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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NOS.19 & 20 OF 2024

CRIMINAL WRIT PETITION NO.19 OF 2024

Kunal Patni,
43 years of age,
son of Saroj Patni,
Residing at 67/30,
Gonguerem, Lane Opposite
Agnel Institute of Technology,
Assagaon, Bardez, Goa. ... PETITIONER

Versus

1. State of Goa, Through its Public Prosecutor, High Court of Bombay at Goa, Porvorim, Goa.
 2. Police Inspector, The Maina Curtorim Police Station, Curtorim, Goa.
 3. Shamir Abdul Rehman, Residing at LIG-660, Housing Board Colony, Rumdamol Davorlim, Salcete, South Goa, Goa.

... RESPONDENTS

AND

CRIMINAL WRIT PETITION NO.20 OF 2024

Sonia Madan Jain,
40 years of age,
Daughter of Bhagya Jain,
Residing at 67/30, Gonguerem,
Lane Opposite Agnel Institute
of Technology, Assagaon,

Bardez, Goa.

... PETITIONER

Versus

1. State of Goa,
Through its Public Prosecutor,
High Court of Bombay at Goa,
Porvorim, Goa.

2. Police Inspector,
The Maina Curtorim Police
Station, Curtorim, Goa.

3. Shamir Abdul Rehman,
Residing at LIG-660,
Housing Board Colony,
Rumdamol Davorlim,
alcete, South Goa, Goa.

... RESPONDENTS

Mr. S. S. Kantak, Senior Advocate with Mr. Gauravvardhan Nadkarni, Ms. Neha Kholkar, Ms. Saicha Dessai, Mr. K. Simoes and Mr. S. Sawaikar, Advocates for the Petitioners.

Mr Nikhil Vaze, Additional Public Prosecutor for Respondent Nos. 1 and 2.

Mr. Rohit Bras De Sa, Advocate for Respondent No.3.

CORAM: **M. S. KARNIK &
VALMIKI MENEZES, JJ.**

**Reserved on: 20th JUNE 2024
Pronounced on: 26th JUNE 2024**

ORDER : (*Per M.S. Karnik, J.*)

- Heard Mr S.S. Kantak, learned Senior Advocate appearing with Mr Gauravvardhan Nadkarni for the petitioners. Mr Nikhil Vaze,

learned Additional Public Prosecutor appears for respondent nos.1 and 2 and Mr Rohit Bras De Sa, learned Counsel appears for respondent no.3.

2. By consent, these petitions are disposed of by a common order. We refer to the facts in Criminal Writ Petition No.19/2024. This petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, seeks the following reliefs:

“a) That this Hon’ble Court be pleased to issue a Writ or Order or Direction quashing the First Information Report bearing FIR No. 9/2024 dated 07/02/2024 or any proceedings connected thereto, registered in the Maina Curtorim Police Station.

b) That this Hon’ble Court be pleased to restrain the Respondents from registering First Information Report against Petitioner on the basis of the similar allegations as contained in the Complaint dated 02/02/2024 filed by the Respondent No.3.”

3. At the outset, it is material to note that FIR No.9/2024 was registered by the Maina Curtorim Police Station on 07.02.2024 against the petitioners for the offence punishable under Section 406, 420 read with Section 34 of the Indian Penal Code (IPC for short) and under Sections 3,4,12(1)(a) of the “Goa, Daman and Diu Public Gambling Act, 1976” (hereinafter referred to as the Goa Gambling Act for short). The FIR was registered on the basis of the information received from the complainant Shamir Abdul Rehman. The FIR contents are thus:

"First Information contents (Brief Facts)

On the date time and place mentioned above the above noted accused persons with their common intention prepared website www.natural8in.com which allows players to deposit money and play poker game with other players/rigged software/bots thereby cheating innocent users of their hard earned money and causing loss to the exchequer and further misappropriating the fund collected from general public. In this connection registered Maina Curtorim Police Station Crime No. 09/2024, u/s-406, 420, r/w 34 IPC and Sec. 3, 4, 12 of GDDPG Act."

4. The matter is under investigation. Shri Kantak, learned Senior Advocate submits that the allegations in the complaint are entirely unsubstantiated. It is submitted that the complaint is manifestly attended with the malafide intention of harassing the petitioners by instituting malicious prosecution as also with the ulterior motive of tarnishing, injuring and humiliating the petitioners. Learned Senior Advocate vehemently urged that the FIR registered under Sections 406 and 420 of IPC is not at the behest of any victim or aggrieved person/s and hence the very locus of the complaint is challenged. Our attention is invited to the allegations in the complaint to urge that such allegations are as vague as they can be, as such the allegations do not even prima facie make out the ingredients mandatorily required to be made out under Section 406 and 420 of IPC. It is submitted that cyclostyle complaints allegedly signed by different persons addressed to different police station are filed only with the view to tarnishing, injuring and humiliating the petitioner, his wife and also the company under the name and style of Gamoski Networks Private Ltd. at the behest of the

third party competitors. It is submitted that the petitioner is the Director and authorised signatory of the said Company which is a private limited Company incorporated on 24.11.2022 and registered with the Registrar of Companies, Goa. Learned Senior Advocate was at pains to point out that such a Company has been formed after securing all the requisite permissions under law.

5. Learned Senior Advocate pointed out certain facts which are thus:

- (a) The company entered into License Agreements with third-party foreign companies for license to operate the software application and brand, as well as to obtain B2B services for technical support and maintenance of the Natural8 Platform. The said Company is the licensee of the software and neither is it the developer nor does it possess access to the algorithm/coding of the software. For the said license of software and brand, the said Company, in terms of its contractual obligations, pays the license fee through proper banking channels in terms of the agreements, after deducting applicable TDS. The said license of the software is like any other entity using the software of a developer in operating its business or licensing the brand;
- (b) The said Company provides a platform to play online skill based poker in India, on which it offers free games as well as 'for money' games on a website available at the URL <https://www.natural8in.com> on a desktop and mobile

application. ‘For Money’ online skill based poker game is available only to the Indians on the Natural18 Platform as neither does the said Company accept any fees or any deposit from any foreign players nor is any winning or prizes given to the foreign players by the said Company. It is the complete discretion of the customer/player, after perusing and accepting the user license agreement and terms and conditions of use to choose between the free game of online poker or a for money game of online poker. When choosing for money game of online poker, the players decide how much money to play in the game. There is no automatic deduction of funds by the Natural18 Platform;

(c) There are several online poker websites available in the State of Goa, offering skill based for money poker. The operation of the Natural18 Platform started on 19.09.2023 and since then the platform has been functional. At present, there are approximately 8000 Indian users registered on the Natural18 Platform and it appears that none of them filed any complaint. None of the users have ever raised any complaints about the Natural18 Platform in the past;

(d) The said Company offers paid and free-to-play games on the Natural18 Platform and, therefore, the sole discretion of the customers/players whether they want to opt for the paid or free-to-play games and all the commercial transactions

with the customers in India are with the said Company only. The relationship between the Indian users and the said Company is governed by Natural18 Platform's Terms and Conditions of Use, which in detail provides all information to the customer/players at the time of registration;

(e) After having made an account on the Natural18 Platform, a customer/player can play online poker for money only after having successfully clearing the thorough KYC done by the said Company. During the KYC process, the registered e-mail/mobile number, identity confirmation, bank account verification and address confirmation are obtained on the basis of documents such as Aadhar Card, Pan Card or other authorised documents, which are maintained in strict confidentiality by the said Company. The thorough KYC process done by the said Company ensures that there are no bots (robots) on the Natural18 Platform, in any case for which continuous scans are done in the software as per its Security and Ecology Policy, no person below the age of 18 plays, the persons residing in any Indian State where for money online games of skill are not permitted are not allowed to play on the Natural18 Platform and no company employees of the said Company plays the game. Therefore, even prior to allowing a customer/player to play online poker for money on the Natural18 Platform, a thorough check is done by the said Company. The Security and Ecology Policy

of the Company prohibits chip-dumping, that is the act of a user intentionally losing their chips to another user. The policy informs users that they may be issued warnings, or banned temporarily/permanently in case of breach of this policy;

(f) That on the Natural18 Platform, a customer/player can make a free choice between a free game or for money game, but only after the said customer/player having passed the thorough KYC, he/she is allowed to play for money online poker. After voluntarily making the said choice, there are different categories of games and tournaments a customer/player can play. Upon selection of a tournament, the player is allotted a table wherein he plays with other players who have been randomly allotted the table. In relation to tournaments, neither the said Company nor the customer/player has control of any nature on the allotment of the table to the particular customer/player and the same is done completely randomly by the software. As regards the tournaments, even the said Company does not have any control of the allotment of the table as it has no control of the software or the algorithm. In case of table games, users can select a table;

6. Learned Senior Advocate was at pains to point out that players/customers are using their skills to play amongst themselves. It

is submitted that the State laws have recognised poker as a game of skill, contrary of which has not even been alleged in the said Complaint. It is submitted that several other online platforms offer for money online poker throughout the country, including in the State of Goa. According to learned Senior Advocate Natural18 Platform pertains to online poker and not any game of chance. It is urged that there is no specificity even in the commission of any offence such as the date, time, method, particulars of property involved, estimate of value of the property, etc. apart from the fact that there is no victim or aggrieved person making the allegations in the said complaint. It is further urged that only online transactions are carried out on the Natural18 Platform that too only in Indian currency and neither any cash deposits nor any foreign currency is permitted on the Natural18 Platform. All the transactions with players on the Natural18 Platform are through digital means, and traceable in nature. The transactions on the Natural18 Platform are maintained by third-party Indian payment gateways, such that payments/paying and deposits are handled by PhonePe and all payouts/withdrawals are routed through RazorPay, both not only having all the requisite permissions but also being immensely reputed in their field. The TDS is deducted at the time of withdrawal and GST is paid by the Company as per applicable tax laws. Learned Senior Advocate further submitted that in order to safeguard and maintain complete transparency, the Natural18 Platform includes all the details on its website as regards the terms and conditions of use, withdrawal policy, privacy policy, house rules, random number generation

certification from the reputed BMM Spain Testlabs s.l.u. Security and Ecology policy etc. It is then pointed out that even as regards the referred foreign players, Natural18 Platform's Terms and Conditions of Use disclose the arrangement to all customers/players. Our attention is invited to clause 18.8 of Natural18 Platform's Terms and Conditions of Use. Learned Senior Advocate emphasised that the Company is committed to offering a secure, fair and safe gaming environment on the Natural18 Platform. The said Company has published a robust Responsible Gaming Policy ('RG Policy') available on the website which sets out the measures the said Company employs to ensure only adults are accepted on the Natural18 Platform. In addition, the RG Policy sets out measures to enable users to game responsibly, such as through providing tools to enable users to set limits on spending, self-exclude from the Natural18 Platform and seek support and help from support channels provided.

7. Learned Senior Advocate urged that a very perusal of the said complaint and the impugned FIR makes it clear that there is not a single substantiation of any allegations made therein. The allegations therein are completely fabricated. There are absolutely no material particulars or any evidence of any offence having been committed by the petitioners. The impugned FIR contains allegations relating to 406 and 420 of IPC which cannot be sustained without specificity. There is no allegation of any victim or an aggrieved person of the alleged cheating or breach of trust, who has either been named or has approached the police authorities nor is there any specific allegation of any dishonest

inducement, intention to cheat from the inception, delivery of property, dishonest misappropriation or dishonest use, which, as held by the Hon'ble Supreme Court forms the basic and foundational requirements for making out an offence under Section 406 and/or 420 of the IPC. It is submitted that there is absolutely no mention of any property, either tangible or intangible in the said complaint. Learned Senior Advocate is at pains to point out that the complainant himself has not even alleged that he has used the website/app and faced any alleged cheating or loss of money. It is submitted that the complaint does not disclose any commission of any offence much less a cognisable offence.

8. It is further submitted that at the time of registration of the FIR, the police are to apply its mind whether the commission of any cognisable offence has been made out. At the time of such application of mind, the foundational principle is the fulfilment of all the ingredients or requirements as mandated under the offence. It is further submitted that offering online games of skill has been recognised by Indian Courts including the Supreme Court as legitimate business activities protected under Article 19(1)(g) of the Constitution of India.

9. The gist of the submissions of the learned Senior Advocate is thus:

- (a) The complainant is not an aggrieved party and that he has been set up by rival competitors only to tarnish the image of the petitioner;

- (b) There is a complete disclosure of the Terms and Conditions and none of the users have a grievance or registered a complaint;
- (c) Poker is a name of skill and it is emphasised that the petitioner Company is not using any bots. Online poker is also recognised as a game of skill;
- (d) The Company is not made an accused and hence the criminal prosecution against the petitioners who are Directors of the Company is not maintainable;
- (e) Even if the complaint is taken at its face value, none of the ingredients of offence under Section 406 or 420 and the Goa Gambling Act are made out to constitute any offence much less a cognisable offence;
- (f) Cyclostyle complaints are being filed at different police stations only to harass the petitioner solely with a view to tarnish the reputation of the Company and at the behest of the rival competitors;
- (g) The complaint is vague. The allegations in the complaint are false and unsubstantiated;
- (h) The criminal prosecution cannot be resorted to as a means to harass anyone as such false and unsubstantiated

complaints have a drastic effect on persons who have to face such unwarranted complaints;

- (i) The complete disclosure of the Terms and Conditions is available on the website and that the Company is operating the portal after all requisite permission under law;
- (j) The complaint is only an attempt to harass and humiliate the petitioner with a view to tarnishing the reputation of the petitioner and the Company;
- (k) The provisions of the Gambling Act are not at all applicable to online poker, there being a specific exemption in the Act, as the Company is only offering games of skills;
- (l) The Terms and Conditions of the Rules (page 81 of the paper book) apart from the complete disclosure specified that the game is played without human intervention and that the use of bots is prohibited.

10. Learned Senior Advocate in support of his submissions relied upon the following decisions:

1. *State of West Bengal & Ors. vs. Swapan Kumar Guha & Ors.*¹,
2. *Vijay Narayandas Rizwani vs. Dilip @ Dhanraj s/o. Navalrai Rizwani & Anr.*²,
3. *Kamlakant Ratikant Bakare vs. State of Maharashtra & Ors.*³,

¹ (1982) 1 SCC 561

² 1995 SCC OnLine Bom 283

³ CRIR No.382/2000 decided on 18.06.2010

4. *Mahmood Ali & Ors. vs. State of U.P. & Ors.*⁴,
5. *State of Haryana & Ors. vs. Bhajan Lal & Ors.*⁵,
6. *M N G Bharateesh Reddy vs. Ramesh Ranganathan & Anr.*⁶,
7. *Velji Raghavji Patel vs. State of Maharashtra*⁷,
8. *All India Gaming Federation vs. State of Tamil Nadu*⁸,
9. *Mohammed Ibrahim & ors. vs. State of Bihar & Anr.*⁹,
10. *Prof. R. K. Vijayasarathy & anr. vs. Sudha Seetharam & Anr.*¹⁰ and
11. *Sushil Sethi & anr. vs. State of Arunachal Pradesh & Ors.*¹¹

11. On the other hand, Shri Nikhil Vaze, learned Additional Public Prosecutor, while opposing the petition submitted that at this stage considering the allegations in the FIR which calls for an in-depth investigation, the FIR should not be quashed. Learned Additional Public Prosecutor invites our attention to page 121 of the paper book which is a complaint against the petitioner made to the Police Inspector, Quepem Police Station. The contents of the complaint read thus:

“To,
*The Police Inspector
 Quepem Police Station
 Quepem-Goa.*

Date: 22-02-2024

***Sub: Complaint against Mr. Kunal Patni for operating
 an Illegal Online Casino Game***

⁴ CRIR No.2341/2023 (SC) dated 08.08.2023

⁵ 1992 Suppl (1) SCC 335

⁶ 2022 SCC OnLine SC 1061

⁷ (1965) 2 SCR 429

⁸ 2023 SCC OnLine Mad 6973

⁹ (2009) 8 SCC 751

¹⁰ (2019) 16 SCC 739

¹¹ (2020) 3 SCC 240

Sir,

With reference to the above cited subject, I would like to request you to kindly lodge a complaint/FIR against Mr. Kunal Patni, the resident of 67/30, Gonguerem, Assagao, Bardez-Goa, opp. Agnel Institute, for operating illegal online casino games across India. The Chief Minister of Goa Shri. Pramod Sawant & his government has banned the illegal online casinos operated across in the state of Goa a year ago, but still the people like Kunal Patni is still operating the said business illegally.

Natural8 India is a website (<https://www.natural8in.com/>) and mobile application run by Gamoski Networks Private Limited having its registered office at Office No.1, 5th Floor, Centro Pedro, Vincente Vaz, Opp. Mapusa Police Station, Mapusa, Goa and its directors/key officials are Mr. Kunal Patni and Ms. Sonia Madan Jain.

This website Natural8 India allows players to play card games of poker by betting money and lures players to play games with players in foreign currencies/other countries and/or bots or machine software/unknown persons who are asked to deposit their money on such websites. The website by fraud and deception makes the users play against foreign players or machine operated software/bot with the games being manipulated and rigged thereby cheating innocent users and general public who lose their hard-earned money. The website Natural8 India is causing loss to the exchequer and violating Foreign Exchange Management Act, 1999 and Prevention of Money-Laundering Act, 2002 by moving the funds collected from players abroad through hawala channels, crypto currencies, banking channels etc.

This kind of illegal casino's spoiling the youth of Goa and it directly affects the family who went into bankrupt and also result into suicide.

Since clear offence is made out, it is therefore prayed that an FIR may be registered under Sections 406 & 420 r/w Section 34 of IPC, 120B of IPC, Sections 66, 66D of Information Technology Act, 2000, Sections 3, 4 and 12 of the Goa, Daman and Diu Public Gambling Act, 1976 and other applicable provisions of law. Hope you'll do the needful at earliest.

Thanking you in anticipation,

Sd/-

*Riyaz Shaikh
Near Masjid
Quepem- Goa.”*

12. Learned Additional Public Prosecutor submitted that the matter is under investigation. It is submitted that there is an allegation that the machines are operated with the use of software/bots for manipulating the games thereby cheating innocent people and the general public who lose their hard-earned money. It is submitted that when there is a specific allegation of manipulation of software and that bots are being used, on the basis of which allegations investigation is started pursuant to the registration of the FIR, the investigation should not be stifled at this stage. It is submitted that the society's interest has to be kept in mind in view of the allegations that the software has been manipulated and the bots are used.

13. It is submitted that the notice under Section 41(a) CrPC dated 02.03.2024 was served on the petitioner and he was directed to appear before the Investigating Officer for inquiry. In so far as prayer (b) is concerned, learned Additional Public Prosecutor submits that pursuant to the complaint made, there is no FIR registered.

14. Learned Additional Public Prosecutor in support of his submissions relied upon the following decisions:

1. *Rajesh Bajaj vs. State NCT of Delhi & Ors.*¹²,
2. *A. R. Antulay vs. Ramdas Sriniwas Nayak & anr.*¹³,
3. *Superintendent of Police, CBI & Ors. vs. Tapan Kumar Singh*¹⁴,
4. *Shriram Krishnappa Asegaonkar vs. State of Maharashtra & anr.*¹⁵ and
5. *Neeharika Infrastructure Private Ltd. vs. State of Maharashtra & Ors.*¹⁶

15. Shri Rohit Bras De Sa, learned Counsel for respondent no.3 has filed an affidavit on behalf of the complainant. It is urged that this Court should examine the documents annexed along with an affidavit in reply of the respondent no.3 which would demonstrate rampant use of foreign currency and that bots are being used apart from the software being manipulated to the detriment of the players.

16. The learned Counsel for respondent no.3 in support of his submissions relied upon the following decisions:

1. *Mr. Nasir Salim Patel vs. The State of Maharashtra & Ors.*¹⁷ and
2. *Dominance Games Pvt. Ltd. vs. State of Gujarat*¹⁸

¹² (1999) 3 SCC 259

¹³ (1984) 2 SCC 500

¹⁴ (2003) 6 SCC 175

¹⁵ 1986 SCC OnLine Bom 191

¹⁶ (2021) 19 SCC 401

¹⁷ WPCR No.42/2017 decided on 28.03.2018

¹⁸ Special Civil Appln. No.6903/2017 dated 04.12.2017

17. We have heard learned Counsel for the parties. The arguments of the learned Senior Advocate that none of the players/participants of the gaming portal has a grievance or that the complaint is not at the instance of any aggrieved person does sound attractive. It does appear that the complainant is not a participant/user of the online portal nor does he say that there is cheating or criminal breach of trust so far as he is concerned.

18. No doubt from the RG Policy available on record there is a complete disclosure by the Company. It is the specific stand of the petitioners that the online poker game does not use bots. It is the stand of the petitioner that poker is a game of skill. The allegation is that the machines are manipulated. The question is whether we should interfere at this stage when there is a specific allegation that the website allows players to deposit money and play poker games with other players/rigged software bots thereby cheating innocent users of their hard-earned money. The allegation is that the funds collected from the general public are misappropriated. There are as many as 8000 members who are playing the online poker game on this portal. According to learned Additional Public Prosecutor it is necessary to investigate whether the software is rigged and whether bots are used as is the allegation. In our opinion, merely because the members of the online portal have not filed any complaint, should not be a factor to stifle the investigation having regard to the nature of the allegations brought to the notice of the investigating agency. The allegation is that the players are being cheated by manipulating the machine and by use

of bots. The representation made by the Company is that they are neither using bots nor the software is rigged. If that is so, the allegation that the software is rigged or bots are being used is a matter which requires investigation. For whatever reason, though there are large number of players participating, no one has come forward to file any complaint. The allegation concerns the interest of the society at large which we cannot overlook.

19. We are not impressed with the submission of learned Senior Advocate that the FIR be quashed only because the complaint is not at the instance of a player of the game. The petitioners have their remedies if pursuant to the investigation the report is filed. The observations made by us are limited to the plea that the FIR be quashed at this stage. In our opinion, therefore it is not possible for us to hold that the allegations even if taken at face value do not constitute the ingredients of the offence alleged. We, therefore, do not find any merit in these petitions. Hence, Criminal Writ Petitions are dismissed. We make it clear that the observations are limited to deciding the present criminal writ petitions.

20. In so far as prayer clause (b) is concerned, learned Additional Public Prosecutor submitted that the matter is being investigated by the Maina Curtorim Police Station. It is submitted by the learned Additional Public Prosecutor that pursuant to the complaint dated 22.02.2024 addressed to the Quepem Police Station no FIR is registered. In such view of the matter, the complaint at Quepem can be considered

as additional material which can be investigated by the Maina Curtorim Police Station. This will address the petitioners' concern.

VALMIKI MENEZES, J.

M. S. KARNIK, J.