

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

WRIT PETITION NO. 4169 OF 2014

Gautam Ramesh Adhikari and anr. ... Petitioners

V/s.

Tata Memorial Hospital and ors. ... Respondents

Mr. S.S. Borkar i/by Niranjan Mogre Petitioner.

Mr. Agnel Carneiro i/by Mulla and Mulla & CB & C for Respondent No.1.

Mr. A.M. Chimalkar for Respondent Nos. 2 and 3.

Mr. S.S. Hulke,APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 04th October, 2018

P.C.:

1. By the present petition under Article 227 of the Constitution of India the petitioners-original complainants have impugned the order dated 11.3.2013 passed below Exhibit 1 in CC No 2900084/SW/2009 by the learned Metropolitan Magistrate 29th Court, Dadar, Mumbai dismissing the complaint of the petitioners and the Order dated 17.4.2014 passed by the learned Ad-hoc Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No.557 of 2014, dismissing the said revision and

confirming the Order dated 11.3.2013 passed by the learned Magistrate.

2. Heard learned counsel for the petitioners at length and learned counsel for the respondents. Perused the record.

3. The applicants are the original complainants. The applicants are brothers and sons of deceased Smt. Bina Ramesh Adhikari who expired due to an ailment of Cancer. It is the case of the petitioners that, their mother Smt. Bina Ramesh Adhikari though was detected with malignancy, due to inadequate or improper medical help by the respondents, she ultimately succumbed to the said ailment. The learned Magistrate by the impugned Order passed below Exh.1 dated 11.3.2013 dismissed the said complaint by a well reasoned Order. The Revisional Court has confirmed the said Order dated 11.3.2013 passed by the learned Magistrate by its Order dated 17.4.2014.

4. The record indicates that the report submitted by the Medical Board constituted by the Dean of Sir J.J.Hospital, Mumbai has opined that, there was no medical negligence on the part of the treating Doctors and Management of Tata Memorial Hospital treating the said Smt. Bina Ramesh Adhikari. It is further observed that, after first clinical suspicion of malignancy the respondent sought to have admitted her in hospital to avoid any

inconvenience of the patient. The said report given by the expert committee is in compliance with the guidelines issued by the Supreme Court in the case of Jacob Mathew vs. State of Punjab and anr. reported in (2005) 6 SCC 1. The record further indicates that, at an early occasion the petitioner had approached this Court by way of filing W.P. No.209/2008 for directions for lodging first information report against the respondents which was dismissed by a speaking Order dated 10.3.2008. The record further indicates that thereafter the petitioners preferred the aforestated complaint which has resulted into its dismissal.

5. As noted earlier there is concurrent findings recorded by both the Courts below. The Supreme Court in the case of Shalini S. Shetty vs. Rajendra S. Patil reported in (2010) 8 SCC 329 held that High Courts cannot at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. That in exercise of its power of superintendence under Article 227 of the Constitution, the High Court cannot interfere to correct mere errors of law or fact or just because another view

than the one taken by the tribunals or courts subordinate to it, is a possible view. The said view has been further affirmed by the larger Bench of the Supreme Court in the case of Radhey Shyam and another vs. Chhabi Nath and others reported in (2015) 5 SCC 423.

6. After perusing the entire record and the report submitted by the Enquiry Committee, this Court is of the considered view that, no case for entertaining the complaint filed by the petitioners is made out and both the lower Courts have not committed any error either in law or on facts while passing the impugned orders.

7. The petition is devoid of merits and is accordingly dismissed.

(A.S.GADKARI, J.)