

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2158 OF 2018

Union Territory of Daman and Diu
through Vijay Patel, Range Forest Officer,
Daman

...Petitioner

Versus

M/s.Tirupati Timbers

...Respondent

.....

Mr H.J. Dedhia for the Petitioner.

Mr.Mubin Solkar a/w. Ms.Zara S.Salati for the Respondent.

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CORAM: MRS.MRIDULA BHATKAR, J.

DATED: OCTOBER 24, 2018

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard finally and disposed of at the stage of admission.
2. The petitioner, who is the original complainant, prefer this Writ Petition against the order dated 21st June, 2017 passed by the learned Judicial Magistrate First Class, Daman in S.C.C. No. 56 of 2017 thereby discharging the respondent/accused. Against the said order, the petitioner preferred Criminal Revision Application No. 10 of 2017 before the Sessions Court, Daman. By an order dated 20th January 2018, the learned Sessions Judge has dismissed Criminal Revision Application No. 10 of 2017.

3. The respondent/accused was facing prosecution for the offence punishable under Rule 66 of the Goa, Daman and Diu Forest Rules, 1964 for violation of Rule 44 (5) of the said Rules.
4. The learned counsel for the petitioner has submitted that the petitioner i.e., Range Forest Officer had filed a private complaint against the respondent/accused under the Forest Act. The learned Judicial Magistrate First Class, Daman by order dated 21st June, 2017 discharged the respondent/accused by invoking power under Section 258 of the Code of Criminal Procedure (“the Cr.P.C.”), which is illegal.
5. The learned counsel for the respondent/accused fairly concedes that the legal position under Section 258 of the Cr.P.C. is applicable to the summons cases, which are instituted otherwise upon the complaint and the present case is initiated on the complaint.
6. In view of the submissions of both the sides, it appears that the learned Magistrate has committed error in discharging the accused by invoking power under Section 258 of the Cr.P.C.
7. Writ Petition is allowed. Rule made absolute in terms of prayer clauses (b) and (c).

8. The learned Judicial Magistrate First Class, Daman to expedite the matter and conclude it preferably on or before 31st March, 2019.

(MRIDULA BHATKAR, J.)