

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION NO.1231 OF 2013
WITH
APPLICATION NO.1232 OF 213

Bharti Airtel Limited

.. Applicants

-Versus-

State of Maharashtra & Anr.

..Respondents

Mr. Saahil Memon i/b. D.H.Law & Associates for applicants

Mr. K.V.Saste, APP for State.

CORAM : V.M.KANADE &
MS.NUTAN D. SARDESSAI, JJ.

DATE : 16th November 2016.

P.C.

1] Heard learned Counsel for the applicant and learned APP for State. Both these applications can be disposed of by a common order since the issue raised by the applicants in both these applications is common.

2] The applicant is a company incorporated under the Companies Act, 1956 and is carrying on business of providing telecommunication services. The respondent No.3 is an officer working with Palghar Municipal Council and Bhivandi Municipal Council. The applicants in both

the applications had erected certain mobile towers on certain buildings which, according to the Municipal Council is illegal and unauthorised since prior sanction of the Corporation / Council has not been taken. The respondent No.3 in both these applications, therefore, filed complaints with Narpoli Police Station, Bhivandi and Palghar Police station under sections 52 and 53 of the Maharashtra Regional and Town Planning Act, 1956 (for short MRTP Act). These complaints were registered with the Narpoli Police Station, Bhivandi vide C.R.No.II-120 of 2012 on 28th December 2012 and with Palghar police station vide C.R.No.II-10 of 2012 on 14th December 2012.

3] Learned Counsel appearing for the applicants submitted that the said F.I.Rs which are registered by the Palghar and Bhivandi Municipal Council are without any authority of law since by virtue of section 43 of the MRTP Act, no complaint can be registered without seeking prior sanction under section 43 of the MRTP Act.

4] Reliance is placed on the judgement of a Division Bench of this Court in the case of Mahesh Shivram Puthran Vs. Police Commissioner, Thane reported in **2011 SCC Online Bom 389**. Reliance is also placed on a unreported Judgement and order of the Division of this Court dated 8th October 2013 in **Criminal Application No.247 of 2013**

(S.C.Dharmadhikari, & G.S.Patel, JJ). In the said case, complaint was filed against the present applicants under section 52 and 53 of the MRTTP Act.

5] No reply has been filed by the State, though sufficient opportunity has been given to the State to file their reply.

6] The Division Bench of this Court in the case of Mahesh Puthran (supra) has considered the various provisions of the MRTTP Act and also the relevant provisions of Cr.P.C. namely sections 4 and 5 and after having examined all those provisions came to the conclusion that an F.I.R. could not be registered by the police and if it is so registered, it is without authority of law. There is no material on record to show that prior sanction has been taken under section 142 of the MRTTP Act before filing the complaints.

7] The Division Bench of this court in the case of Mahesh Puthran (supra) is also followed by another Division Bench of this Court in the case of Criminal Application No.247 of 2013 dated 8th October 2013 (supra). The law laid down by the Division Bench of this Court in Mahesh Puthran (supra) is squarely applicable to the present case. We are, therefore, of the view that the said complaints which are lodged and

registered by the Municipal Council is without any authority of law and, therefore, the F.I.R. are liable to be quashed. Both the applications are, therefore, allowed in terms of prayer clause (a).

8] Needless to state that it is open for the concerned Municipal Councils/ Corporations to take appropriate action in accordance with law.

(MS. NUTAN D. SARDESSAI, J)

(V.M.KANADE, J)