

**(2011) 02 BOM CK 0150**

**Bombay High Court (Goa Bench)**

**Case No:** Criminal Writ Petition No. 6 of 2011

Mrs. Jacqueline Pereira

APPELLANT

Vs

Diniz C.T. Demello

RESPONDENT

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**Date of Decision:** Feb. 17, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 227

**Hon'ble Judges:** A.P. Lavande, J

**Bench:** Single Bench

**Advocate:** J. Godinho, for the Appellant; C. Mascarenhas, for the Respondent

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### **Judgement**

A.P. Lavande, J.

Heard Mr. J. Godinho, learned Counsel for the Petitioner and Mr. C. Masarenhas, learned Counsel for the Respondent.

2. Rule by consent heard forthwith.

3. By this petition under Article 227, the Petitioner challenge the Order dated 1.11.2010 passed by the learned JMFC, Margao in Criminal Case No. 810/OA/NIA/05/C by which complainant has been disallowed to lead her own evidence.

4. Perusal of the record discloses that the complainant examined her power of attorney Shri Antonio Earnest Pereira, on her behalf and thereafter complainant sought to place on record her evidence by filing affidavit. The same was objected on behalf of the accused by filing application dated 23.9.2010. By impugned Order learned Magistrate has held that once the power of attorney has been examined on behalf of the complainant, the complainant could not depose as a witness to her own complaint. Perusal of the record further discloses that at no point of time complainant sought leave to examine the complainant after examining her power of attorney stating reasons for examining herself after her power of attorney is

examined.

5. Mr. Godinho, learned Counsel for the Petitioner seeks leave to file such an application before learned Magistrate on the ground that in the event the complainant is not allowed to examine herself in the case, serious prejudice will be caused to the complainant Mr. Godinho, states that impugned order be set aside and liberty be given to the complainant to file such an application. The prayer made by Mr. Godinho, has been vehemently opposed by Mr. C. Macarena"s, learned Counsel for the Respondent/ accused.

6. As stated above after examining power of attorney the complainant without seeking leave of the Court filed her own affidavit which was objected on behalf of the accused. This being the position, in my considered opinion interest of justice would be served if the prayer made by Mr. Godinho is allowed.

7. In view of the above, impugned Order dated 1.11.2010 passed by the learned JMFC, Margao in Criminal Case No. 810/OA/NIA/05/C is quashed and set aside. Liberty is granted to the Petitioner/complainant to file appropriate application seeking leave to examine the complainant. In case, such an application is filed within three weeks the learned Magistrate to decide the same after giving opportunity of being heard to the accused and in accordance with law. Complainant/Petitioner shall pay costs of Rs. 5000/-to the Respondent. Costs shall be deposited in the Court of JMFC, Margao within a period of two weeks. Learned Magistrate shall decide such application, if filed, without being influenced by the observations made in the impugned order dated 1.11.2010.

8. Rule is made absolute in the aforesaid terms.