

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1028 OF 2014

WITH

CRIMINAL WRIT PETITION NO. 2830 OF 2013

WITH

CRIMINAL WRIT PETITION NO. 3287 OF 2013

Bajpe Shivram Shetty .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

WITH

CRIMINAL WRIT PETITION NO. 1244 OF 2009

WITH

CRIMINAL WRIT PETITION NO. 1245 OF 2009

Vinay Shetty .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr. S. P. Kanuga, Advocate for the petitioners

Mr. Ajit Patil, APP for the respondent-State.

Mr. Prakash Naik, Advocate for the respondent-BMC

CORAM:-M.L. TAHALIYANI,J.

DATED : -17/09/2014

ORAL JUDGMENT:

These two petitions bearing Nos. 1244 of 2009 and

1245 of 2009 are already admitted and they are listed for final hearing. Rest of the petitions are for admissions. They are admitted and heard finally by consent.

2 The issue involved in these petitions is common and is being decided by the common judgment and order. The issue raised by the learned counsel for the petitioners is that the signboard indicating the name of business place does not amount to an advertisement and, therefore, the display of signboard will not amount to an offence within the meaning of Section 328A of Mumbai Municipal Corporation Act ("the said Act" for short) and will not be punishable u/s 471 of the said Act. The complaints in all the cases are very cryptic. There are no details of the alleged offence except one line allegation that the signboard of particular size is displayed outside the Bar. The name of the Bar in question is Deepa Bar.

3 The petitioners are different because they are holding different position in the same Bar and they are prosecuted at different points of time.

4 As already said, the issue involved is as to whether the

display of illuminated signboard amounts to advertisement. The said issue had come up for consideration before the Hon'ble Supreme Court in the matter of **ICICI Bank & Anr. v. Municipal Corpn. Of Greater Bombay & Ors., (2005) 6 SCC 404.** The Hon'ble Supreme Court has made the following observations in respect of ATM signboards of the bank at para 20:

“From the aforesaid analysis, in all fact situations and circumstances, at the outset it cannot be said that the signboards indicating ATM centres cannot have commercial interest but would only tell about the location of the ATM centres to the existing account-holders only. Whether signboard of an ATM centre tantamounts to be an advertisement or not would depend upon the facts of each case, depending on the number of ATM centres established by a particular bank in a particular locality or place or even city, to have the flavour of commercial or business interest of the service provider. In the present case no exercise was undertaken by the Municipal

Authorities or the Bombay High Court before the High Court had reached to the conclusion that the signboards of the ATM centre put up by ICICI Bank at different locations would be an advertisement within the meaning of Section 328-A of the Corporation Act. In fact the notices issued by the Corporation to the appellant are under Sections 328, 328-A of the Corporation Act. The reach ambit and scope of these sections are quite different and they operate in different fields. They do not completely overlap. In the circumstances, it was appropriate for the Corporation to issue notices to the appellant either under Section 328 or under Section 328-A of the Corporation Act and notice should not have been issued under both sections for the same signboard. The Bombay Municipal Corporation Authorities seem to be in a state of doubt and hence the notices clearly do not specify under which section they propose to take action. As we have made it clear that in the present case the signboards of ATM centres, which are not sky-signs, are

not covered under the provisions of Section 328 of the Corporation Act, the notices issued shall be deemed to have been issued under Section 328-A of the Corporation Act and the Corporation shall decide the question of advertisement under Section 328-A of the Act after indicating to the Bank a fresh date of hearing.”

5 In the present case also there is nothing in the complaint to indicate as to how the signboards of the petitioners amounted to an advertisement. As already stated the allegations are in printed form and very cryptic. For example, contents of one of the complaints can be reproduced as under:

“Illu. name board adm size 10'x2 at above address without the written permission from the Municipal Commissioner on 12th July, 2013 - - - to be punishable u/s 328/328-A r/w Section 471 of the Mumbai Municipal Corporation Act”.

6 As such, the complainant / Municipal Corporation of Greater Mumbai were not sure as to whether there was violation of Section 328 or 328-A. As stated by the Hon'ble Supreme Court in

the case of **ICICI Bank cited (supra)**, in the present case also the Corporation appeared to be in state of doubt and hence the complaints clearly do not specify as to under which section the prosecution was launched. There is nothing in the complaint to indicate as to how the signboards amounted to advertisement. The Hon'ble Supreme Court has said that whether signboard tantamounts to be an advertisement or not would depend upon facts of each case. It was, therefore, necessary for the Corporation to state the facts in detail and to describe as to how the signboards erected by the petitioners amounted to an advertisement. It may be noted here that signboards can only be for the purpose of indicating the location of the business place. They may not be having intention to invite the customers. It is possible that the intention of the petitioners may be only to indicate that there hotel or bar was situated at a particular place so that the customers do not find it difficult to locate the same. If the Corporation alleged that the signboards had commercial value and they were for the purpose of advertisement, it was incumbent on the part of the Corporation to give details thereof in the complaint and to explain as to how did it amount to advertisement.

7 As such, in my opinion, all the complaints need to be quashed. Hence, I pass the following order:

The proceedings against the petitioners in the Court of Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai, vide Criminal Case Nos. (1) 7549/SS/2013, (2) 2531/SS/09, (3) 2532/SS/09, (4) 2844/SS/13, (5) 3844/SS/2013 are quashed and bail bonds, if any, stand cancelled.

(JUDGE)

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