

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1611 OF 2016

Mr. Arjun Kathod Shelke & Ors.

..... Petitioners

V/s

State of Maharashtra

..... Respondent

Mr. Munir Ahmed i/b Ms. Sushma T. Mishra for the Petitioners.

Mr. K.V. Saste, APP for the Respondent/State.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 10 OCTOBER 2016

ORDER:

1 Notice for final disposal has been already issued. Heard learned Counsel appearing for the Petitioners and the learned APP for the State. The prayer in this Petition is for quashing the First Information Report registered for the offences punishable under sections 115, 302, 120-B of the Indian Penal Code and the various offences under the Arms Act. The first informant is the Assistant Police Inspector of Crime Branch Unit-3, Kalyan.

2 The challenge in this Writ Petition is confined only to the applicability of section 302 of the Indian Penal Code. We have perused the First Information Report. Admittedly, it is not the case of the prosecution that there has been a culpable homicide.

3 The learned Counsel appearing for the Petitioners relies upon a decision of Rajasthan High Court in the case of **State of Rajasthan vs. Ghanshyam and another**¹ decided on 19 April 2000 and the decision of Gujarat High Court in the case of **State of Gujarat vs. Jaku @ Malam Isha Suleman Notiyar Vadher and Ors.**².

4 Heard the learned APP for the State. We have carefully considered the submissions.

5 Section 302 of the Indian Penal Code provides for punishment for murder. The offence of murder is defined under section 300 of the Indian Penal Code. Offence of murder is attracted when there is a culpable homicide. In the present case, admittedly there is no culpable homicide. Therefore, by no stretch of imagination, section 302 of the Indian Penal Code could have been applied by the police. In fact we find that section 115 of the Indian Penal Code has been applied. Therefore, to that extent, the Petitioners must succeed. Accordingly, we pass following order:

1 2000 (4) WLC 491

2 2015 CRI.L.J 4110

ORDER

- i) The impugned First Information Report bearing No.CR I-125 of 2016 registered with Manpada Police Station is quashed only as far as section 302 of the Indian Penal Code is concerned;
- ii) We make it clear that we have made no adjudication on the merits of the controversy.
- iii) Rule is accordingly made absolute.

(A.A. SAYED, J.)**(A.S. OKA, J.)**

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