

ORDER BELOW EXH. 81 IN R.C.C. NO. 281/2022

(CNR No.MHAH250020892022)

This order shall dispose of an application filed on behalf of prosecution for allowing to refresh memory by referring the FIR to the informant under section 159 of the evidence act Prosecution submits that informant is a Regional Office and the alleged crime occurred while he was working as a Regional Officer. The informant has filed lodged the report as an authorized officer of the bank. As per section 159 of Evidence Act, while deposing, the witness has a right of refreshing his a memory. There have been 6 transactions and during the examination in chief the witness has requested to refer the documents. Hence, APP has prayed for referring the FIR to the informant for refreshing his memory.

2. Accused objected and submitted that APP has taken time for refreshing the memory of the informant and the trial has began after some time. Witness does not recollect contention in the FIR therefore defence has taken strong objection to show FIR. Also prosecution is not referring documents in the charge-sheet. Prosecution wants to show contentions in FIR. Section 159 would not be applicable in present case because informant is a person who lodged report and under his supervision, entire inquiries were conducted. Hence, for the purpose of natural justice and fair trial accused has prayed to reject the application.

3. Heard both the sides. The informant stepped into the witness box today and started deposing in his examination in chief. He was asked by the prosecution about what was the complaint given by person named Tikone. Witness and APP requested to refer the FIR for refreshing the memory and then learned advocate for accused objected it on the ground that the witness is an informant and he cannot be referred FIR for refreshing the memory as the defence of the accused is based on the allegations against the bank officials. In the present application, reference has been made to section 159 of the Evidence Act which mentions that a

witness may, while under examination refresh his memory by referring to any writing made by himself at the time of transaction concerning which he is question or so soon after words that court considers it likely that a transaction was at that time a fresh in his memory. The witness may also refer to any such writing made by any other person and read by the witness within the time of aforesaid, if when he read it he knew it to be correct. In the present case, there are allegations of cheating the bank customers by misappropriating the amount of the bank customers. FIR is lodged by the informant who is a Regional Officer of Central Bank of India the FIR mentions of complaint of various bank customers who were allegedly cheated by using their amount in the bank account by giving the alleged fake fixed deposit receipts by the accused. The crime includes the aspect of complaints given by various persons and it appears that person named Tikone is one of the bank customers about which the question was asked by the prosecution. The present witness has deposed in his examination chief that he had directed the Branch Manager of Central Bank of India Parner to conduct the preliminary inquiry. Considering the nature of the witness who is an informant and considering that the witness was a Regional Officer of the Bank at Ahmednagar, as well as considering that the crime includes numerous complaints of various persons, the present application needs to be taken into consideration. It is necessary to make reference that as per para 562 of Halsbury's law's of England, that a witness in criminal proceeding may be permitted to refresh his memory either in the course of evidence or before going into the witness box. In practice, it would be almost impossible for a court to control the extent to which the witnesses refresh their memories before testifying, the testimony would become more of a test of memory than of truthfulness if witnesses were deprived of the opportunity of checking their recollection before hand by reference to statements or notes made at a time closer to the events in question. Any rule purporting to deny witnesses prior excess to their statements would tend to create difficulties for honest witnesses but do

little to hamper dishonest witnesses. In view of the aforesaid reference, the FIR can be used to refresh the memory of the person who gave the information as the FIR would aid in recalling the details of the incident. Moreover, considering the scope of the FIR taking into consideration complaints of various account holders of the bank, it would be harsh on the witness if he is not allowed to refer the FIR for recalling the information. There is no doubt that the opportunity of fair trial needs to be given to the accused however, it has also to be seen that no prejudice shall be caused to the witness and it also needs to be taken into consideration the balance has to be struck between both the sides in the light of the fair trial. Hence, in view of the aforesaid reasons, opportunity to the witness who is an informant needs to be given to refresh his memory during the course of evidence by referring FIR to him. Hence, the order

**ORDER**

Application is allowed.

Date- 06/12/2024  
Place- Parner

(N. S. Sabnis)  
Judicial Magistrate First Class,  
Parner