



**IN THE COURT OF HON'BLE PRINCIPAL DISTRICT &
SESSIONS JUDGE, AHMEDBAD [R] AT NAVRANGPURA**

ORDER BELOW EXH. 35

**In
Sessions Case No. 126 of 2023**

1. The applicant-accused has preferred the present application under the provisions of Sec. 173 [8] of the Code of Criminal Procedure in respect of Specific Digital Records / Documents that have been allegedly posted by the present applicant over the internet, which has been claimed to have been read by all the 5 prosecution witnesses and thereby prayed that the Hon'ble Court be pleased to direct the Investigating Officer to carry out further investigation in a comprehensive manner in respect of the digital record of the present application.
2. It is further stated that the claims made by 5 witnesses, whose police statements have been forwarded with the Charge Sheet Papers mentioned in para-3 of the application. Further, stated that the investigation agency was carrying on further investigation till the end of last year i.e. 2023 and

yet have not deemed it appropriate to investigate such a crucial aspect.

3. It is further stated that because the social media posted and campaign pages, specifically been allegedly posted by the present applicant-accused and claimed to have been read by all the 5 prosecution witnesses as the sole basis for doing charity and donation to the applicant-accused have never been investigated. It is further stated that it would not only be paramount will certain be a great aid to the discovery of truth.
4. Further stated that it is most relevant to investigate the contents of the digital-documents as it is the basis and the foundation of the case of the prosecution on the basis of which it alleges 'material concealment of facts'.
5. It is further stated that there is no investigation as even the name of the campaign page on which the applicant-accused had provided for the payment link through which claimed payment was made and there is no investigation as to the identity of the devices on which the 5 prosecution witnesses

have clicked on the link to make the payment to the present applicant.

6. It is further stated that despite the fact that their police statements having been forwarded with the charge sheet papers, the specific social media page, which has been claimed to have been read by the prosecution witnesses, neither have been produced by them nor has been investigated. Further, it is well settled proposition of law that right to fair investigation is an essential principle of our criminal jurisprudence, which encapsulates the principle of "presumption of innocence".
7. It is further stated that no attempt has been made by the Investigating Officer to secure the aforementioned alleged social - medial posts and the campaign page documents, which contained the payment-link and it is self evident that a thorough investigation is extremely crucial for unearthing the truth.
8. It is further stated that not allowing the present applicant will eventually mean that in the absence of an appropriate direction issued by the Investigating Officer to the

concerned social media / digital platform, the campaign pages will be erased permanently and the same would cause grave prejudice to the interest of just and fair investigation. Further, the authenticity and veracity of the aforesaid digital documents will also require forensic-examination of the digital devices of the 5 prosecution witnesses as well and the investigating agency is a specialized agency to carry out such an investigation, which ought to have been done at the first instances and that too before filing of the main charge sheet.

9. It is further stated that the campaign pages are the only contemporaneous records and the sole written basis for parting of the respective property as claimed by the 5 prosecution witnesses and further stated that U/s. 91 of the Evidence Act, these contemporaneous written terms, which have occasioned the transfer of property i.e. donations, are required to be brought on record as being the most crucial piece of investigation leads and lastly prayed to allow the present application.
10. Against the present application, the Investigating Officer has submitted his report at Exh. 39, wherein, he has stated at

length facts of the alleged offence. It is further stated that as per information received during the course of technical investigation with regard to the post campaigned and Razor Pay by the applicant-accused as well as screen shot obtained there from has been adduced on record along with the print out of the Certificate obtained U/s. 65 of the Indian Evidence Act by the witness Sudhir Kulkarni and C.A. Durgesh Pandey and administrator of Razor Pay and OurDemocracy. It is further stated that all the Investigation Papers are adduced on record vide Page No. 1 to 196, which may pleased be considered as an incriminating evidence with the charge sheet filed against the applicant-accused and lastly submitted that in the present case further investigation is going on and therefore, the present application is required to be rejected.

11. Heard the Ld. Advocate for the applicant-accused and Ld. Public Prosecutor for the State on the facts and provisions of law.
12. The Ld. Advocate for the applicant-accused submitted and argued out according to the contents of the present

application and further referred the Statement of 5 witnesses. It is further submitted that it is most relevant to investigate the content of the digital documents as it is the foundation of the case. It is further argued that no investigation of the campaign page provided for the payment link through which payment was made has been carried out.

13. It is further argued that no investigation as to the identity of the devices on which the aforesaid 5 prosecution witnesses have clicked on the link to make the payment to present applicant has been carried out. It is further argued that no attempt has been made by the Investigating Officer to secure the aforementioned alleged social media post and the campaign page documents.
14. It is further submitted that in absence of an appropriate direction issued by the I.O. to the concerned Social Media / Digital Platform, the campaign pages will be erased permanent and the same would cause grave prejudice to the interest of just and fair investigation and lastly submitted that the charges in the present case has not been framed and therefore, there is no bar in law to entertain the present

application seeking further investigation and lastly prayed to allow the present application.

15. In support of above arguments, the Ld. Advocate for the applicant-accused has placed his reliance on the following judgments.

1. [2019] 17 SCC 1 in the case of Vinubhai Haribhai Malaviya Vs. State of Gujarat.
2. 1955 AIR SC 196 in the case of H. N. Rishbud and Inder Singh Vs. The State of Delhi.
3. [2004] 5 SCC 347 in the case of Hasan Valibhai Qureshi Vs. State of Gujarat and others.
4. 2006 [2] GLH 354 : 2006 [12] GHJ 518 in the case of Valiben W/o. Vitthalbhai Narsinhbhai Vs. State of Gujarat.
5. 2018 JX [Guj.] 960 : 2018 AIJEL_HC 240881 in the case of Rasikbhai Thakkarshibhai Igrodiya Vs. State of Gujarat.

16. *Per-contra*, the Ld. Public Prosecutor for the State has submitted at length facts of the alleged offence, charge sheet papers and also referred the documentary evidences and further submitted that the investigating officer has filed the report / reply along with the documentary evidences total pages No. 1 to 196 and vehemently argued that all the documents relates to the alleged offence.

17. The Ld. Public Prosecutor for the state further submitted and referred the statements of witnesses and vehemently argued that the Investigating Agency collected the documentary evidences during the investigation for the alleged offence. Further, submitted that during the course of investigation, the Investigating Agency has obtained the Certificate U/s. 65 of the Indian Evidence Act and also referred the statements of witnesses and lastly prayed to reject this application.
18. I have gone through the application; reply filed by the Investigating Agency along with the documentary evidence at Page Nos. 1 to 196, referred the charge sheet papers and also considered the arguments advanced by the Ld. Advocates of the concerned parties.
19. The applicant-accused has filed the present application under the Provisions of Sec. 173 [8] of the Code of Criminal Procedure, 1973 and hence, the said provision is required to be reproduced as under;

Section 173(8) of the Code of Criminal Procedure, 1973 provides:- Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been

forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

20. Considering the facts and circumstances of the subject matter, the applicant-accused has filed this application and thereby, prayed to direct the Investigation Officer to carry out further investigation in a comprehensive manner in respect of the digital record detailed in para-3 of the present application.
21. Considering the facts and circumstances of the subject matter, the Investigating Officer has submitted the documentary evidences relating to the digital record details. It is required to note that at this stage detailed appreciation or discussion or evaluation of the documents produced by the prosecution is not required; in other words, it will be caused prejudice to either party.

22. Considering the above judgments of the Hon'ble Apex Court and Hon'ble High Court as well as considering the facts and circumstances of the subject matter, the Investigating Agency has filed the documentary evidences vide Page Nos. 1 to 196, which relates to the digital records in form of hard copies and hence, pass the following order in the interest of justice.

ORDER

*. The present application Exh. 35 preferred by the applicant- accused under the provisions of Sec. 173 [8] of the Code of Criminal Procedure, 1973, is **hereby rejected.**

Pronounced in the open Court today on this 12th day of June, 2024, Ahmedabad [Rural] at Navrangpura.

(D.M. Vyas)
Principal District & Sessions Judge
Ahmedabad (R) at Navrangpura.
(Code : GJ00326)