**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**PUBLIC INTEREST LITIGATION PETITION NO. OF 2019**

**DIST. MUMBAI**

**In the matter of Articles 14, 19 & 21 of Constitution of India.**

**And**

**In the matter of Article 226 of Constitution of India.**

 **And**

**In the matter of non-compliance of the directions of the Hon’ble Supreme Court in the case of Lalita Kumari v/s Government of U.P**

 **And**

**In the matter of non-registration of FIR by the Office of EOW, Mumbai inspite of information disclosing cognizable offence and forwarding the same to High Power Committee, Apex GRC, SRA, MHADA and MCGM.**

**Kamlakar Ratnakar Shenoy**

Aged: 61 years, Occu: Self Employed,

R/o: B/ 903, Vaishali Apartments,

Sheth Motisha( Love ) lane,

Opp. Telephone Exchange

Mazgaon, Mumbai 400 010 .**..PETITIONER**

**V/s**

1. **The State of Maharashtra**

 through its Chief Secretary

 and its Home Secretary

 Mantralaya, Mumbai4000032.

1. **The Commissioner of Police, Mumbai,**

 Police Commissioner, Greater Mumbai,

 Dr. D. N. Road, in front of Crawford Market,

 Mumbai-40001.

**3. Joint Commissioner of Police,**

**Economic Offences Wing, Mumbai,**

Police Commissioner Compound,

Dr. D. N. Road, in front of Crawford Market,

Mumbai- 400 001. **…RESPONDENTS**

**MOST RESPECTFULLY SHEWETH:-**

1. The Petitioner states that he is an Indian citizen and is the permanent resident at the address mentioned hereinabove.
2. The Respondent No.1 is the State of Maharashtra through its Chief Secretary and its Home Secretary, Respondent no. 2 is the Commissioner of Police, Greater Mumbai, and Respondent No. 3 is the Joint Commissioner of Police, Economic Offences Wing, Mumbai.
3. The Respondent no. 1 to 3 are thus “state” within the meaning of Article 12 of the Constitution of India and are amenable to the writ jurisdiction of this Hon’ble Court.

**Particulars of Petitioner**:

1. The Petitioner is an Indian citizen and is the permanent resident of the address mentioned hereinabove. The Petitioner is a public spirited person and alert citizen working for the welfare of the public at large in the City of Mumbai for the last about 8 years.

**Public interest Litigations initiated by Petitioner**:

1. Copy of the list of some of the public cause litigations initiated by the Petitioner is hereto annexed and marked as **Exhibit-A**.

**Declaration and Undertaking**:

1. The present Petition is filed by way of Public Interest Litigation and the Petitioner does not have any personal interest in the subject matter, in the present Petition, except pursuing compliance of declaration of law as laid down in the case of Lalita Kumari v/s Government of U.P. and others reported in AIR 2014, Supreme Court 187.
2. The litigation cost is borne by the Petitioner and the Advocate’s Fees are pro bono and the Petitioner craves leave of this Hon. Court to order reimbursement of appropriate cost of this Petition and its hearings in favour of the Petitioner.
3. The law laid down by the Apex Court as regards mandatory registration of FIR in case of cognizable offence as stated in Lalita Kumari v/s Government of U.P. and others reported in AIR 2014, Supreme Court 187, is not implemented by the investigating agencies and the same requires to be dealt with and that similar or identical Petition was not filed hereto before, to the best of the knowledge of the Petitioner.
4. The Petitioner has understood that in the course of the hearing of this Petition the Court may require Security to be furnished towards the cost or any other charges and the Petitioner will comply with such requirement if so called upon.

**Subject matter in brief:**

1. The Petitioner states that by way of the present Public Interest Litigation the Petitioner is seeking necessary directions in the nature of Mandamus from this Hon’ble Court thereby directing the Respondent No.3 to register FIR in all the complaints received by Respondent No.3 wherein information discloses commission of cognizable offence and directing the Respondent No. 3 to forthwith register FIR in all such cases as mentioned by the Respondent No.3 in the reply dated 30.10.2018 where the complaints though disclosing commission of cognizable offence, have been forwarded to the High Power Committee or Apex Committee, SRA, MHADA, BMC or other departments for inquiry.

**Facts in brief:**

1. The Petitioner states that the Petitioner had sought information under the Right to Information Act, 2005 from the office of Assistant Commissioner of Police (EOW), Mumbai regarding the complaints disclosing commission of cognizable offence which are received by the said office and are forwarded to the High Power Committee (HPC), Apex GRC (Grievances Redressal Committee), Slum Rehabilitation Authority (SRA), Maharashtra Housing and Development Authority (MHADA),Municipal Corporation for Greater Mumbai (MCGM/BMC). The Petitioner states that the office of Assistant Commissioner of Police, EOW, Mumbai vide their reply dated 30.10.2018 furnished the said information as requested by the Petitioner. The Petitioner states that the Petitioner was shocked and surprised on going through the said reply dated 30.10.2018 as the same disclosed that though many complaints disclosing commission of cognizable offence are received by the Office of Assistant Commissioner of Police, EOW, Mumbai the same are forwarded to the abovementioned Committees and other authorities for inquiry instead of registering FIR thereon.

The Petitioner states that vide the said reply the said office had furnished information as to the number of complaints which are forwarded to the Committees and Authorities which is as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Year** | **HPC or Apex GRC** | **SRA** | **MHADA** | **BMC** | **Other Department** |
| 2015 | --- | 36 | 09 | 18 | --- |
| 2016 | 1 | 26 | 08 | 23 | 1 |
| 2017 | 20 | 09 | 08 | 19 | 1 |
| 2018 | 31 | 07 | 05 | 24 | --- |

Hereto annexed and marked as **Exhibit “B”** is the copy of the said reply dated 30.10.2018.

1. The Petitioner states that the Petitioner had also sought information regarding the provisions of the Code of Criminal Procedure and/or provisions of any other law under which the said complaints disclosing commission of cognizable offences are forwarded by the Office of Assistant Commissioner of Police (EOW), Mumbai to the abovementioned Committees and Authorities. The Petitioner states thatvide the aforesaid reply dated 30.10.2018 the Petitioner was informed that the complaints are so forwarded as per the Government Resolution dated 15.11.2007.Hereto annexed and marked as **Exhibit “C”** is the copy of the said Government Resolution dated 15.11.2007.
2. The Petitioner states that thus after perusal of the said reply dated 30.10.2018 the Petitioner came to know that inspite of receipt of complaints disclosing cognizable offences the office of Assistant Commissioner of Police, (EOW), Mumbai has not registered FIR in a number of cases and has forwarded the same to High Power Committee (HPC), Apex GRC (Grievances Redressal Committee), Slum Rehabilitation Authority (SRA), Maharashtra Housing and Development Authority (MHADA),Municipal Corporation for Greater Mumbai (MCGM/BMC) etc. The Petitioner states that the reply also revealed that the same was done under the provisions of the aforesaid Government Resolution dated 15.11.2007.The Petitioner states the said action on the part of the Respondent No. 3, in light of the ratio laid down by the Hon’ble Supreme Court in the case of Lalita Kumari is not permissible.
3. The Petitioner states that five Judge Constitutional Bench of Hon. Supreme Court in case of LalitaKumari v/s Govt. of U.P. and others reported AIR 2014 SC 187 in para 111 held as follows :

“111. In view of the aforesaid discussion, we hold:

“ i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

The categories of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) “Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary enquiry must also be reflected as mentioned above”…

1. The Petitioner states that moreover a perusal of the said Government Resolution dated 15.11.2007 clearly indicates that vide the said Government Resolution a High Power Committee was established to look into the matter relating to the disputes arising in respect of the slum rehabilitation schemes under the SRA such as eligibility of persons entitled to rehabilitation, etc. and nowhere does the said Government Resolution mention about forwarding of the complaints disclosing commission of cognizable offences to the abovementioned Committee by the concerned department like the Respondent No.3.
2. The Petitioner states that furthermore the Government Notification dated 08.03.2017 mentions the scope of the Apex Grievance Committee which is as follows:

“(a) Appeal against all orders of CEO, SRA or orders issued on behalf of CEO, SRA by any officer, who has been delegated powers by CEO, SRA. Under Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 and respective Development Control Regulation. (b) Any issue referred by State of Government by executive orders. (c) Any issue refereed by Hon’ble Court or Hon’ble Supreme Court. (d) The issue not specifically assigned to other GRC’s. (e) Administration control and coordination over functioning of other GRCs so notified by the State Government from time to time”. Hereto annexed and marked as **Exhibit “D”** is the copy of the said Government Notification dated 08.03.2017.

1. The Petitioner states that thus upon a con-joint reading of the reply of the office of Assistant Commissioner of Police (EOW), Mumbai dated 30.10.2018, Government Resolution dated 15.11.2017 and Government Resolution dated 08.03.2017 it can be seen that the action of the office of Assistant Commissioner of Police (EOW), Mumbai in forwarding complaints disclosing commission of cognizable offence to the above mentioned committees and authorities is not warranted under the said Government Resolution and is impermissible and contrary to the decision laid down by the Hon’ble Supreme Court in the case of Lalita Kumari vs Government of UP.
2. The Petitioner further states that by non-registration of FIR in cognizable offences by the investigating agencies they have aided in delaying fair trial particularly in those cases which are mechanically forwarded by the investigation agencies to the High Power Committee/ Apex Grievances Redressal Committee/ BMC/ SRA/ MHADA and others without registering the FIR.
3. The Petitioner states that prima facie the said document Exhibit –B shows that the investigating agencies are consciously and with malafide intentions disobeying the said Constitutional Bench decision.
4. The petitioner states that the Investigating agencies are specifically made aware to follow the law as laid down in the said case by the Constitutional Bench of the Supreme Court in the above case vide circular dt. 5.2.2014 bearing no. 15011/91/2013-SC/ ST-W, Government of India, Ministry of Home affairs, N. Delhi, which is addressed by the Joint Secretary (CS) of the ministry of Home affairs of the Government of India.

Copy of the Circular dated 05.02.2014 issued by Ministry of Home is hereto annexed and marked as **Exhibit-E**.

1. The Petitioner states that the Respondent No. 1 to 3 were & are very well aware of the said Supreme Court decision in Lalita Kumari case and the said circular which is at Exhibit-E.
2. The Petitioner states that the judgement of the full Bench of the Hon’ble High Court, Mumbai in Tulsiwadi case pursuant to which the aforesaid Government Resolution dated 15.11.2007 is issued, does not deal with the scope of section 154 of CR.P.C. The said judgment dealt with basically civil remedies available to the slum dwellers with reference to slum rehabilitation schemes.
3. The Petitioner states that by judgment dated 18.12.2008 in Notice of Motion no. 126 of 2008 in writ Petition 1326 of 2007 in case of Tulsiwadi Navnirman (SRA) Cooperative Housing society Ltd and another v/s State of Maharashtra and others, the full bench of the Hon. Bombay High Court permitted the State of Maharashtra to constitute one more High Power Committee. In this judgement dated 18.12.2008 there is also no reference to criminal offences with reference to section 154 of Cr.P.C.
4. The petitioner states that in Notice of Motion no. 126 of 2008 in writ petition no. 1326 of 2007,in case of Tulsiwadi Navnirman (SRA) Cooperative Housing society Ltd and another v/s State of Maharashtra and others, the full bench of the Hon. Bombay High Court gave direction by judgment dt. 11.2.2009 in para 3, to implement immediately the said main judgment as well as the subsequent order dt. 18.12.2008.
5. The Petitioner states that in the RTI reply dated 30th October, 2018 given by the Assistant Police Commissioner (Administration & Economic Offences), Mumbai which reply is at Exhibit-B it is stated “ c- How many complaints are decided by HPC/ Apex/ GRC / SRA / MHADA / BMC / Others-
6. The Petitioner state that this is very sorry state of affairs which discloses prima facie that no records are available in the office of the Assistant Police Commissioner (Administration & Economic Offences), Mumbai, as regards how many complaints were decided by HPC/ Apex GRC / SRA / MHADA / BMC / Others. Thus not only the investigation agencies have violated the law as laid down in the Lalita Kumari’s case as mentioned above, they have no records of how many such cognizable offences complaints are decided by HPC/ Apex GRC / SRA / MHADA / BMC / Others and why did the investigation agencies and the HPC/ Apex GRC / SRA / MHADA / BMC / Others did not comply the mandatory time limit of preliminary inquiry of 7 days as laid down in the said Lalita Kumari’s case.
7. The Petitioner states that thus the Office of Assistant Commissioner of Police EOW, Mumbai has forwarded the complaints disclosing commission of cognizable offences to the aforesaid Committee without registering FIR which is impermissible and contrary to the decision of the Hon’ble Supreme Court in case of Lalita Kumari V/s Government of U.P. and others reported in AIR 2014, Supreme Court 187.
8. The Petitioner states that in case of Sayed Anwar Ahmed and another v/s State of Maharashtra and another, 2017 SCC Online BOM 3972 Division Bench of Bombay High Court by oral judgment dated 27/28.02.2017 while considering Criminal Writ Petition No. 924 of 2016 with Criminal Application no. 486 of 2016 under Article 226 of Constitution of India read with section 482 of Cr.P.C. held that there are absolutely no reasons recorded for issuing the impugned directions to the Sr. Police Inspector, Oshiwara Police Station to investigate. This decision cannot by any stretch of imagination wipe out the mandatory directions of the Hon. 5 Judge Constitutional bench of the Supreme Court to register the FIR mandatorily u/s 154 CRPC in case of cognizable offences.
9. The Petitioner further states he strongly suspects that the police department appears to be intentionally with mala fide intentions pretending to be either misguided or pretending to be misinterpreting the said two decisions of the Hon. Bombay High Court in case of Shailesh Gandhi and Sayed Ahmed Anwar case as referred above.
10. The Petitioner and Respondents are from Mumbai and Hon’ble Committees and has jurisdiction to entertain and try this PIL.
11. **The Petitioner therefore prays :**
12. That this Hon’ble Court be pleased to issue Writ of Mandamus or any order in the nature of writ of Mandamus or any other writ, order or direction in the nature of Mandamus directing the Respondent No.3 to register FIR in all the complaints received by Respondent No. 3 wherein information discloses commission of cognizable offence and directing the Respondent No.3 to forthwith register FIR in all such cases as mentioned in their reply dated 30.10.2018 where the complaints though disclosing commission of cognizable offence, have been forwarded to the High Power Committee or Apex Committee, SRA, MHADA, BMC or other departments for inquiry.
13. Any other relief as this Hon’ble Court may deem fit and proper in the interest of justice

**Place:** Mumbai

**Dated:** April, 2019 **Petitioner**

**Advocate for the Petitioner**

**VERIFICATION**

 I, Kamlakar R. Shenoy, Aged: 61 years, Occu: Self Employed, R/o:B/ 903, Vaishali Apartments, Sheth Motisha ( Love ) lane, Opp. Telephone Exchange Mazgaon, Mumbai 400 010 the Petitioner above named do hereby on solemn affirmation state and declare that what is stated in the paragraph 1 to 30 is true to my own knowledge and belief and what is stated in paragraphs 31is based on the information and legal advice which I believe to be true and correct.

**Solemnly affirmed at Mumbai ]**

**This 18th day of April, 2019 ]**

 **Before me,**

**Identified by me,**

**Advocate for the Petitioner**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**PUBLIC INTEREST LITIGATION PETITION NO. OF 2019**

**DIST.MUMBAI**

**Kamlakar R. Shenoy …Petitioner**

**Versus**

**State of Maharashtra & Others …Respondents**

**AFFIDAVIT IN SUPPORT OF PETITION**

I,Kamlakar R. Shenoy, Aged - about 61 years, Residing at B / 903, Vaishali apart., Sheth Motisha (Love ) Lane, opp. Telephone exchange, Mazgaon Mumbai- 400 010 Petitioner abovenamed do hereby state on solemn affirmation as under:

1. I say that I am conversant with facts of the above petition. I say that I have signed and verified the above petition.
2. I confirm, repeat and reiterate what is stated in the above Petition and adopt the same herein, as part and parcel of this affidavit for the sake of brevity. I further reiterate and confirm the documents relied upon by the Petitioner in support of the above Petition.
3. I say that the contents of this Affidavit are true and correct to the best of my knowledge, information and belief and I believe the same to be true.

Solemnly affirmed at Mumbai

This day of April, 2019

Identified by me,

Advocate for the Petitioner

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**PUBLIC INTEREST LITIGATION PETITION NO. OF 2019**

**DIST.MUMBAI**

**Kamlakar R. Shenoy …Petitioner**

**Versus**

**State of Maharashtra & Others …Respondents**

**AFFIDAVIT CUM CERTIFICATE**

I Kamlakar R. Shenoy , the above named Petitioner do hereby say and submit on solemn affirmation as under :

1. I say that, I hereby undertake to pay the cost if any as ordered by this Hon’ble court, if it is held that the petition is false and frivolous or has been filed for extraneous and consideration or it lacks bonafied facts.
2. I say that, I hereby undertake to abide by the orders of this Hon’ble Court.
3. I say that, above averments are made by me considering all the facts in the interest of public and whatever has been stated hereinabove is true to my knowledge.

 Solemnly affirmed at Mumbai

Dated this day of April, 2019

Advocate for the Petitioner