

Shubhada S Kadam

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 6022 OF 2024**

Sanjiv Sharma and anr.

Versus

The State of Maharashtra and anr.

Mr. Niranjan Mundargi along with Ms. Keral Mehta i/b. Mr. Veerdhawal Deshmukh, Advocate for the Petitioners..

Mr. B. B. Kulkarni, APP for Respondent No.1-State.

Mr. Vijay Jaitkar i/b. Ms. Komal Punjabi, Advocate for Respondent Nos.2-3-BMC.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th JANUARY, 2026.

P.C. :

1. The challenge to this petition is to the issue process order passed by learned Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai (for short “the Magistrate”).

2. It is contention of learned counsel for the petitioners that the petitioners are the Directors of a private limited company, namely, Optimystix Entertainment India Private Limited. The office of the petitioners is housed in a building. The said building structure consists of a ground floor plus upper floor and terrace on the upper floor consisting one room. The petitioners’ company had put up its name board, namely, Optimystix Entertainment Private Limited. The board is hung outside the

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wall and within the boundary line of the building premises. The petitioners were surprised to receive summons in their individual names rather than in the name of the company, alleging against the petitioners that their attendance is required to answer a charge of erecting, exhibiting, fixing, or retaining an advertisement regarding putting up the glow signboard upon the wall and required their presence before the learned Magistrate. Learned counsel further submitted that the notice was issued under Section 328A of the Mumbai Municipal Corporation Act 1888 (for short “the MMC Act”), which clearly states that no person shall, without the written permission of the Commissioner, erect, fix, or retain any advertisement upon the land or near the building etc. The word “advertisement” as used in Section 328A of the Act is in the commercial sense and, in ordinary parlance, must have a direct or indirect connection with the business, trade, or commerce carried on by the advertiser. It must have commercial exploitation. But these facts are not considered by the learned Magistrate while passing the issue process order against the petitioners. The issue process order is passed against the petitioners without application of mind and requested to allow the petition.

3. It is contention of learned counsel for respondent no. 2 that the petitioners are the Directors of the company. The name-board was hung on the outside of the office of the petitioners’ company. It shows that the

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petitioners were advertising their company. The Magistrate has passed proper orders, no interference is required in it.

4. I have heard both the learned counsel and perused the impugned order. Admittedly, the petitioners are individually summoned without issuing summons to the company. In my view, the advertisement is intended for the purpose of directing or soliciting customers to the products, or service prominently shown in the advertisement. In the present case, merely mentioning that the office of the company is situated at a particular place cannot be considered as an advertisement. The learned Magistrate has passed order without application of mind. In view of above, I pass following order:

O R D E R

- (I) The petition is allowed.
- (II) The issue process order passed in Complaint No. 9009/SS/2013, pending before the Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai, is hereby quashed and set aside.

The petition stands disposed of.

(SHIVKUMAR DIGE, J.)