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

WRIT PETITIOIN NO.1152 OF 2004

Kamaluddin Khan

..Petitioner

Vs

The State of Maharashtra

.Respondent

Mr. Ganesh Bhujbal for petitioner.

Mr. A.R. Patil, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 17th September 2018.

P.C.:

1] By the present petition under Article 227 of the Constitution of India, the petitioner has questioned the correctness of Order dated 18.11.2002 passed by the learned Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai in CC No.143/P/2002, granting permission to prosecute the petitioner under section 182 of Cr. P.C and the Order dated 4.12.2003 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No.88 of 2003 dismissing the said Revision and confirming Order dated 18.11.2002 passed by the learned Metropolitan Magistrate.

2] Heard the learned counsel appearing for the petitioner and the learned APP for State. Perused the record.

3] The petitioner is son of Suleman Khan. His father had inherited 'Muslim Bakery' as a tenant from Mr. Irani for last more than fifty years. There were disputes between the applicant and his brother Jalaluddin over the said premises. The record indicates that, the petitioner had filed fifty-five complaints with the police and with the constitutional functionaries pertaining to the said premises and against his brother Jalaluddin. After conducting enquiry into the said complaints, it was revealed that no offence of whatsoever nature such as theft, house breaking was in fact committed by Jalaluddin and/or other persons. The said fact was informed to the petitioner by the Investigating Agency. However, the petitioner kept on sending letters to the police and other authorities. As noted earlier, there are in all fifty-five complaints filed by the petitioner.

4] The record indicates that, the petitioner also sent letters to the Honourable President of India, Prime Minister of India, Governor of Maharashtra and Chief Minister of Maharashtra. In the premise the Senior Inspector of Police submitted report to the Metropolitan Magistrate, 15th Court, Mumbai seeking permission to prosecute the petitioner under section

182 of Cr. P.C. which has been granted by the impugned Order dated 18.11.2002. Criminal Revision Application No.88 of 2003 preferred by the petitioner has been dismissed by the learned Additional Sessions Judge by its Judgment and Order dated 4.12.2003.

5] Mr. Bhujbal, the learned counsel for the petitioner contented that, Section 195 prescribes that no Court shall take cognizance of the offence punishable under Sections 172 to 188 of the Indian Penal Code except a complaint in writing of the public servant concerned to whom he is administratively subordinate. He further submitted that, the Magistrate has no jurisdiction to grant such permission to lodge an offence under Section 182 of the Indian Penal Code.

6] Section 182 of the Indian Penal Code postulates, imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both, if an accuse gives false information with intent to cause public servant to use his lawful power to the injury or another person. The record indicates that, in the present case the applicant has filed numerous complaints with the police authorities and other Government functionaries against Jalaluddin Khan for his personal dispute over the suit property and the police after

conducting thorough enquiry, came to the conclusion that the applicant had with malafide intention lodged the said complaints.

7] It is to be noted here that, the offence under section 182 of the Indian Penal Code is classified as a non-cognizable, bailable, non-compoundable and triable by any Magistrate. As the offence being non-cognizable, a permission to investigate the said crime is necessary under Section 155(2) of Cr. P.C. Therefore in my view, the learned Magistrate while passing the impugned Order dated 18.11.2002 has in fact granted such a permission though not expressively mentioned in the said Order, but under Section 155(2) of Cr. P.C. and there is no substance in the contention raised by the learned counsel for the petitioner.

8] It is to be noted here that, in the present case the concerned Officer being a public servant while seeking permission, has filed a detailed application/complaint before the learned Magistrate on 18.11.2002 which is annexed at Exhibit A to the present petition. As noted earlier, the petitioner had filed innumerable complaints with the Police thereby seeking action against the said Mr. Jalaluddin Khan which after enquiry found to be not genuine and instituted with a malafide intention. The police after conducting enquiry/investigation, have reached to the conclusion that the

information given by the petitioner was false information, with intent to cause public servant to use his lawful power to cause injury or annoyance to another person, or knowing it to be likely that he would thereby cause such public servant to use lawful power of such public servant to the injury or annoyance to other person.

8] As noted earlier, the concerned Investigating Agency has rightly invoked the section 182 of the Indian Penal Code against the petitioner and the learned Magistrate has not committed any error while passing impugned Order dated 18.11.2002.

9] The petition being devoid of any merits, is accordingly rejected.

10] Rule is discharged. Interim relief vacated.

(A.S.GADKARI, J.)