

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL WRIT PETITION NO. 1001 OF 2002**

- |    |                                      |     |             |
|----|--------------------------------------|-----|-------------|
| 1. | Shri Mohamed Arif Sagir Ahmed        | )   |             |
|    | Muslim, Adult.                       | )   |             |
| 2. | Mohamed Firoz Sagir Ahmed,           | )   |             |
|    | Muslim, Adult.                       | )   |             |
|    | Both permanently residing at         | )   |             |
|    | Budharam Chawl, Kurla-Andheri        | )   |             |
|    | Road, Sakinaka, Mumba9-72.           | ).. | Petitioners |
|    | vs.                                  |     |             |
| 1. | The State of Maharashtra             | )   |             |
| 2. | Shri Kanchan Mirza Vishwakarma       | )   |             |
|    | Hindu, Adult, residing at Room No.7, | )   |             |
|    | Budharam Chawl, Kurla-andheri        | )   |             |
|    | Road, Sakinaka, Mumbai-72.           | )   |             |
| 3. | Rajendra prasad Jayram Nisad,        | )   |             |
|    | Hindu, Adult, residi9ng at Room      | )   |             |
|    | No.5, Budharam Chawl,                | )   |             |
|    | Kurla-Andheri Road, Sakinaka,        | )   |             |
|    | Mumbai-72.                           | )   |             |
| 4. | Shri Rakesh Singh Thakur,            | )   |             |
|    | Hindu, Adult, residing at Room No.6, | )   |             |
|    | Budharam Chawl, Kurla-Andheri        | )   |             |
|    | Road, Sakinaka, Mumbai-72.           | ).. | Respondents |

None for the petitioners.

Ms. A.A.Mane, APP, for the State.

**CORAM: SMT. SADHANA S.JADHAV, J.**

**DATE : 9th June, 2016.**

**JUDGMENT:**

None present for the petitioners. Heard the learned APP and perused the compilation of the Petition.

2. The petitioners herein have challenged the correctness and validity of the order dated 24.7.2002 passed by the Addl. Sessions Judge, Greater Bombay in Criminal Misc. Application No.948 of 2002 filed in Sessions case No.698 of 1993. The present petitioners happen to be the accused in Sessions Case No.698 of 1993. Charge is framed against them for the offence punishable under Section 302 read with Section 34 of IPC for having committed the homicidal death of one Mohamed Shafi on 16.2.1993. The substantive evidence of the witnesses was also recorded. It appears that there was a cross-case, which was registered as C.R. no.71 of 1993 against the complainant/witnesses in C.R. No.70 of 1993. The witnesses in Sessions Case No.698 of 1993 were being tried for the offence punishable under Section 307 read with Section 34 of IPC and charge had been framed against them for the alleged offence which was registered as Sessions Case No.240 of 2002.

3. It appears from the records that there was a compromise outside the Court between the present petitioners who were facing charge

under Section 302 of IPC and the accused who were facing the charge for the offence punishable under Section 307 read with Section 34 of IPC and accordingly they have filed an application before the learned Sessions Court seeking permission to compound the offence punishable under Section 302 read with Section 34 of IPC. That the offence punishable under Section 302 read with Section 34 of IPC is punishable with imprisonment for life or death and Section 307 of IPC is punishable with rigorous imprisonment which may extend to 10 years and fine. Both the offences are not included in the list incorporated under Section 320 of Cr.P.C. The offence punishable under Section 302 read with Section 34 of Indian Penal Code is not against the deceased or a particular person, but it is an offence against the State. It is a serious offence and could not have been compounded in any way. The learned Sessions Judge has rightly rejected the application by holding that both the offences are not compoundable and that they are serious offences. In view of this, no interference can be called for. Hence, this Writ Petition deserves to be dismissed.

4. Needless to say that the order granting interim relief dated 27.11.2002 granting interim relief dated 27.11.2002 in terms of prayer clause 'c' is hereby vacated. Rule is discharge. The Petition stands

disposed of as dismissed.

5. Office to communicate this order to the concerned court i.e. Court of Addl. Sessions Judge, Greater Bombay forthwith.

6. The learned Sessions Judge shall issue notices and bailable warrants to the petitioners within 3 weeks from the date of receipt of this order. In any case, it appears that the substantive evidence of the witnesses is recorded even prior to the filing of the application seeking composition of the offence and hence it would not be necessary for the learned Addl. Sessions Judge to recall the witnesses who have been examined and cross-examined. The learned Addl. Sessions Judge shall complete the trial in Sessions Case No.698 of 1993 from the stage of recording of the statements under Section 313 of Cr.P.C. or any other stage immediately after recording of the substantive evidence of the witnesses.

Writ Petition stands disposed of as dismissed.

**(SMT.SADHANA S.JADHAV, J.)**