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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5067 OF 2014**

Jayesh M. Acholkar ... Petitioner

Versus

Vincy Joseph Moraes & anr. ... Respondents

Mr. S.S. Redekar for the petitioner.

Smt. A.A. Mane, A.P.P. for State.

**CORAM : M.L. TAHALIYANI, J.
DATED : MARCH 19, 2015**

P.C.

Admit. By consent taken up for final hearing forthwith.

2. Heard learned counsel for the petitioner and Mrs. Mane, learned A.P.P. for State. Perused the impugned order passed by the Magistrate and also the order passed by the Additional Sessions Judge. Respondent no.1 filed a complaint against the petitioner and 7 other accused for the offence punishable under section 420 of the Indian Penal Code. The complaint was sent to the police for investigation in exercise of powers of the Magistrate under section 156(3) of Code of Criminal Procedure. Police conducted investigation and filed "C" summary indicating that the dispute was of civil nature. Learned Magistrate without considering "C" summary and without

issuing notice to respondent no. 1, proceeded to issue summons to the petitioner and others for the offence punishable under section 420 of the Indian Penal Code. It is an admitted position that “C” summary was not considered and that no order in respect of acceptance or rejection of the “C” summary was passed by the Magistrate. It is also an admitted position that the learned Magistrate did not record statement of respondent no. 1 on oath before issuing process for the offences punishable under section 420 of the Indian Penal Code. The procedure followed by the learned Magistrate apparently is wrong.

3. If the Magistrate wanted to follow the procedure laid down under section 200 onwards, it was his duty to take decision on the “C” summary and then to follow the procedure under section 200 of Criminal Procedure Code. Let us assume for the sake of argument that no illegality was committed by the Magistrate by not passing the order in writing in respect of “C” summary, what is pertinent to note is that the statement of respondent no. 1 on oath was also not recorded before issuing the process. As such the order is manifestly wrong and needs to be set aside. The order passed by the Judicial Magistrate, First Class, Vasai in Criminal Case No. 53 of 2010 issuing process against petitioner and other accused and the order passed by the learned Additional Sessions Judge, Vasai in Criminal Revision Application No. 28 of 2012 are set aside. The learned Magistrate is directed

to follow proper procedure in accordance with law. Petition stands disposed of.

(JUDGE)