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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.8 OF 2017

Jethanand Tahilram Motiramani	..Applicant.
V/s.	
State of Maharashtra & Anr.	..Respondents.

Mr.Minal Chandnani i/b. Jaiwant Chandnani for the applicant.

Mr.H.J.Dedhia, APP for respondent No.1-State.

Mr.PD.Dalvi for respondent No.2.

CORAM: NITIN W.SAMBRE, J.

DATE : MARCH 6, 2018

PC.:-

Heard the respective parties.

2. In R.C.C.No.174/2011 respondent No.2–original accused is prosecuted for offences punishable under section 420, 467, 468 and 471 of the Indian Penal Code. After the trial has reached the stage of conclusion of recording of evidence of the prosecution, the prosecution moved an application under section 173(8) of the Code of Criminal Procedure which came to be rejected by the learned Magistrate by order dated September 23,

2012. As such this revision.

3. Relying upon the judgment of the Apex Court in the matter of *Hasanbhai Valibhai Qureshi V/s. State of Gujarat and Others*¹, the learned counsel for the applicant/original complainant would urge that the stage at which the power under section 173(8) of the Code of Criminal Procedure are to be invoked is immaterial. According to her, what is required to be noticed is whether case for further investigation is made out or not.

4. In the facts of the case before this Court, it is an admitted position that the investigating officer had collected the handwriting samples of the accused, however, had failed to send it for the opinion of the Handwriting Expert.

5. In this backdrop, the prosecution has invoked the provisions of section 173(8) of the Code of Criminal Procedure.

6. So far as the aforesaid factual matrix is concerned, the

¹ (2004) 5 Supreme Court Cases 347

learned APP supports the case of the applicant / original complainant.

7. The learned counsel appearing on behalf of the accused supports the order passed by the learned Magistrate and submits that it does not warrant any interference, as the same is passed considering the stage at which the trial has reached.

8. Considered rival submissions.

9. The learned Magistrate vide the impugned order rejected the prayer for further investigation for the reasons that recording of evidence of the prosecution side is almost complete.

10. If the provisions of section 173(8) of the Code of Criminal Procedure are considered, there is no legal embargo on the right of the prosecution to submit additional report *qua* investigation at a particular stage of trial. Rather, the plain reading of section 173(8) of the Code of Criminal Procedure makes it aptly clear that it is either upon direction of a Magistrate or the

investigating officer with permission of Magistrate on his own can submit such additional report.

11. So far as the case in hand is concerned, the fact remains that during investigation, the investigating officer had collected handwriting samples of the accused, however, for the reasons best known to him, had not forwarded the same for the opinion of the Handwriting Expert. It being material evidence will not be available to the Court for appreciating the case of prosecution and also for the defence of the accused.

12. As such, it was in the interest of both the defence and the prosecution that the report of the Handwriting Expert should have been called in respect of the handwriting samples collected during the investigation.

13. For the aforesaid reasons, in my opinion, the order impugned dated September 23, 2016 passed by the learned Judicial Magistrate First Class below Exhibit-50 in R.C.C. No. 174/2011 is not sustainable and is quashed and set aside. The

application Exhibit-50 stands allowed.

14. The handwriting samples of the accused shall be forwarded for obtaining the opinion of the Handwriting Expert within a period of six weeks from today. The Handwriting Expert shall forward his opinion within a period of six weeks thereafter. The aforesaid time frame is fixed considering the fact that the trial is pending since 2011 and recording of evidence in the trial Court is at the conclusion stage.

15. The complainant shall produce a copy of this order before the learned Magistrate for appropriate orders.

16. With the above observations, the writ petition stands disposed of.

(NITIN W.SAMBRE, J.)