is said to have formed for the purpose of carrying on the recreational activities among its members, which include all kinds of outdoor and indoor games. It is seen that what is played in these associations are fantastic three games as could be seen from the CD, which was produced by the learned Additional SPP, which is played before this Court in the presence of counsel for petitioner and petitioner – Hariraj Shetty and also in the presence of the learned Additional SPP. Other two CDs, which are said to be CCTV recording of the actual game activities within the premises of M/s.Rajeshwari

Association and as well as the demo CD of fantastic three games, are also played in the open Court. After witnessing the said demonstration, it is seen that the entire activity, which is going on in the said place is confined only to fantastic three games, which is not a skilled game. The observation of this Court with reference to the contents of the aforesaid CDs, which are played before the Court this day are as under;

A game table is provided in the place where the so called recreational activity is carried on, which is a big rectangle table with three plastic wickets of the size of 6 inch, being kept at one end of table and on either side of the table the names of Shoe Company are drawn leaving a passage in between. On the left side, first name is Joker, second name is Fila, third is Nilu; on the right side there is Puma, Reebok and Adidas. In between these six names is a passage of about 1 ½ feet. Within the said 1 ½ feet passage, a hexagon shape dye is rolled aiming at the wickets, which is on the other end of the table. In the meanwhile, each of the persons participating in the game would place their bet on the board

above the name of Nilu, Reebok, Joker, Puma, Fila and Adidas; depending on the hits, each of the persons, who are betting would be paid money up to 1 to 3 times as explained by the learned counsel for the petitioner in the course of his argument. This Court is unable to see what skill is involved in this game.

8. After witnessing the video playing of aforesaid game, if the judgment rendered by Co-ordinate bench of this Court in WP.No.57021/2013 (DD 18/12/2013), WP.No.27530/2013 (DD 27.06.2013) and WP.No.12290/2014 (DD 14.03.2014), it is seen that this Court is taken for raid by the petitioner and others by suppressing the facts and projecting as if they are running a recreation Club for its members. On the contrary, the video discloses that petitioner and other group of persons carrying on gambling in the business locality of the City after the business hours. Watching of the CD does not infuse any kind of confidence in the mind of this Court regarding petitioner's claim that the registered association is carrying on recreation activity for its members. In the judgments,

which are rendered by Co-ordinate Bench of this Court it is clearly seen that these facts are kept away from the knowledge of this Court and this Court is misled to believe that the police are unnecessarily harassing registered clubs and associations, which are carrying on recreation activity for the benefit of its members and the same is sought to be protected by filing the writ petitions. It is necessary to place on record that based on the orders passed in W.P.No.57021/2013, a copy of which is produced at Annexure - "E", the Commissioner of Police is said to have issued a Circular dated 31.08.2013, which is produced at Annexure - "H" to CrI.P.No.3317/2014, which reads as under:

"In spite of repeated instructions, it is coming to the notice of the undersigned that certain police officials are interfering with the running of Clubs, Establishments, Parlours, etc.

It is made clear herewith that there should be no interference with the conduct of business of such establishments, unless specific illegalities come to notice. Even in such instances, the prior consent of the DCPs concerned shall be obtained before undertaking any legal action.

Any infringements will be viewed seriously."

9. All these clearly indicate the manipulation right from the level of filing of writ petitions to the level of getting circulars and orders being issued blindly without even ascertaining as to what is the nature of activity going on in the said association/club, whether it is skilled game or gambling in the guise of skilled game, is not looked into by anybody. This Court feel that the present petitions which are filed challenging the registering of complaint in Crime Nos.150/2014 and 114/2014 respectively in Criminal Petition Nos.3317/2014 and 4129/2014 are premature in nature. A thorough investigation is required to be conducted into the business of such kind of Association not only one which is run by the petitioner herein, but also other similar Associations. Therefore, this Court would direct the Commissioner of Police to refer these matters to ADGP of CID Department to ascertain whether in the name of skilled game, the general public, more particularly the downtrodden members of socially and economically weaker section is taken by raid by bunch of people with fictitious association, thereby enhancing the activity of gambling in the State of Karnataka,

which is a social menace. Hence, if this activity is allowed to continue without proper check, it would lead to anarchy in the society.

10. Hence, while dismissing these petitions, a clear direction is issued to ADGP of CID Department to conduct thorough investigation in to these kind of activity not only into the Association run by the accused in these complaints, but other similarly situated clubs/associations or organizations registered under whatever name indulging in the activity of gambling as if they are conducting skilled game and the same shall be brought to the notice of this Court. The investigation ordered herein shall be taken up throughout the State and the result of the same shall be placed before this Court within six months from the date of receiving copy of this order. Till such time the investigation is conducted by the police and file its report into this Court, the Home Department shall ensure that, no such club or association should be allowed to carryout aforesaid game or similar activity.

Further, it is made clear that the Registry shall keep track of these disposed of matters to ensure that as and when the report is submitted by the ADGP of CID Department, the same shall be placed before this Court. To assist the investigation, all materials which are placed before this Court in these petitions in the form of CD's, are ordered to be sent to ADGP of CID Department to be made use of in the course of aforesaid investigation.

A copy of this order shall be furnished to Additional SPP to communicate the same to Secretary, Home Department, ADGP of CID Department and other concerned Officers.

**Sd/-
JUDGE.**

SMA - 1 - 3.
AGV - 4 - 17.