

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 6653/2019

Chandresh Sankhla S/o Jagdish Singh, Aged About 42 Years, R/o
55/248, Alakhnanda Colony, Vaishali Nagar, Ajmer- 305004

----Petitioner

Versus

1. The State Of Rajasthan, Through The Chief Secretary, Government Of Rajasthan, State Of Rajasthan, Government Secretariat, Jaipur-302005
2. The Home Secretary, Government Of Rajasthan, State Of Rajasthan, Government Secretariat, Jaipur-302005
3. Mr. Bhavit Rajesh Sheth, Whole Time Director, Dream11 Fantasy Private Limited, 1901, A-Wing, Naman Midtown, Senapati Bapat Marg, Elphinstone - West Mumbai Mumbai City, Maharashtra- 400013
4. Harsh Anandkumar Jain, Managing Director, Dream11 Fantasy Private Limited, 1901, A-Wing, Naman Midtown, Senapati Bapat Marg, Elphinstone - West Mumbai Mumbai City, Maharashtra- 400013

----Respondents

For Petitioner(s)	:	Mr.Sunil Kumar Singh, Advocate.
For Respondent(s)	:	Mr.Rajesh Maharshi, Additional Advocate General with Mr.Udit Sharma, Advocate for respondents No.1 & 2. Mr.Arvind Lakhawat, Mr.Prateek Kasliwal, Ms.Gauri Jasana, Mr.Prakhar Sharma, Ms.Arani Mukherjee for respondents No.3 & 4.

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ASHOK KUMAR GAUR**

Judgment

Judgment Reserved on : 10th February, 2020

Date of Pronouncement : 14th February, 2020

By the Court: (Per Hon'ble Gaur, J.)

The present Public Interest Litigation (PIL) petition has been filed by the petitioner claiming himself to be a resident of Ajmer City, involved in the business of imparting education by way of coaching to the youth of Ajmer City.

2. The grievance raised in the present petition is in respect of the online game known as "Dream 11" and the said online game is alleged to be betting of cricket team and amounting to gambling. The petitioner has submitted that public in general are cheated in the name of "Dream 11" game and people become culprit of gambling and betting without having the proper knowledge of law. The petitioner has submitted that by permitting "Dream 11" game to be played, the respondents are committing offence of gambling and betting.

3. The prayers made in the Public Interest Litigation petition are quoted hereunder:-

"10. Relief(s) prayed for: In the facts and circumstances enumerated above this Hon'ble Court may be graciously pleased to direct;

10.1 That the suitable orders/directions may be issued to the respondents No.1 & 2 for to stop illegal game of gambling and betting organised by respondents No.3 & 4.

10.2 That the suitable orders/directions may be issued to the respondents No.1 & 2 to book a criminal case(s) against respondents No.3 & 4 for abetting the game of gambling and betting.

10.3 That the suitable orders/directions may be issued to the respondents No.1 & 2 to make necessary arrangements so that such organised crime is not committed in this country by respondents No.3 & 4 in any manner whatsoever."

4. The respondents No.1 & 2 have filed reply to the PIL petition and prayed that the present petition is a frivolous petition which has been filed with bald and vague allegations against the State authorities. The respondents have also pleaded that the

authorities in the State of Rajasthan are conscious of their statutory duties towards public and any illegal act of gambling and betting, is dealt with, as per the provisions of the Rajasthan Public Gambling Ordinance, 1949 and further as per the duties assigned under the Public Gambling Act, 1867.

5. The respondents have also pleaded that the Punjab and Haryana High Court in the case of **Varun Gumber Vs. Union Territory of Chandigarh and Ors.** reported in **2017 Cri.L.J. 3827** has considered the similar issue with respect to the game "Dream 11" and it has been found that "Dream 11" game does not involve any commission of offence of gambling and betting and accordingly, the writ petition was dismissed vide order dated 18.04.2017. The respondents have also pleaded that the order of Punjab and Haryana High Court was challenged before the Hon'ble Supreme Court in Special Leave Petition No.27511/2017 and the Hon'ble Supreme Court has dismissed the said Special Leave Petition vide order dated 15.09.2017.

6. The respondents have also pleaded that issue with regard to nature of "Dream 11" game as whether it involves gambling/betting was also examined by Division Bench of the Bombay High Court in the case of **Gurdeep Singh Sachar Vs. Union of India & Ors. [Criminal Public Interest Litigation Stamp No.22 of 2019]** and Division Bench of the Bombay High Court vide its judgment dated 30.04.2019 upheld the legality of the "Dream 11" game. The judgment of Division Bench of Bombay High Court dated 30.04.2019 was challenged before the Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No.35191/2019

and the Hon'ble Supreme Court has dismissed the said Special Leave Petition vide order dated 04.10.2019.

7. The respondents have pleaded that as per Section 12 of the Rajasthan Public Gambling Ordinance, 1949, the game involving "mere skill" is exempted from the applicability of the Act/Ordinance and since "Dream 11" game has been held to be a game of skill, no fault can be found by the answering respondents in the activity which is carried out by the private respondents.

8. The respondents No.3 and 4 have also filed reply to the PIL petition and submitted that the petition is wholly frivolous and it does not raise any genuine claim of public concern/injury. The respondents have pleaded that the petitioner has failed to show as how "Dream 11" game falls within the ambit of gambling/betting.

9. Mr.Sunil Kumar Singh, learned counsel for the petitioner submitted that this Court is required to declare the "Dream 11" game to be involved in gambling and betting and playing such game is a mere chance and not the skill. Counsel further submitted that the State authorities have miserably failed to discharge their statutory obligation of preventing such game which is played by the innocent people and they indulge themselves in gambling and betting.

10. This Court finds that the issue of considering the nature of game played as "Dream 11" has been examined by the Punjab and Haryana High Court in the case of Varun Gumber (supra) and the writ petition was dismissed vide order dated 18.04.2017. The extract of the order dated 18.04.2017, relevant for the present purpose, is reproduced as under:-

"In view of the finding rendered by the Hon'ble Supreme Court aforementioned, it leaves no manner of doubt that on the scope and ambit of the term game "mere skill" in the context of the present case, in other words, the Hon'ble Supreme Court has held that :-

- "i) the competitions where success depends upon the substantial degree of skill are not gambling; and
- ii) despite there being an element of chance, if a game is preponderantly a game of skill it would nevertheless be a game of "mere skill".

It has been found that horse racing like foot racing, boat racing, football and baseball is a game of skill and judgment and not a game of chance. The aforementioned finding squarely applies to the present case. Even from the submissions and contentions of respondent-company and factual position admitted in writ petition, I am of the view that playing of fantasy game by any participant user involves virtual team by him which would certainly requires a considerable skill, judgment and discretion. The participant has to assess the relative worth of each athlete/sportsperson as against all athlete/sportspersons available for selection. He is required to study the rules and regulations of strength of athlete or player and weakness also. The several factors as indicated above submitted by the respondent – company would definitely affect the result of the game. Admittedly, the petitioner himself created a virtual team of a Cricket Match between two countries as indicated in the website by choosing 11 players out of total player, who were to play for two countries collectively and after forming a virtual team of 11 players as per his own selection, knowledge and judgment, which is thoughtful Will, he joined various leagues for the leagues selected by him and after registration which was declared before participating, was not about possibility of winning or losing like horse riding not every better is winner.

The respondent company' s website and success in Dream 11's fantasy sports basically arises out of users exercise, superior knowledge, judgment and attention. I am of the further view that the element of skill and predominant influence on the outcome of the Dream11 fantasy than any other incidents are and therefore, I do not have any hesitation in holding the any sports game to constitute the game of "mere skill" and not falling within the activity of gambling for the invocation of 1867 Act and thus, the respondent company is therefore, exempt from the application of provisions, including the penal provisions, in view of Section 18 of 1867 Act. Equally so, before I conclude, I must express that gambling is not a trade and thus, is not protected by Article 19(1)(g) of Constitution of India and thus, the fantasy games of the respondent -company cannot said to be falling within the gambling activities as the same involves the substantial skills which is nothing but is a business activity with due registration and

paying the service tax and income tax, thus, they have protection granted by Article 19 (1)(g) of Constitution of India.

Resultantly, the questions noticed above are squarely answered in favour of the respondent – company and no need to issue the direction against the respondents to settle the criminal law into motion.

Accordingly, the writ petition stands dismissed.”

11. This Court further finds that the order passed by the Punjab and Haryana High Court in the case of Varun Gumber (supra) was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 15.09.2017 has dismissed the Special Leave Petition.

12. This Court finds that Division Bench of the Bombay High Court in the case of Gurdeep Singh Sachar (supra) has again considered whether the activity of playing “Dream 11” game amounts to gambling/betting and dismissed the petition vide order dated 30.04.2019. The relevant portion of the order dated 30.04.2019 is reproduced hereunder:-

“8. XX XX XX It is evident that the expressions 'betting' or 'gambling' were used interchangeably in Section 65B(15) of the Finance Act, 1994. Again the test applicable was whether it was a game of chance or game of skill. Only if the result of the game/contest is determined merely by chance or accident, any money put on stake with consciousness of risk and hope to gain, would be 'gambling' or 'betting'. There is no merit in the submission that the result of their fantasy game/contest shall be considered as merely by chance or accident notwithstanding involvement of substantial skill. The petitioner claims that the result would depend largely on extraneous factors such as, who amongst the players actually play better in the real game on a particular day, which according to the petitioner would be a matter of chance, howsoever skillful a participant player in the online fantasy game may be. The petitioner has lost sight of the fact that the result of the fantasy game contest on the platform of respondent No.3, is not at all dependent on winning or losing of any particular team in the real world game. Thus, no betting or gambling is involved in their fantasy games. Their result is not dependent upon winning

or losing of any particular team in real world on any given day. In these circumstances, there is no plausible reason to take a contrary view than that taken by the Hon'ble Punjab and Haryana High court, which judgment has already been upheld by the Hon'ble Supreme Court in the SLP filed against the respondent No.3 itself. Moreover, the said issue is also covered by a judgment of 3 Judge Bench of the Hon'ble Supreme Court, to which detailed reference is made in the order of the Hon'ble Punjab and Haryana High Court. It is thus clear that the activity of the respondent No.3 do not amount to 'gambling' or 'betting' or 'wagering' even if the definition contained in Finance Act, 1994 is taken into consideration.

9. to 16. XX XX XX

17. The authorities have therefore not taken any coercive steps against the respondent No.3, and rightly so. No case for issuing any directions is made out. It is seen that the entire case of the Petitioner is wholly untenable, misconceived and without any merit. It can be seen that success in Dream 11's fantasy sports depends upon user's exercise of skill based on superior knowledge, judgment and attention, and the result thereof is not dependent on the winning or losing of a particular team in the real world game on any particular day. It is undoubtedly a game of skill and not a game of chance. The attempt to reopen the issues decided by the Punjab and Haryana High Court in respect of the same online gaming activities, which are backed by a judgment of the three judges bench of the Apex Court in K. R. Lakshmanan (supra), that too, after dismissal of SLP by the Apex Court is wholly misconceived."

13. The order of Division Bench of Bombay High Court in Gurdeep Singh Sachar (supra) was challenged before the Supreme Court in Special Leave Petition (Criminal) Diary No.35191/2019 and the Hon'ble Supreme Court has dismissed the said Special Leave Petition vide order dated 04.10.2019.

14. This Court further finds that after dismissal of the Special Leave Petition by the Hon'ble Supreme Court, IA No.14605/2020 for clarification/direction was filed and the Hon'ble Supreme Court vide order dated 31.01.2020 dismissed the interlocutory application for clarification. The Apex Court has also observed that scope of review petition which was filed in the Bombay High Court

was only with respect to GST and not to re-visit the issue as to whether gambling is or is not involved.

15. This Court finds that the issue of treating the game "Dream 11" as having any element of betting/gambling is no more *res integra* in view of the pronouncements by the Punjab and Haryana High Court and Bombay High Court and further the SLPs have also been dismissed against the orders of these High Courts.

16. Consequently, this Court finds no merit in the present Public Interest Litigation petition and the same is accordingly dismissed. No costs.

(ASHOK KUMAR GAUR),J (INDRAJIT MAHANTY),CJ

Solanki DS, PS



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