

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 33 OF 2018

ASHWIN F. D'SOUZA.,

... Petitioner

Versus

THE LOKMANYA MULTIPURPOSE CO-OP.
SOCIETY LTD. (MULTI STATE) THR.
ITS BRANCH MAN., PRATAP DESAI.,

... Respondent

Shri Parag S Rao, Advocate for the petitioner.

Shri Salil Satish Saudagar, Advocate for the respondents.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 21st March 2018

P.C.:

Heard Shri P. Rao, learned Advocate for the petitioner and Shri S. Saudagar, learned Advocate for the respondents for a considerable length of time.

2. An issue was raised about the procedure applicable to the proceedings before the learned Magistrate i.e. the summary procedure as per the contention of the learned Advocate for the respondents and the summons procedure as per the contention of the learned Advocate for the petitioner. Several judgments too were relied upon by the learned Counsels being of a Single Judge of this Court and of the Hon'ble Apex Court in support of their plea. Without going into the further contentions and opining on the applicability of the procedure to the proceedings before the learned Magistrate and as the order under challenge is found in

clear violation of the rights of the accused of cross-examining the respondents witness, the impugned order is quashed and set aside.

3. It appears also from the manner in which the proceedings have been conducted that the learned Magistrate had followed the summons procedure and not the summary procedure as envisaged under Chapter XXI of the Code of Criminal Procedure.

4. In the circumstances, therefore the impugned order cannot stand the test of legal scrutiny and is therefore quashed and set aside. The petitioner is given the benefit of pursuing his right of cross-examination of the respondent and /or any of the witnesses to be examined at its instance before the learned Magistrate. The parties are directed to appear before the learned Magistrate on the pre-scheduled date i.e. 25/04/2018 at 10.00 hours. All other contentions of the parties are left open.

5. Since a plea has been raised on behalf of the learned Advocate for the respondents that the proceedings have been delayed from 2013, the learned J.M.F.C. is directed to dispose off the case as expeditiously as possible and in any event within six months and on or before 31/12/2018.

6. The petition stands disposed off.

NUTAN D. SARDESSAI, J.

mv