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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.613 OF 2016
WITH
CRIMINAL APPLICATION NO.86 OF 2016**

Brain Aloysius D'lima

..Petitioner.

V/s.

State of Maharashtra and Ors.

..Respondents.

Mr.Rishi Bhuta i/vb. A.S. Khan & Associates for the petitioner.

Mrs.S.V.Sonavane, APP for respondent-State.

Ms.Bobby Malhotra – Intervenor in Criminal Application No.86/2016.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 26TH FEBRUARY, 2016

P.C. :-

1. Heard learned counsel for the petitioner, the applicant and learned APP for the State.

2. The present petition is filed under Article 226 of the Constitution of India and under section 482 of the Criminal Procedure Code to quash the proceeding of the Chapter case No.7/2016 pending before the Special Executive Magistrate, Bandra Division Mumbai. By the notice issued, the petitioner has been asked to appear before the Special Executive Officer on 27th January, 2016.

3. In nutshell, it is the contention of learned counsel

for the petitioner that the impugned notice could not have been issued by the Special Executive Magistrate, Bandra Division, Mumbai without passing an order under section 111 of the Criminal Procedure Code. We are of the view that the contentions raised before us can be raised before the Special Executive Magistrate, Bandra Division, Mumbai and he can very well consider the same and pass necessary orders. Pursuant to the notice, the petitioner can file reply to show cause notice raising therein all such contentions, including the maintainability of the notice for want of order under section 111 of the Criminal Procedure Code and in that event, the concerned authority is expected to consider the same and pass necessary orders. We are, therefore not inclined to interfere with the proceedings at this stage in exercise of writ jurisdiction. Accordingly, the petition is disposed of with liberty to the petitioner to file reply to the notice which is under challenge raising all such challenges as made in the petition.

4. All contentions of rival parties are kept open.

5. Subject to above the petition and the application are disposed of.

(V.L.ACHLIYA, J.)

(RANJIT MORE, J.)