

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.177 OF 2018**

Rohit Hariram Israni
Through Power of Attorney Holder
Shri Manish Premchand Sidhwani : **Petitioner.**
Versus
Senior Police Inspector,
Dadar Police Station, Mumbai and ors. : **Respondents.**

Dr. A Chandrachud i/by Mr. Kartik S Garg for the Petitioner.
Mr. R M Pethe for the Respondent/State.

CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
DATE : 28th JUNE 2018

P.C.

1 The above Writ Petition has been filed seeking a direction against the Respondent No.1 to take cognizance of the Petitioner's complaints dated 02/08/2017 and 08/09/2017 and register the FIR for the offence punishable under Section 302 of the Indian Penal Code.

2 The allegations in the said complaints are in respect of the death of the Petitioner's maternal aunt Ms. Tillottama G Bhide and the gravamen of the allegations is as regards the removal of the oxygen supply i.e. the disconnection of the Bi-Pap of the said Ms. Tillottama G Bhide.

3 The said complaints of the Petitioner were taken note of by the concerned Police Station and an enquiry was conducted into the allegations made by the Petitioner by the Inspector of Police (Crime) of the Dadar Police

Station.

4 The learned APP Shri R M Pethe has submitted for our perusal the report dated 26/06/2018 of the Police Inspector (Crime) of the Dadar Police Station. The said report refers to in detail the material which has come before the police during the course of the said preliminary enquiry which includes the reports of the three Doctors which were forwarded by one of the Doctors of the Jaslok Hospital, Mumbai from the Department of Legal Compliance. The said report concludes by holding that no cognizable offence has been made out and that the dispute between the parties appears to have civil overtones. Hence the said report discloses that the police has refused to register an FIR on the basis of the allegations made by the Petitioner.

5 The learned counsel appearing on behalf of the Petitioner Dr.Chandrachud would draw our attention to the judgment of the Apex Court in **Lalita Kumar vs./ Govt. of U. P. and ors.** reported in **AIR 2014 SC 187** and especially to the conclusions which are contained in paragraph 111 of the said judgment. In so far as the said conclusions are concerned, clause (i) thereof directs that registration of FIR is mandatory if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. It is the said conclusions on which reliance is placed by the learned counsel for the Petitioner. No doubt the complaints made by the

Petitioner which we have adverted to in the earlier part of this Order make an allegation as regards the death of the said Ms. Tillottama G Bhide. As indicated above, the said complaints were acted upon and an inquiry was conducted and the conclusion was reached that no cognizable offence was made out and the dispute between the parties is of civil nature.

6 Faced with this situation, we are of the view that it would be open for the Petitioner to approach the higher authorities viz. Deputy Commissioner of Police, Zone V as provided by Section 154(3) of the Criminal Procedure Code making a grievance as regards non-registration of the FIR. If such an application is made by the Petitioner within two weeks from date, the Deputy Commissioner of Police, Zone-V, Mumbai would consider the same expeditiously and not later than four weeks of the receipt of the said application, and communicate his decision to the Petitioner. It would be contingent upon the decision that would be taken by the Deputy Commissioner of Police, Zone-V, Mumbai, that the avenues would be open to the Petitioner, to seek further recourse. We express no opinion in that regard.

7 With the directions as aforesaid, the above Writ Petition is disposed of.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]