

**RCC No. 121 of 2018**  
**State V/s Laxman+01**  
**CNR No.MHWS080008612018**

**ORDER BELOW EXH. 18**

The prosecution has filed this application u/s 173(8) of the Code of Criminal Procedure (CrPC) seeking permission for further investigation.

**The Prosecution's case:**

**02** The crime bearing no. 03/2018 is registered with Risod Police Station on the information given by one Vitthal Gulab Vasu who is the General Head Manager of Sant Amardas Credit Co-operative Society, Risod (“The Society” in short). The society is having its head office at Risod and branches in Washim district at villages like Haral, Shelu Bazar etc. Accused no. 01 was working as the Manager of the Haral branch situated at Haral Tq-Risod district-Washim. The society was also maintaining its account in ICICI Bank, Washim. For effective functioning of the society, accused no. 01 had authority to transfer the amount from the societies account maintained with ICICI bank to the head office Risod and then to get the amount distributed for purposes related to his branch.

**03** It is alleged that accused no.01 has mis-utilized the authority given to him and transferred (through RTGS) Rs. 41,63,800/- from the account of the society maintained with ICICI bank to his personal accounts maintained at

Risod in the Bank of Maharashtra and Washim Urban Co-operative Society. The informant has set out details of these transactions in schedule 'D' annexed with his first information report (FIR). It is also alleged that he further transferred this amount into the accounts of Rupali Hajare, Pushpabai Hajare, Chhagan Hajare, Rameshwar Dange and Santosh Dange. Rupali is the wife, Pushpabai is the mother and Chhagan Hajare is the father of accused no.01 and their accounts in which he has transferred amount are maintained in the societies branch at Haral.

**04** The allegations also report that the society is having its warehouse at village Sawad Tq-Risod Dist-Washim. The farmers store their agricultural produce in the warehouse and then the supervisor and warehouse keeper issue warehouse receipts to them. The farmers in need of loan get it by depositing those warehouse receipts in the society. The society keeps original warehouse receipt until the farmer has cleared the entire loan amount due against him. The supervisor and warehouse keeper were under the control and supervision of accused. However, accused no.01 using his position, released the agricultural produces of the farmers named in Schedule-B though the loan amount was still due against them. It is also alleged that he sanctioned loan to the farmers named in Schedule-C without keeping their agricultural produce in the warehouse as a security. He also issued false warehouse receipts and along-with accused no. 02 misappropriated the entire loan amount.

05 This apart, it is further alleged that the accused have pretended to have issued loan against 'Fix Deposits' to some persons named in Schedule-A. However, none of them had claimed loan as such and all are having their original F.D. receipts with them. Thus, accused have prepared forged F.D. receipts for issuance of the loan amount and misappropriated the same. Accused no.01 has also taken with him the entire record relating to these fix deposits, warehouse receipts and the loan accounts.

06 After eight months of the registration of crime, accused no. 01 appeared before the court *suo-moto*. The record reveals that he was remanded to police custody for in all seven days. On 26.10.2018, the investigating officer forwarded the charge-sheet against accused no. 01 wherein accused no. 02 is shown absconding. It is mentioned in the charge-sheet at Exh-01 that the collection of other evidence in the matter is ongoing and a provision has been made to file supplementary charge-sheet as per section 173(8) of CrPC. Thereafter, during further course, accused no. 01 filed an application for his discharge vide Exh-10. He highlighted therein the shortcomings of the investigation by mentioning that investigating officer has not recovered original files regarding fixed deposits, warehouse receipts, withdrawal slips and other record. The ld. APP filed his say overleaf discharge application and then pending its hearing the present application is filed.

07 Heard Mr. G.B. Khillare, the learned APP and Mr. R.C. Chaumwal, the learned advocate for accused no. 01. Perused the entire record including say filed by accused no. 01 vide Exh-20.

### SUBMISSIONS

08 The ld. APP submitted that for all ten grounds mentioned in the application further investigation is very necessary. According to him, the charge-sheet does not reveal any documentary evidence showing that accused have made false documents for the purpose of forgery. Fix deposit receipts, warehouse receipts, withdrawal slips and the entire documentary record is not seized during investigation. In support of his contentions, he filed along-with list Exh-28 judgments of Hon'ble Apex Court in *Rajesh Kumar Varma Vs State of Jharkhand 2006 0 Supreme (Jhk) 834* and *Vinubhai Haribhai Malaviya Vs State of Gujrat Criminal Appeal No. 478-479 of 2017 decided on 16<sup>th</sup> October 2019.*

09 On the contrary, the ld. Advocate for accused no. 01 submitted that accused no. 01 is in judicial custody since September 2018. The prosecution has filed this application only when this court made queries to ld. APP while hearing discharge application of accused no. 01. According to him, the investigating officer is not prevented from filing supplementary charge-sheet as per section 173(8) of CrPC if some new material or evidence comes

to fore. Only to fill up the lacuna in investigation the present application is filed. He apprehends that the trial may get delayed if the permission sought by prosecution is granted. Hence, he insisted for rejection of the application.

### CONSIDERATIONS

**10** It is true that the original files regarding fixed deposits, ware house receipts and other record is not seized during investigation though the accused was remanded to police custody for sufficient time. The warehouse keeper and manager are not made accused despite allegations that accused no. 01 with their help misappropriated the amount. Withdrawal receipts by which accused frequently withdrew amount and RTGS records are also not seized. Therefore, this court wants to observe very clearly that the case requires further investigation so that these defects can be rectified. In this view of the matter, section 173(8) of CrPC has to be adverted,

**173(8)** 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).

11 Thus, the plain reading of section 173(8) of CrPC would show that the investigating officer is not precluded from collecting evidence in a case in which a police report has been already filed u/s 173(2) of CrPC. The old CrPC did not contain a provision by which the police officer could conduct further investigation in respect of an offence after police report u/s 173(2) has been forwarded to Magistrate. Therefore, the 41<sup>st</sup> Law Commission had recommended that this hindrance in the way of investigating agency which can be very unfair to the prosecution and for that matter even to the accused has to be removed. In this background, the power of further investigation even after filing police report u/s 173(2) is invested to prosecution agency.

12 In *Rajesh Kumar supra*, further investigation was sought by the son of deceased alleging that the police in connivance with the main culprit has done defective investigation. Therefore, the Hon'ble Apex Court had ordered further investigation to rectify the defects. In *Vinubhai supra* as well, accused no. 01 had filed application for further investigation. Thus, in both the cases cited by prosecution, either original informant or accused were

seeking further investigation. However, in the case in hand, the learned APP has moved the application pointing out the defects in the investigation. This court has already observed that section 173(8) of CrPC does not preclude the investigating officer to conduct further investigation even after a charge sheet is filed. To the contrary, it puts a duty on such officer to forward the newly collected evidence to the Magistrate in a manner similar to the filing of charge sheet under section 173(2) of CrPC. In *Vinubhai supra* as well, the Hon'ble Apex court in para 19 has observed that the police department has been armed with the power to investigate an offence even after a police report has been forwarded to the Magistrate.

**13** Thus, the present application seems unnecessary. The learned APP can make the investigating officer well aware about his power to conduct further investigation and for that matter no specific direction from the court is required. Hence, in this view of the matter, the present application seems devoid of merits. Hence, following order is passed.

**ORDER**

Application Exh-18 is rejected.

Date: 21.01.2020

Sd/-  
(P.P.Giri)  
Judicial Magistrate First Class,  
Risod