

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.7559 of 2017

Date of decision:18.04.2017

Shri Varun Gumber

... Petitioner

Vs.

Union Territory of Chandigarh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M.S.Virk, Advocate
for the petitioner.

Mr. G.S.Bedi, Advocate
for the caveator(s).

Mr. Suvir Sehgal, Advocate
for the respondent - U.T.

AMIT RAWAL J. (Oral)

In the instant petition directions for setting criminal law into motion against Respondent Company are sought, by an Advocate residing in the jurisdiction of this Court, claiming himself to be a victim of such alleged illegal gambling activities of the Respondent Company carried out by them through their website <https://fantasycricket.dream11.com.in> which according to the petitioner renders them liable for criminal prosecution and punishment under the penal provisions of Public Gambling Act, 1867.

The petitioner tried to persuade me for issuing directions for investigations or initiating criminal prosecution against the Respondent Company. The learned Counsel appearing for the Respondent Company, who is on caveat, and the Learned Counsel appearing for UT, Chandigarh

opposed grant of any relief in the instant petition. All parties were heard. I have carefully perused by records.

It is contention of the petitioner that-

On 09.03.2017, he registered himself on the said website by using his email id. after being satisfied with the claim of the Respondent Company on their website that their operations were legitimate not amounting to gambling under the Public Gambling Act, 1867.

On 10.03.2017, the petitioner transferred by his credit card an amount of ₹50,000/- in his own account opened on the said website for participating in the various leagues created on the said website.

The petitioner created a virtual team for the cricket match between Ireland and Afghanistan as illustrated and instructed on the said website, by himself choosing 11 players, out of total players, who were to play for Ireland and Afghanistan collectively.

After forming a virtual team of 11 players as per his own selection, the Petitioner joined various leagues and from the available deposit of ₹50,000/- he used ₹24,000/- approx. for playing in the leagues. The petitioner submits that at the end of the match, he lost ₹24,000/-, the entire money, which he had betted on his virtual team while playing in the various leagues.

Again, on 11.03.2017 the petitioner created a virtual team this time for the football match being played between Manchester City and Middleborough. Thereafter, he betted on his virtual team for Rs.26,000/ in

similar fashion, and ended up losing the said amount of ₹ 26,000/-.

Thus, he was ultimately left with a balance of only ₹3 out of ₹50,000/- in a short span of 2 days.

It is claim of the petitioner that only after losing the money in the above manner, he realized by the nature of the activities offered on the said website that they were not based on any skill, but were purely a game of chance and thus they clearly amount to gambling prohibited under the Public Gambling Act, 1867.

The petitioner submits that it is falsely claimed that the activities are skill-based games.

The Petitioner, before filing the writ petition, had given a legal notice, dated 14.03.2017 to the Respondent Company for suo-moto blocking of their website, to stop the illegal gambling activities and to refund of the amount paid by the petitioner.

A detailed response denying all the allegations in the said notice, had been given by the Respondent Company, who are on caveat, which has also been placed on record before the Court. Respondent Company had claimed in their response to the Notice that their activities do not amount to 'gambling' punishable under the provisions of Public Gambling Act, 1867.

The petitioner however submits that the said response is devoid of any merits and is misleading. From the peculiar facts, a clear case of violation of the provisions of Public Gambling Act, 1867 is made out.

The learned Counsel for the Respondent Company submits that to the legal notice issued by the petitioner, detailed reply explaining therein following broad points-

Introduction of Dream11:

a) Dream11 is one of the world's leading platforms for online fantasy sports games and offer fantasy cricket, fantasy kabaddi and fantasy football games being offered by them since about 2012 in partnership with reputed websites and social media platforms, with a wide user base. Dream 11 is a company that is duly incorporated having Certificate of Incorporation issued to them by the Registrar of Companies, Ministry of Commerce, Govt. of India. A Service Tax registration is issued to them by the Central Excise Department, Ministry of granted a PAN no. by the Income Tax Authorities, with whom they are being assessed since more than 5 years. These Statutory Authorities have not found anything amiss in their business model of providing services. They not only remit service tax and income tax as applicable to them, but also deduct and remit applicable withholding tax on user winnings to the competent authority. Their partners include reputed financial institutions, payment gateway service providers, websites and social media portals, website/hosting services providers and other service providers, which engagement reflects their standing and reputation.

What is a fantasy sports game:

b) Any fantasy sports game offered by them is a game which

occurs over a predetermined number of rounds (which may extend from a single match / sporting event to an entire league or series) in which participating users select, build and act as managers of their virtual teams (constituted of real players or teams) that compete against virtual teams of other users, with results tabulated on the basis of statistics, scores, achievements and results generated by the real individual sportspersons or teams in certain designated professional sporting events. The winner of such fantasy sports game is the participant whose virtual team accumulates the most number of points across the round(s) of the game.

Requirement of material and considerable skills by the user in 'drafting' of a virtual team and 'playing' fantasy sports game:

c) The drafting of a virtual team involves the exercise of considerable skill as the user must first assess the relative worth of each athlete / sportsperson as against all athlete / sportspersons available for selection. The user has to study the rules and made evaluations of the athlete's strengths and weaknesses based on these rules.

d) Further, a user's virtual team cannot be entirely or substantially consists of athletes from a single real-world team. In the case of fantasy cricket and fantasy football games, the Dream11 rules stipulate that not more than 7 of the 11 athletes in the virtual team may be from a single real world team. This stipulation ensures that the user has to exercise greater skill in acquainting himself with the athletes of both participating real-world teams in a single match and prevents a user from creating a

circumstance resembling the act of betting on the performance of a single team to win the match/league.

e) As per the mechanism for the election of a virtual team in Dream11's fantasy sports game, each virtual player available for drafting into a virtual team is attributed a value in credit points and each user's virtual team is prescribed a maximum budget in points. Dream 11 specifies the price of drafting a virtual player based on the player's relative value and ability. Thus, any selection decision by a user in drafting a virtual team must also consider the opportunity cost of selecting a particular athlete in such user's virtual team does not exceed the prescribed budget in credit points.

f) Therefore, users engaged in participating in Dream11's fantasy sports games read and understand the rules of the game published by Dream11, and make their assessment of athletes and the selection of athletes in their virtual team on the basis of the anticipated statistics of their selection; for example, in the fantasy cricket game, a user needs to evaluate, in the case of a batsman, the anticipated statistics for multiple categories such as batting average, total runs, number of half-centuries and centuries (which attract additional points), strike rate, number of catches and stumpings (for a wicket keeper), and in the current or previous series), economy rate, five wicket hauls. Such evaluation by the user is based on a wealth of statistics from past matches from which to evaluate future performances, but these need to be analysed in light of factors such as age, statistical trends, current form, injuries, the athlete's statistics in particular

stadia and against particular opponents, and other material causative factors that will have a bearing on the athlete's performance. Users must also follow the news to acquaint themselves with selection decisions as they are permitted to change their team up to sixty minutes prior to the commencement of a match, before the squads are announced at the toss.

g) Furthermore, users have to select one player from amongst their virtual team selection as a 'captain' and another player as the 'vice-captain', with the points accumulated by the designated captain doubled, and the points accumulated by the designated 'vice-captain' multiplied by 1.5, and added to the overall points-tally of such user's virtual team. Therefore, selecting the right captain and vice-captain are critical to the success of the virtual team, with a good captain or vice-captain in the Dream11 fantasy points and not one who displays good leadership skills, and which assessment requires the user to follow the sport closely and to evaluate the potential of a player in light of the scoring metrics of the fantasy sports game.

f) In the course of such selection of teams and making decisions on drafting of players and designated captains/vice-captains, the user must also overcome team biases and prejudices while selecting athletes. For example, the user must avoid overrating athletes that play for his favorite team and underrating other athletes because they play for a disfavored team. The user must develop a strategy to create a team that is balanced in manner consistent with the user's overall strategy with a focus on winning fantasy points.

g) The online fantasy spor games offered by them through the Platform require material and considerable skills in terms of 'drafting' and 'playing' which are the determinative factors in the results of the game and winning outcomes thereby.

Element of skill predominant requiring exercise of superior knowledge, judgment, attention and adroitness:

h) Once a virtual team is drafted, the user must interact with the game on a regular basis by monitoring the scores accumulated by the athletes drafted by him, as well as the general performance of teams, surveying other athletes for substitution and making substitutions where he deems fit but only during the given time-frame.

i) The success in Dream11's fantasy sports games arises out of a user's exercise of superior knowledge, judgment, attention and adroitness in understanding the Dream 11 rules, acquainting himself with the past performance, physical state and form of athletes available for selection across multiple categories, assessing the relative worth of an athlete and the anticipated statistics arising out of the athlete's performance in the underlying real-world event and devising an overall strategy in selecting and playing the Dream11 game. Therefore, the element of skill has a much greater and predominant influence on the outcome of the Dream11 fantasy sports game than any incidental chance.

j) As is the case with any game of skill, greater experience and training in Dream11 fantasy sports games provides a user with greater

insight into strategies for success and a better understanding of the game's dynamics and operational constraints, and in itself heightens and attunes the element and exhibition of skill on the user's part and thereby has an material influence on generating a successful winning outcome in favour of the user. It is in recognition of the material influence that training and experience in the Dream11 fantasy sports games has on user success that Dream11 offers free-to-play variants of its fantasy sports games to users and thereby offers users an opportunity test their skills against other participating users, familiarize themselves with the Dream11 rules and points attribution methodology, understand and gain experience in participating in the Dream11 game and devise their participation strategy on the basis of such training and experience, at no cost or charge to users.

Training to exercise knowledge, judgment and skill:

k) Alongside providing users with the opportunity to participate in free-to-play fantasy sports games, Dream11 also provides users with How-to-Play and Frequently Asked Questions pages and operates the Guru section wherein it offers match previews and tips on team selection and do's and don'ts to assist users, particularly new users, in familiarizing themselves with the Dream11 fantasy sports games and rules, to address common queries that a user may have in respect o the Service and to enable users in employing their skill and judgment to ensure competitive participation in Dream11's fantasy sports games. In Frequently-Asked-Questions page they expressly encourage new users who may be unfamiliar with the Dream11 fantasy sports game or unsure of their cricket knowledge to learn the

Fantasy Cricket game by visiting the Dream11 'Help' section, and further encourage them to participate in 'practice games' offered by Dream11 through the Platform, which are free-to-play. Through these measures Dream11 actively supports its users in their endeavour to train themselves and exercise their knowledge, judgment and skill to the best of their abilities in the course of participation in any fantasy sports games offered by Dream11 or any other service provider.

Attribution of points:

l) The points are attributed in a transparent and verifiable manner to the virtual analogues of real world athletes on the basis of the statistical elements of the real world athlete's performance in the real-world sports event.

m) In the cricket fantasy sports game, points are attributed to the virtual analogue on the basis of, amongst others, the real-worlds player's selection in the starting eleven of the real-world team, number of runs scored, wickets taken, catches taken, stumpings/run-outs caused, batting strike rate and bowling economy rate with additional bonus points for boundaries hit, maiden overs bowled and similar other laudable performance events.

Principle reason for failure of petitioner to achieve success in Dream11's fantasy sports games:

n) The failure of the petitioner to achieve success in Dream11's fantasy sports games is principally and directly attributable to his failure to

employ adequate skill, knowledge and assessment of participating players to maximize his potential points accumulation. His losses in the Dream11 games in which he participated were directly attributable to his failure to exhibit superior skill in comparison with other participants in the game and leagues.

Cancellation policy:

o) In Dream11's cancellation policy, as set out in the Dream11 Terms and conditions, Dream11 refunds the entire entry-fees and administrative fees and administrative fees paid by a user in case of an "Abandonment" or "Cancellation" of the sports event in respect of which the fantasy sports game is offered. This policy is exemplified in the transaction history of the petitioner's account with Dream11, where all amounts paid by the petitioner towards participation in fantasy cricket games offered in relation to the South African Domestic T20 cricket match between the Dolphins and Warriors were refunded and credited back into his user account on the abandonment of the cricket match.

p) On the above basis, the Respondent Company refuted the claim of the Petitioner that the fantasy sports games offered by Dream11 constitute gambling.

Mandatory agreement and acceptance of contractual terms and conditions by user:

q) With respect to the fantasy sports games offered by Dream11 through the Platform, and in relation to each user's interaction with the

Platform, Dream11 has published a detailed set of terms and conditions to govern the user's account and interaction with the Platform and the services offered by Dream11 on the Platform. A user's affirmative acceptance and agreement to abide by the Terms and Conditions of the Dream11 site is a pre-condition for the user's registration of an account with Dream11. Reference to document E of this response the terms and conditions of Dream11 service and a screenshot of the registration page containing the affirmative acceptance click-box clicked on and affirmatively accepted and agreed to the Terms and Conditions as aforesaid. Thus we state and record that Dream11 is transparent and open its in interaction with its users, and clearly defines and contractually documents the terms of its service provision through the Platform and thus your claim in the notice that you have been deceived in any way by Dream11 is false and without basis.

Administrative Fees / charges, and distribution from price money pool:

r) Dream11 is engaged in operating the Platform and offering users the opportunity to participate in fantasy sports games on such Platform, and limits its fees and charges for such participation to an administrative fee. Each fantasy sports game offered on the Dream11 Platform comprises of a game in which participating users are engaged in competing against other participating users for the cumulative price money pool available to such participating users from the amounts paid by each of them after excluding the aforesaid administrative fees. The invoices issues to the petitioner clearly shows this accept. This entire amount of the cumulative price money is collected and held by Dream11 in trust of the

game and is, upon announcement of the results of the fantasy sports game, distributed in a transparent and objective manner on the basis of the final points-tally of participating users in the fantasy sports game.

Fair-Play and healthy competition:

s) Dream11 actively encourages its users to engage in Fair-Play and healthy competition amongst users and undertakes a number of steps to maintain the

To maintain user services in the platform

Mr.G.S.Bedi, further pointed out that as per the judicial precedents, the Hon'ble Supreme Court in **K.R.Lakshmanan vs. State of Tamil Nadu AIR 1996 SC 1153**, such type of game requires training, adroitness and experience which have dominant influence in the mind for winning the outcome of game.

I am of the view that preliminary issues involved in the case is whether provisional prevention of the Public Gambling Act, 1867 (hereinafter referred to as "1867 Act") are applicable or not; or any direction to set the case in motion are granted. For the sake of brevity, provisions of Sections 11 and 12 of 1867 Act, read as under:-

"11.Witnesses indemnified.-Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating, to gaming, and who, upon such examination, shall in

the opinion of the Magistrate make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

12. *Act not to apply to certain games – Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.”*

The aforementioned Act, has been extended to the State of Punjab, Haryana and Union Territory by way of the Public Gambling (Punjab Amendment) Act 1929 and Section 18 inserted for applicability to the State of Punjab which provides exemption of games of mere skill - “nothing in this Act contained shall apply to any game of mere skill wherever played.” Thus, I am of the considered opinion that the games are not covered by the term of game “mere skill”. It may not be necessary to look into the provisions of 1867 Act, much less these provisions would not have any application. The expression games of skill has already been debated upon in K.R.Lakshmanan's case (supra) as aforementioned provisions of 1867 Act are pari materia to the provisions of Section 11 of the Madras Gaming Act, 1930 and the skill constitutes a game in which primarily the success depends upon the superior knowledge, training, attention, experience and adroitness of the player, in essence, the skill dominates over the element of luck/chance. It has been held that the

expression “mere skill” would mean substantial degree or preponderance of skill. By taking into the aforementioned expression into consideration, it was held that the “horse racing” is not gambling and is a game of skill. The relevant paragraphs 9 and 17 to 23 of the judgment reads as under:-

“9. On the same day when this Court decided Chamarbaugwala's case, the same four-Judge Bench presided over by S.R. Das, Chief Justice, delivered judgment in another case between the same parties titled R.M.D. Chamarbaugwala & Anr. vs. Union of India & Anr. AIR 1957 SC 628. The validity of some of the provisions of the Prize Competitions Act (42 of 1955) was challenged before this Court by way of petitions under Article 32 of the Constitution. Venkatarama Ayyar J. speaking for the Court noticed the contentions of the learned counsel for the parties in the following words:-

"Now, the contention of Mr. Palkhiwala, who addressed the main argument in support of the petitions, is that prize competition as defined in S. 2 (d) would include not only competitions in which success depends on chance but also those in which it would depend to a substantial degree on skill; that even if the provisions could be regarded as reasonable restrictions as regards competitions which are in the nature of gambling, they could not be supported as regards competitions wherein

success depended to a substantial extent on skill, and that as the impugned law constituted a single insertable enactment, it must fail in its entirety in respect of both classes of competitions. Mr Seervai who appeared for the respondent, disputes the correctness of these contentions. He argues that 'prize competition' as defined in S.2 (d) of the Act, properly construed, means and includes only competitions in which success does not depend to any substantial degree on skill and are essentially gambling in their character; that gambling activities are not trade or business within the meaning of that expression in [Art. 19\(1\) \(g\)](#), and that accordingly the petitioners are not entitled to invoke the protection of [Art. 19\(6\)](#); and that even if the definition of 'prize competition' in S.2(d) is wide enough to include competitions in which success depends to a substantial degree on skill and Ss. 4 and 5 of the Act and Br. 11 and 12 are to be struck down in respect of such competitions as unreasonable restrictions not protected by [Art. 19 \(6\)](#), that would not affect the validity of the enactment as regards the competitions which are in the nature of gambling, the Act being severable in

its application to such competitions."

The learned Judge thereafter observed as under:-

"We must hold that as regards gambling competitions, the petitioners before us cannot seek the protection of [Art. 19\(1\) \(g\)](#)... (5) As regards competitions which involve substantial skill however, different considerations arise. They are business activities, the protection of which is guaranteed by [Art. 19\(1\) \(g\)](#)..."

Finally, Venkatarama Ayyr, J. speaking for the Court held as under:-

"(23) Applying these principles to the present Act, it will not be questioned that competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories. The difference between the two classes of competitions is as clear-cut as that between commercial and wagering contracts. On the facts there might be difficulty in deciding whether a given competition falls within one category or not; but when its true character is determined, it must fall either under the one or the other. The distinction between the two classes of competitions has long been recognised in the

legislative practice of both the United Kingdom and this country, and the Courts have, time and again, pointed out the characteristic features which differentiate them. And if we are now to ask ourselves the question would Parliament have enacted the law in question if it had known that it would fail as regards competitions involving skill, there can be no doubt, having regard to the history of the legislation, as to what our answer would be. The conclusion is therefore inescapable that the impugned provisions, assuming that they apply by virtue of the definition in S.2(d) to all kinds of competitions, are severable in their application to competitions in which success does not depend to any substantial extent on skill."

This Court, therefore, in the two Chamarbaugwala-cases, has held that gambling is not trade and as such is not protected by Article 19(1)(g) of the Constitution. It has further been authoritatively held that the competitions which involve substantial skill are not gambling activities. Such competitions are business activities, the protection of which is guaranteed by Article 19(1)(g) of the Constitution. It is in this background that we have to examine the

question whether horse-racing is a game of chance or a game involving substantial skill.”

17. We may now take-up the second question for consideration. [Section 49](#) of the Police Act and Section 11 of the Gaming Act specifically provide that the penal provisions of the two Acts shall not apply to the games of "mere skill wherever played". The expression "game of mere skill" has been interpreted by this Court to mean "mainly and preponderantly a game of skill". [In State of Andhra Pradesh vs. K. Satyanarayana & Ors.](#) (1968) 2 SCR 387, the question before this Court was whether the game of Rummy was a game of mere skill or a game of chance. The said question was to be answered on the interpretation of Section 14 of the Hyderabad Gambling Act (2 of 1305 F) which was *pari materia* to [Section 49](#) of the Police Act and Section 11 of the Gaming Act. This Court referred to the proceedings before the courts below in the following words:

"The learned Magistrate who tried the case was of the opinion that the offence was proved, because of the presumption since it was not successfully repelled on behalf of the present respondents. In the order making the reference the learned Sessions Judge made two points: He first referred to s.14 of the Act which provides that nothing done under the

Act shall apply to any game of mere skill wherever played and he was of opinion on the authority of two cases decided by the Madras High Court and one of the Andhra High Court that the game of Rummy was a game of skill and therefore the Act did not apply to the case."

This Court held the game of Rummy to be a game of mere skill on the following reasoning:

"We are also not satisfied that the protection of s.14 is not available in this case. The game of Rummy is not a game entirely of chance like the 'three- card' game mentioned in the Madras case to which we were referred. The 'three card' game which goes under different names such as 'flush', 'brag' etc. is a game of pure chance. Rummy, on the other hand requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out,

there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this also it cannot be said that Rummy is a game of chance and there is no skill involved in it."

18. *The judgments of this Court in the two Chamarbaugwala cases and in the Satyanarayana case clearly lay-down that (i) the competitions where success depends on 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". We, therefore, hold that the expression "mere skill" would mean substantial degree or preponderance of skill.*

19. *The crucial question to be determined is whether a horse-race run on the turf of the club is a game of 'chance' or a game of "mere skill". The relevant pleadings before the High Court in the writ petition were as under:*

"Racing is really a test of equine speed and stamina. The horses are trained to run and their form is constantly watched by experts... As stated earlier, racing is not a game of chance. Experts on racing throughout the world would bear testimony to the fact, and indeed it has been so recognised, by

decisions, that the result of a horse race on which bets are placed is not based on pure chance. A considerable degree of skill goes into the operation. It starts from the breeding and training of the race horse on which much talent, time and money are expended by trained persons, jockeys have also to be specially trained and equipped. The horses themselves are not necessarily consistent in fitness, which is the reason why horses are exercised openly and watched carefully by representatives of the Press and their observations widely published. Thus, the inherent capacity of the animal, the capability of the jockey, the form and fitness of the horse, the weights carried and the distance of the race at the time of the race are all objective facts capable of assessment by race goers. Thus the prediction of the result of the race is not like drawing 2 aces in a game of poker. Rather, it is the result of much knowledge, study and observation..... Horse racing has been universally recognised as a sport. Horsemanship involves considerable skill, technique and knowledge and jockeys have to be specially trained over a period of years. Whether a particular horse wins at the race or not, is not

dependent on mere chance or accident but is determined by numerous factors, such as the pedigree of the animal, the training given to it as well as the rider, its current form, the nature of the race, etc. Horse racing has been held judicially to be a game of skill unlike pure games of chance like Roulette or a Lottery."

The above quoted averments have not been specifically denied in the counter affidavit filed before the High Court.

20. *The new Encyclopaedia Britannica 15th Edition, Volume 5 at page 105, while defining the expression "gambling" refers to horse racing as under:-*

"Betting on horse racing or athletic contests involves the assessment of a contestant's physical capacity and the use of other evaluative skills."

21. *Volume 6 of the Encyclopaedia at page 68 onwards deals with the subject of horse-racing. Thoroughbred horses with pedigree are selected and trained for races. Horse-racing is a systematic sport where a participant is supposed to have full knowledge about the horse, jockey, trainer, owner, turf and the composition of the race. It would be useful to quote an extract from the Encyclopaedia:-*

"Horse racing, sport of running horses at speed, mainly, Thoroughbreds with a rider astride or

Standardbreds with the horse pulling a conveyance with a driver. These two kinds of racing are called racing on the flat and harness racing. Some races on the flat involve jumping....."

"Knowledge of the first horse race is probably lost in prehistory. Both four- hitch chariot and mounted (bareback) races were held in the Olympic Games of 700-40 BC. Other history of organized racing is not very firmly established. Presumably, organized racing began in such countries as China, Persia, Arabia, and other countries of the Middle East and of North Africa, where horsemanship early became highly developed. Thence came too the Arabian, Barb, and Turk horses that contributed to the earliest European racing. Such horses became familiar to Europeans during the Crusades (11th to 13th centuries) from which they brought those horses back....."

"Eligibility rules were developed based on the age, sex, birthplace, and previous performance of horses and the qualifications of riders. Races were created in which owners were the riders (gentlemen riders); in which the field was restricted geographically to a township or country; and in which only horses that

had not won more than a certain amount were entered....." "All horse racing on the flat except quarter- horse racing involves Thoroughbred (q.v) horses. Thoroughbreds evolved from a mixture of Arab, Turk and Barb horses with native English stock Private studbooks existed from the early 17th century, but they were not invariably reliable. In 1791 Whether by published An Introduction to a General Stud Book, the pedigrees being based on earlier Racing Calendars and Sales papers. After a few years of revision, it was updated annually. All Thoroughbreds are said to descend from three "Oriental" stallions (the Darley Arabian, the Godolphin Barb, and the Byerly Turk, all brought to Great Britain, 1690-1730) and from 43 "royal" mares (those imported by Charles II). The predominance of English racing and hence of the General Stud Book from 1791 provided a standard....." "A race horse achieves peak ability at age five, but the classic age of three years and the escalating size of purses, breeding fees, and sale prices made for fewer races with horses beyond the age of four....."

"Over the centuries the guiding principle for

breeding thoroughbreds has been, as expressed by an old cliché: breed the best to the best and hope for the best. Performance of progeny is the most reliable guide to what is best for breeding purposes, of course but in the case of horses untried at stud, their own racing ability, pedigree, and physical conformation are the only available yardsticks. Emphasis is on racing ability, especially in evaluating potential stallions."

22. *Horse racing is an organized institution. Apart from a sport, it has become a huge public entertainment business. According to The New Encyclopaedia Britannica the occasion of certain races are recorded as public holidays. Derby day at Epsom where the public is admitted on two parts of the grounds at no fee has drawn as many as 5,00,000 spectators. Attendance at horse races in many countries is the highest or among the highest of all sports. The horses which participate in the races are a class by themselves. They have a history of their own. The breed of the horse is an important factor. The experts select the horses who are to be inducted into the racing profession. The selected horses are given extensive training by professional trainers. Breed, upbringing, training and the past record of the race - horses are prominently published and circulated for the benefit of prospective betters. Jockeys are*

experts in horse riding and are extensively trained in various aspects of horse-racing. They are supposed to know the horse they are riding and the turf on which the horse is to run.

23. *Judicial pronouncements on the subject are primarily of American Courts. In People of Monroe 85 ALR 605, it was held that the pari-mutuel betting on the result of horses races, did not violate a provision of the State Constitution prohibiting lotteries. The Court observed as under:*

"The winning horse is not determined by chance alone, but the condition, speed, and endurance of the horse, aided by the skill and management of the rider or driver, enter into the result... In our opinion the parimutuel system does not come within the constitutional inhibition as to lotteries.... `In horse racing the horses are subject to human guidance, management, and urging to put forth their best efforts to win'."

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.

(AMIT RAWAL)
JUDGE

April 18, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No