



2025:AHC:223676

A.F.R.

Judgment Reserved On 26.11.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 43373 of 2025

Kamran

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Diwan Saifullah Khan
Counsel for Opposite Party(s)	:	G.A.

Court No. - 78

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Shri Diwan Saifullah Khan, learned counsel for the applicant and Shri Mohd. Afzal, learned counsel for the State.
2. Present application under Section 528 BNSS has been preferred to quash the entire proceedings of Case No.1468 of 2020 (State vs. Imran and Others), arising out of Case Crime No.1025 of 2019, under Section 13 of the Public Gambling Act, 1867 (in short 'Gambling Act'), Police Station Sikandara, District Agra, pending in the court of Special Chief Judicial Magistrate, Agra as well as chargesheet dated 21.12.2019 and Summoning order dated 24.02.2020 issued in the aforesaid proceedings.
3. The prosecution case in brief is to the effect that a First Information Report (in short 'FIR') was lodged on 08.12.2019 at 11:09 AM in respect of alleged incident dated 08.12.2019 at 9:30 AM, at Police Station Sikandara, District Agra, as Case Crime No.1025 of 2019, under Section 13 of the Gambling Act. It is alleged by the informant that the applicant and co-accused were arrested by the police while playing cards in the park and Rs.750/- were recovered from their possession. The Investigating Officer started investigation and recorded statements of informant and other witnesses and submitted chargesheet in this case on 21.12.2019, under section 13 of the Gambling Act. Thereafter, the learned Magistrate took cognizance of offence vide order dated 24.02.2020.

4. It is submitted by the learned counsel for the applicant that the chargesheet has been filed under section 13 of the Gambling Act where the maximum sentence in State of Uttar Pradesh is upto rigorous imprisonment for a term not exceeding one month and fine not exceeding two hundred fifty rupees nor less than fifty rupees, in the case of first offence and in the case of any subsequent offence to a fine not exceeding five hundred rupees nor less than hundred rupees and rigorous imprisonment for a term not exceeding six months nor less than one month. The amendment was incorporated in State of Uttar Pradesh on 07.09.1961, therefore, the counsel for the applicant opened up his argument by making a reference to Schedule 1st part II of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') wherein classification of offences against other laws in Cr.P.C. are mentioned, as per which the offences punishable with imprisonment for less than three years are non cognizable, Bailable and triable by Magistrate. The learned counsel further submitted that Section 155(2) of Cr.P.C. mandates that no Police Officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial and as in the present case police did not take permission from the learned Magistrate to commence with the investigation, thus, the entire proceedings commence soon after registration of the FIR become void ab initio. Learned counsel for the applicant placed reliance upon two judgments of Co-ordinate Bench of this Court passed on 12.05.2025 in Application U/S 482 No.26740/2024 (Imran Khan And Another vs. State of U.P. and Another) and judgement and order dated 04.07.2025 passed in Application U/S 482 No.29797 of 2024 (Imran Vs. State of U.P. and Another), wherein it was held that offences under Section 3/4 of the Gambling Act is a non-cognizable offence and the learned Magistrate cannot take cognizance of offence on a chargesheet rather he has to follow the procedure, laid down for complaint cases.

5. Per contra, Mr. Mohd. Afzal, learned counsel for the State has opposed the application and submitted that there are serious allegations of gambling against the applicant. He further submitted that the case law, relied upon by the learned counsel for the applicant, is not applicable in the present case since the case law are related to Section 3/4 of the

Gambling Act, whereas the applicant was chargesheeted under Section 13 of the Gambling Act, which is a cognizable offence and the FIR can be registered and the learned Magistrate can take cognizance on a police report. He lastly submitted that the present application is devoid of merit and deserves to be dismissed.

6. After hearing the learned counsel for the parties and on perusal of FIR, chargesheet, and impugned cognizance order, it is admitted position that the chargesheet has been filed under section 13 of the Gambling Act and the maximum punishment in case of first offence is one month imprisonment and a fine not exceeding two hundred fifty rupees, in State of Uttar Pradesh. Learned counsel for the applicant has relied upon two judgments, passed by Co-ordinate Bench of this Court wherein, proceedings under Section 3/4 of the Gambling Act were quashed by this Court on the ground that the offences under Section 3/4 of the Gambling Act is a non-cognizable offence and the investigation was barred by Section 155(2) Cr.P.C. In the present case the proceeding under Section 13 of the Gambling Act has been challenged and as per argument advanced by learned counsel for the State, Section 13 of the Gambling Act is a cognizable offence and the police can register the FIR, investigate the matter and can submit chargesheet and the learned Magistrate may proceed as a State case.

7. For clarity Section 3, 4 and 13 of the Gambling Act, 1867 are reproduced herein:-

"3. Penalty for owning or keeping, or having charge of a gaming-house.- Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room or place situated within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house; and whoever, being the owner or occupier of any such house, walled enclosure, room or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house; and whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and whoever advances or furnishes money for the purpose of gaining with persons frequenting such house, walled enclosure, room or place; shall be liable to a fine not exceeding two-hundred rupees, or to imprisonment of either description,¹ as defined in the Indian Penal Code (45 of 1860), for any term not exceeding three months.

4. Penalty for being found in gaming-house.-"Whoever is found in any such house, walled enclosure, room or place, playing or gaming with cards, dice, counters, money or

other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description,¹ as defined in the Indian Penal Code (45 of 1860), for any term not exceeding one month,² and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

13. Gaming and setting birds and animals to fight in public streets.-A police officer may apprehend without warrant-

any person found playing for money or other valuable thing, with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill, in any public street, place or thoroughfare situated within the limits aforesaid, or any person setting any birds or animals to fight in any public street, place, or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month;

Destruction of instruments of gaming found in public streets.-And such police officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

Uttar Pradesh:

In Section 13,-

(a) for the words "playing for money or other valuable thing with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill", substitute the word "gaming".

[Uttar Pradesh Act 1 of 1917, Section 5]

(b) between paras. 1 and 2, add the following new paragraph as follows:

"any person found in any public street, place or thoroughfare within the limits aforesaid with any instruments of gaming, or;

(c) for the words, in para. 2, "or any person there present aiding and abetting such public fighting of birds and animals", substitute the word "or any person there present making preparation for or aiding or abetting such gaming or public fighting of birds or animals"; and

(d) in the last para the semi-colon after the words "shall be liable" shall be deleted and a dash substituted therefor and clauses (a) and (b) after the said words "shall be liable" shall be deleted and the following substituted therefor:

"in the case of a first offence to a fine not exceeding two hundred and fifty rupees nor less than fifty rupees; or to rigorous imprisonment for a term not exceeding one month; and

in the case of any subsequent offence to a fine not exceeding five hundred rupees nor less than one hundred rupees, and rigorous imprisonment for a term not exceeding six months nor less than one month."

[Uttar Pradesh Act 21 of 1961, Section 9 (w.e.f. 7-9-1961)]"

8. The State of U.P. had enhanced the sentence in Section 13 of the Gambling Act in the year 1961 by bringing State Amendment through U.P. Act no.21 of 1961 in the Gambling Act whereby the punishment was enhanced accordingly, for a first offence, the offender may have to pay a fine between Rs.fifty and two hundred fifty and may be awarded rigorous imprisonment for upto one month. For any later offences, the maximum fine shall be five hundred rupees and the offender may be awarded rigorous imprisonment for a term not exceeding six months nor less than one month.

9. The language of Section 13 of the Gambling Act starts with "**a police officer may apprehend without warrant-**" meaning thereby the police officer may arrest any person without obtaining warrant from any court. Here one has to understand the difference between the cognizable offence and non-cognizable offence which have been defined in Section 2(c) and 2(l) of Cr.P.C. respectively. Section 2(c) and 2(l) of Cr.P.C. are reproduced herein:-

"2.(c) 'cognizable offence' means an offence for which, and 'cognizable case' means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

(l) 'non-cognizable offence' means an offence for which, and 'non-cognizable case' means a case in which, a police officer has no authority to arrest without warrant;"

10. It is very clear from the above definition of cognizable offence and non-cognizable offences that in a case of cognizable offences, a police officer may arrest any person without warrant whereas in non-cognizable offence a police officer has no right to arrest without warrant. Section 13 of the Gambling Act authorise a police officer to arrest any person

without warrant, therefore, it cannot be said that Section 13 of the Gambling Act is a non-cognizable offence and police cannot investigate the matter without prior permission of the learned Magistrate under section 155(2) of the Cr.P.C.

11. The judgments and orders dated 12.05.2025 as well as 04.07.2025 relied on by the learned counsel for the applicant are entirely different on the facts wherein, it has been held that Section 3/4 of the Gambling Act are non-cognizable offences. The facts of the aforesaid judgments are not similar to the facts of the present case. The FIR may be registered under Section 13 of the Gambling Act and the police has authority to register the FIR and investigate the matter and the learned Magistrate did not commit any illegality or irregularity in taking cognizance of offence on police report. Therefore, the present application lacks merit and deserves to be dismissed.

12. Accordingly, the present application is hereby **dismissed**.

13. No other argument was advanced by the learned counsel for the applicant.

14. However, keeping in mind the punishment of the offence in question, the trial court is directed to conclude the trial of the aforesaid case, as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this order.

(Vivek Kumar Singh,J.)

December 12, 2025

Nitendra