

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 20 OF 2015

Radhabai Ambadas Sonawane

.. Petitioner

Vs.

The State of Maharashtra and others

.. Respondents

Mr. V.B. Patil, Advocate for the petitioner

Mr. M.M. Nerlikar, A.P.P. for the respondent-State

CORAM : S.S. SHINDE AND

M.T. JOSHI, JJ.

DATE : 20/11/2015

ORAL ORDER :

1. Heard learned counsel appearing for the petitioner and learned A.P.P. for the respondent-State.

2. Learned counsel appearing for the petitioner invited our attention to the prayers in the Petition and submits that in view of the events occurred subsequent to rejection of the earlier two Writ Petitions, this fresh Writ Petition is filed praying therein the relief of investigation by the Central Bureau of Investigation (C.B.I.).

3. According to learned counsel appearing for the petitioner, in pursuance to the liberty granted to the petitioner to file application before the Sessions Court, Jalgaon, an application was filed and accordingly the said application was allowed, thereby directing the prosecution agency to add 11 accused persons. According to learned counsel appearing for the petitioner, the said order was passed on 01/08/2014 and in the changed circumstances, the application was filed for transfer of the investigation from the local Police to the Central Bureau of Investigation. It is submitted that there were four (4) C.C.T.V. in the said hospital. Therefore, learned counsel appearing for the petitioner submits that the Writ Petition may be allowed.

4. On the other hand, learned A.P.P. appearing for the respondent-State invited our attention to order passed by this Court in Criminal Writ Petition no. 714 of 2012 dated 11/6/2013 and also the order dated 20/8/2014 passed in Criminal Writ Petition No. 690 of

2014 and submits that in those Writ Petitions, there were prayers to transfer the investigation to the Central Bureau of Investigation, however, those petitions are rejected by this Court. He further submits that earlier also Petition bearing Criminal Writ Petition no. 614 of 2012 was also filed by the petitioner, wherein there was prayer to transfer the investigation to the Central Bureau of Investigation, however, that petition was disposed of as withdrawn vide order dated 16/07/2012. Therefore, according to learned A.P.P. appearing for the respondent-State in view of the bar contained under section 362 of the Code of Criminal Procedure, the prayers in this petition cannot be entertained.

. He further submits that in continuation of the investigation by the earlier Investigating Officer, Sub Divisional Police Officer was entrusted with the further investigation. The prosecution agency has carried the investigation properly. The trial is in progress. Therefore, relying upon the averments in the affidavit-in-reply and also the documents placed on

record, learned A.P.P. appearing for the respondent-State submits that the petition may be rejected.

5. We have heard learned counsel appearing for the petitioner and learned A.P.P. appearing for the respondent-State. With their able assistance, we have perused the averments in the petition, annexures, reply filed by the respondent-State and all other documents placed on record. In our opinion, having been dismissed Criminal Writ Petition no.714 of 2012, Criminal Writ Petition No. 690 of 2014 and Criminal Writ Petition No.614 of 2012, wherein there were prayers to transfer the investigation to Central Bureau of Investigation, in view of the bar contained under section 362 of the Code of Criminal Procedure, it is not possible to accede to the prayer of the petitioner to transfer the investigation to the Central Bureau of Investigation. Contention of the learned counsel for the petitioner that in view of the subsequent order passed by the Sessions Court, thereby directing the Investigating Officer to add 11 accused, the same cannot be taken as a change in circumstance, so as to

transfer the investigation to the Central Bureau of Investigation, as even after addition of these accused by the Sessions Court on 1.8.2014 the next of the Criminal Writ Petition No. 590 of 2014 for similar relief was dismissed by this Court on 20.8.2014.

6. In that view of the matter, for the reasons aforesaid, the Writ Petition stands rejected.

[M.T. JOSHI]
JUDGE

[S.S. SHINDE]
JUDGE

arp/