

Baba vs the State of Karnataka

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Court : Karnataka

Decided On : Jul-01-2025

Judge : S.R.Krishna Kumar

Appeal No. : CRL.P/8422/2025

Appellant : BABA

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2025 BEFORE THE HON'BLE
MR. JUSTICE S.R.KRISHNA KUMAR CRIMINAL PETITION NO.8422
OF 2025 (482(Cr.PC) / 528(BNSS) BETWEEN:

1. BABA S/O RAZAK SAB, OCC: LABOURER, AGED ABOUT 44
YEARS, R/O INDIRA EXTENSION, Y.N.HOSAKOTE TUMKUR
DISTRICT-572 141.

2. YASMEEN W/O BABA @ MATKA BABA AGED ABOUT 34 YEARS,
OCC: HOUSEHOLD WORK, R/O INDIRA EXTENSION,

Y.N.HOSAKOTE TUMKUR DISTRICT-572 141.

3. VENKATARAMANA @ ADAVIRAMUDU S/O NARAYANAPPA AGED ABOUT 62 YEARS, OCC: COOLIE WORK, R/O Y.N.HOSAKOTE TUMKUR DISTRICT-572 141. Digitally signed by

CHANDANA 4. VEERESHA D J S/O GANGAPPABM

of Karnataka PAVAGADA TALUKA TUMKUR DISTRICT-561 202.

5. ARUNKUMAR

S/O VEDAMURTHY, AGED ABOUT 40 YEARS, OCC: HOTEL WORK, R/O DODDAHALLI VILLAGE PAVAGADA TALUKA TUMKUR DISTRICT-561 202. PETITIONERS (BY SRI. R.B. DESHPANDE, ADVOCATE) -2- AND: THE STATE OF KARNATAKA BY Y.N.HOSAKOTE POLICE STATION, THIRUMANI CIRCLE, TUMKUR DISTRICT - 572 141. (REPRESENTED BY STATE PUBLIC PROSECUTOR, HIGH COURT BUILDINGS, BENGALURU-560 001) RESPONDENT (BY SRI. NAGESHWARAPPA K., HCGP) THIS CRL.P. IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS)

PRAYING TO QUASH THE CRIMINAL PROCEEDINGS AGAINST THE PETITIONERS IN C.C.NO.4738/2021 PENDING ON THE FILE OF ADDL.CIVIL JUDGE AND JMFC, PAVAGADA (CHARGE SHEETED FOR THE O/P/U/S 78(3) OF K.P ACT IN CR.NO.90/2021 OF Y.N. HOSAKOTE P.S).

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER

WAS MADE THEREIN AS UNDER: CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioners seek the following reliefs: To quash the criminal proceedings against the petitioners in C.C.No.4738/2021 pending on the file of Additional Civil Judge and JMFC, Pavagada (Charge Sheeted for the offences punishable under Section 78(3) of Karnataka Police Act in Crime No.90/2021 of Y.N.Hosakote Police Station) in the interest of justice.

2. Heard learned counsel for the petitioners and the learned HCGP for the respondent. -3-

3. A perusal of the material on record will indicate that on

16.07.2021, respondent conducted a raid at a public place where the petitioners were inviting general public to participate in gambling with an intention of cheating the participants and registered FIR in Cr.No.90/2021, which is presently pending in C.C.No.4738/2021 before the Trial Court, which is assailed in the present petition.

4. Learned counsel for the petitioners would reiterate the

various contentions urged in the petition and referring to the material on record, in order to point out that apart from the fact that the Trial Court passed the impugned order dated 27.11.2021 taking cognizance without assigning any reason and by passing a cryptic, laconic and unreasoned order without any application of mind, the game, which was allegedly played by the petitioners was stated as gambling, but has not been specified as to whether such gambling could be classified as Game of Chance and hence, the petitioners could not be incriminated for the aforesaid offences under Section 78(3) of the Karnataka Police Act as well as section 420 of the Indian Penal Code as held by this Court in Hasan Raj v/s. The State of Karnataka in Crl.P. No. 8395 of 2017 dated 06.06.2018. -4- It is, therefore, submitted that the impugned proceedings deserve to be quashed.

5. Per contra, learned HCGP submits that there is no merit in the petition and that the same is liable to be dismissed.

6. In the instant case, the material on record discloses

that the petitioners were playing 'Gambling' and nothing has been stated in the said complaint as to whether the said game is a game of chance or game of skill and as to how it amounts to offence under section 78(3) of the Karnataka Police Act.

7. In Hasan Rajs case supra, this Court has held as under:

2. The petition is filed seeking quashing of registration of FIR in Crime No. 197/2017 and further investigation thereon. The records disclose that, the Sub-Inspector of Cubbon Park Police Station, Bengaluru, has registered a case in NCR No.133/2017 for the offences punishable under Sections 79 & 80 of the Karnataka Police Act (for short, K.P. Act) and after obtaining permission from the Magistrate, he started investigation for the above said offences. The records also disclose that, the said permission -5-

appears to have been granted. Even considering that the permission being granted by the Magistrate, it appears it is after the Police Officer receiving credible information with regard to the above said offences and going to the spot and after conducting investigation to some extent, thereafter permission was obtained. The learned Magistrate has simply granted permission by mentioning a single word Permitted. There is no application of mind to the contents of the complaint or to the report submitted by the Police Officer and no satisfaction of the Magistrate is recorded before permitting for investigation. Even the learned Magistrate has not mentioned the time at which permission has been taken and as to whether it is before or after starting-up of investigation.

3. At this stage, it is worth to mention here the

observation made by this court in Crl.P under:- Even otherwise a perusal of the order of the Judge, which is in manuscript written over the representation by the Sub-Inspector of Police, does not disclose

application of mind. As noticed supra, the JMFC ought to have applied his mind to the facts, satisfied himself as to whether there are reasonable grounds to believe that anon-cognizable offence is committed and having not done so, the act is both, arbitrary and capricious. -6-

Therefore, it goes without saying that before permitting for investigation, the Magistrate has to go through the contents of the report submitted by the Police Officer and record his satisfaction with regard to the grounds to believe that non-cognizable offence is committed and it requires investigation by the police and thereafter, he has to permit the police to investigate the matter. Such things are not there, so far as this case is concerned, except mentioning in a word Permitted. It appears that the Magistrate has not applied his judicious mind before passing such an

order.

4. One more thing required to be considered by this

court is that, the Police Officer has stated in the complaint that, on 12.09.2017, one Mr. Prakash, the Police Officer (Special Investigation Team) has appeared before the Sub-Inspector of Police, Cubbon Park, Bengaluru, and stated that he has visited the Not a Royal Arcade No.158, Shop No.11 and 12, Ground Floor, Puradamma Recreation Associates which are the video game shops and he found that some people are playing Video Games with the help of machines. Except stating that, nothing has been stated in the said complaint as to whether the said game is a game of chance or a Game of skill and as to how it amounts to offence under Sections 79 & 80 of the K.P Act. Therefore, there is absolute no information with regard -7-

to the game being played as to whether it is a game of chance only or any skill is required.

5. In the above circumstances, there are serious

lacunas in registration of case and investigation in connection of the said case concerned. Therefore, in my opinion, if such investigation ordered to be continued, it would amount to abuse of process of law. Hence, the same is liable to be quashed. However, the Jurisdictional Police are at liberty to follow the procedure under Section 155(2) of Cr.PC. properly and re-investigate the matter, if need arises, in accordance with law. With the above observation, the petition is disposed of.

8. As held by this Court in the aforesaid judgments, in the

event of a person participates / plays a 'Game of Skill', he cannot be said to have committed offence punishable under Section 78(3) of the Karnataka Police Act, which are applicable only to 'Game of Chance' and not to 'Game of Skill'.

9. In the instant case, the material on record discloses

that the respondents have not ascertained as to whether the petitioners were playing a 'Game of Skill' or a 'Game of Chance' at the time of raid and hence, the petitioners cannot be said to -8- have committed the aforesaid offences under Section 78(3) of the Karnataka Police Act, which only relates to 'Game of chance'. Further, it is also evident from the order dated 27.11.2021 that the learned Magistrate has taken cognizance of the said offence without application of mind and the said order is bald, vague, cryptic and the same is impermissible in law.

10. Under these circumstances, I am of the considered opinion that the impugned proceedings, insofar as the petitioners are concerned, deserve to be quashed.

11. In the result, I pass the following:

ORDER

(i) The petition is hereby allowed.

(ii) The proceedings in C.C.No.4738/2021

arising out of FIR in Crime No.90/2021 registered by the respondent - Police, pending on the file of Additional Civil Judge and JMFC, Pavagada for the offence punishable under Section 78(3) of the Karnataka Police Act and Section 420 of the IPC, -9- insofar as the petitioners are concerned, are hereby quashed. Sd/- (S.R.KRISHNA KUMAR) JUDGE SV List No.: 3 SI No.: 55

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