

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.51/2017**

Krishna Ambre,
s/o. C. Ambre, married, businessman,
r/o. H.No.52/1, Mushir Waddo,
Colvale, Bardez, Goa. Petitioner.

V/s.

1) The State of Goa,
through Public Prosecutor,
High Court of Bombay at Goa.

2) Mr. Ajju S. Shindolli,
Proprietor of M/s. Ajju's Mines &
Minerals, major in age,
married, businessman,
Victor Palace, Mezzanine Floor,
Opp. Dr. B. Ambedkar Garden,
Patto, Panaji, Goa Respondents.

Mr. Nillesh Takkekar, Advocate for the petitioner.

Mr. A.P. Verlekar, Advocate for the respondent No.2.

CORAM :- F.M. REIS, J.

Date : - 06/04/2017.

ORAL JUDGMENT :

Heard Mr. N Takkekar, learned Counsel appearing for the
petitioner and Mr. A.P. Verlekar, learned Counsel appearing for the

respondent No.2.

2. Rule. Learned Counsel appearing for the respondent waives service. Heard forthwith, with the consent of the learned Counsel.

3. A short point that falls for consideration in the above writ petition is, whether the learned Judicial Magistrate, First Class, at Mapusa whilst passing the impugned order in CC No. OA/408/NIA/2015/B was justified to close the evidence of the complainant who was under cross examination, despite of an application for adjournment filed by the petitioner.

4. Mr. Verlekar, learned Counsel appearing for the respondent strongly objects and points out that the record and proceedings would have to be called for to examine the delaying tactics on the part of the petitioner. The learned Counsel further points out that as such, there is no jurisdictional error committed by the learned Judge whilst passing the impugned Order.

5. I have duly examined the rival contentions and I have also gone through the records. It is undisputed that when the matter was

placed for further cross examination of the petitioner on 5th January, 2017, an application was moved by the Counsel appearing for the petitioner for exemption of the petitioner on account of sickness of the petitioner which was thereafter supported by a Medical Certificate. On the same day, the adjournment application came to be rejected. Once the respondent-accused did not raise any objection for exemption of the petitioner on the grounds mentioned in the application, the question of refusing adjournment which was sought on the same grounds, is not at all justified.

6. In the peculiar facts and circumstances of the case, I find that the impugned Order dated 5th January, 2017 deserves to be quashed and set aside. The impugned order is accordingly quashed and set aside. The petitioner is permitted to enter the witness box and the respondent is permitted to continue with the cross examination and lead further evidence, in accordance with law, subject to the petitioner paying costs of Rs.2,000/- to the respondent No.2, as condition precedent.

7. Rule is made absolute in the above terms.

F.M. REIS, J.

ssm.