

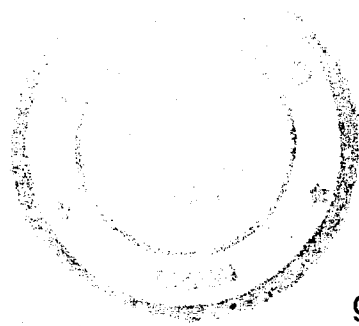
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CASE NO.4100598/SS/2015

IN THE COURT OF THE METROPOLITAN MAGISTRATE,
41ST COURT, SHINDEWADI, DADAR, MUMBAI.
(BEFORE R. M. JADHAV)
(Judgment under section 355 of Cr.P.C.)

Exhibit : 28.

- a) Serial No. of the case : 4100598/SS/2015
- b) Date of Commission of the offence : 18/11/2014
- c) Name of the complainant (if any) : Mumbai Municipal Corporation
'G/N' Ward, Mumbai.
(Through : Sr. Legal Assistant
Smt. V. B. Savant)
- d) Name of the accused person and his parentage and residence : Suresh Sadhu Shetty, 34 Yrs
M/s Raja Hotel,
386 Patil Building,
N. C. Kelkar Marg,
Dadar(W), Mumbai.
- e) Offence complained of or proved : Offence under section 328-A
punishable under section 471
of MMC Act.
- f) Plea of the accused and his examination (if any) : Accused Pleaded not guilty.
- g) Final Order : Accused is acquitted.
- h) Date of such order : 20/10/2015



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REASONS

- 1] Accused is tried for contravention under section 328-A punishable under section 471 of MMC Act, for displaying illuminated board, of hotel "Megh Darshan".
- 2] Accused appeared pursuant to the process issued, and is on bail. Plea of accused is recorded below Exh.9, to which accused pleaded not guilty and claimed to be tried. The statement of accused under section 313 of Cr.P.C. is recorded. Defence of accused is of total denial.
- 3] Prosecution in order to bring home the guilt of accused, examined P.W.1 Advertising Inspector Jayprakash Jagtap, below Exh.11, P.W.2 Sr. License Inspector Mahipal Garud Exh.17, P.W.3 Head Clerk Seema Pathak below Exh.21, and thereafter closed its oral evidence.
- 4] Besides the oral evidence, the prosecution relied upon the copy of authority letter of Advertising Inspector, Jagtap Exh.12, Inspection report Exh.13, offence sheet exh.14,

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authority letter of P.W.2 Garid Exh.18, reply of accused Exh.15 & 16, deputation of powers and its intimation of DMC Exh.22 to Exh.23, authority of LA. Below Exh.24.

5] Heard both the side at length.

6] Following points arose for determination and my findings together with reason on the same are given below :-

Sr. No.	Points	Findings
1.	Does prosecution proves that, accused on or before 18/11/2014 at 386 Patil Building, N. C. Keikar Marg, Dadar(W), Mumbai-28 displayed illuminated board of hotel "Megh Darshan" without permission of Municipal Commissioner and there by committed, offence punishable under section 328-A punishable ?	Not proved
2.	What order ?	As per final order

7] The evidence of P.W.1 is relating to the inspection of disputed board which was displayed by the accused without permission. The evidence of P.W.2 is relating to granting of sanction by signing of offence sheet for prosecution of accused. The evidence of P.W.3 is regarding to production of deputation of power of DMC Vale and authority of

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L.A. Vandana Sawant.

8] At the outset I would like to mention here that, the authority letters of the witnesses and the Legal Assistant are produced on record, likewise the delegation of power to the DMC is produced on record, they are the part of official records. According to section 114(e) of Indian Evidence Act Court may presume that the judicial and official acts have been regularly performed. Except the suggestions there is no concrete evidence on record to deny the above presumption. As such I found no reason to disbelieve the above documentary evidence produced by the complainant.

9] It appears that the entire case to prove the guilt of accused, rests upon the evidence of P.W.1, who inspected the disputed board and found the display of illuminated board, by name 'Megh Darshan'. P.W.1 categorically deposed that, accused was found running hotel and the illuminated board was fixed displaying the name of hotel. The P.W.1 deposed that inspection report was served upon accused and inspite of seven days time, accused did not obtained permission to

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display the illuminated board, showing advertisement of hotel "Megh Darshan".

10] On scrutinizing the cross examination of P.W.1, at the hands of accused, it appears that, accused did not seriously disputed the fact that, he was running the hotel, and was found at the time of inspection. Not a single suggestions denying his presence at the time of inspection was given by the accused. The accused has not disputed the service of inspection report upon him and its acknowledgment by signing copy of inspection report filed in the proceeding. Not only this the accused did not disputed the display of illuminated board by name hotel "Megh Darshan". Thus the evidence on record establishes the fact of inspection and the observations made by P.W.1 at the time of inspection. As such I hold that the prosecution with the evidence on record has proved that the illuminated board of hotel "Megh Darshan" was displayed.

11] It is the defence of accused through cross examination that, ownership record of the hotel, is not produced on record and accused being not the owner, is not

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liable for any action. Not only this it is the defence of accused that, illuminated board does not amounts to advertisement.

12] First of all I would like to mention here that the section 328-A of MMC Act provides that :-

"No person shall without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement".

13] Thus the language employed in section 328-A does not means that, only the owner of the trade is liable for displaying the advertisement. It is not necessarily means that the person should be the owner of the trade. Consequently, simply the fact that ownership record of the hotel does not stands in the name of accused, does not led to the conclusion that accused is not liable for punishment if any.

14] Now the most important aspect to be adjudicated here, whether the display of illuminated board amounts to advertisement. The Ld. Advocate for accused argued that the display of illuminated board is not advertisement. As such it does not require any permission. To

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support this limb of argument Ld. Advocate for accused relied upon the decision of Hon'ble Bombay High Court dated 17/09/2014 in Bajpe Shivram Shetty Vs. State of Maharashtra & ors in criminal writ petition No. 1028/2014 with other connected petitions. As against this the Ld. L.A. Controverted the above arguments and submitted that display of illuminated board amounts to advertisement. Therefore accused is liable for criminal liability. To support this limb of argument the L.A. relied upon decision of Hon'ble Apex Court in ICICI Bank & Anr Vs. Municipal Corporation of Greater Bombay & ors. in appeal No.4671/2005. Considered the rival submissions. Gone through the decision cited above.

15] With due respect to the above cited decision I have to submit here that the decision of Hon'ble Apex Court in ICICI Bank and Anr Vs. Municipal Corporation of Gr. Mumbai as mentioned supra appears to have been relied and discussed in the decision of Hon'ble Bombay High Court dated 17/09/2014 in Bajpe Shivram Shetty Vs. State of Maharashtra & ors as reproduced above. The decision of Hon'ble Apex Court relied by L.A. in fact supports the accused.

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It would be apposite here to reproduce observations of Hon'ble Apex Court in ICICI Bank and Anr Vs. Municipal Corporation of Gr. Mumbai :-

"... From the aforesaid analysis, in all fact situation and circumstances, at the outset it can not be said that the sign boards indicating ATM centers cannot be have commercial interest but would only tell about the location of the ATM centers to the existing account holders only. Whether signboard of ATM Centre tantamounts to be an advertisement or not would depend upon the facts of each case, depending on the number of ATM centers 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 sign boards of the ATM center put up by the ICICI bank at different locations would be an advertisement within the meaning of section 328, 328-A of the Corporation Act."

16] In the case in hand the illuminated board displaying name of hotel by name "Megh Darshan" was found. However there is no particular mention in the complaint Exh.1 as well as in the evidence of P.W.1 as to how the display of name board of hotel "Megh Darshan" amounts to advertisement. As mentioned supra the Hon'ble Apex Court has observed that whether the sign board would amounts to advertisement would depends upon the facts of each case.

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17] It is possible that the intention of the petitioner is to indicate the location of the hotel. If the corporation alleged that the sign board had commercial value and they were for the purpose of advertisement, it was incumbent on the part of corporation to give details there of in the complaint and to explain as to how did it amount to advertisement.

18] It appears that in the case in hand the Municipal Authorities had not undertaken the exercise as to how the display of the illuminated board showing name of hotel "Megh Darshan" amounts to advertisement. So in the absence of evidence to that effect I hold that in view of decision of Hon'ble Apex Court in ICICI Bank and Anr Vs. Municipal Corporation of Gr. Mumbai and decision of Bombay High Court in Bajpe Shivram Shetty Vs. State of Maharashtra & ors., the illuminated board displaying the name of hotel "Megh Darshan" does not amounts to advertisement. Therefore the permission of Municipal Authorities as contemplated under section 328-A of MMC Act does not requires. Hence prosecution against accused required to be dismissed and

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accused deserves to be acquitted. Resultantly I proceed to pass the following order :-

: ORDER :

- i] Accused Suresh Sadhu Shetty is hereby acquitted for the offence under section 328-A punishable under section 471 of MMC Act-1888.
- ii] The bail bond of accused stands continued till appeal period towards compliance of section 437-A of Cr.P.C.

Pronounced in open Court.

20/10/15
(R. M. Jadhav)

Metropolitan Magistrate

Date : 20/10/2015 41st Court, Shindewadi, Dadar, Mumbai.

TRUE COPY

Application No. 842/15
Applied on— 22/10/15
Ready on— 30/10/15
Delivered on 30/10/15

20/10/15
Judicial Clerk
Metropolitan Magistrate
41st Court, Shindewadi, Dadar
Mumbai