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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.738 OF 2017

Anupama Jagtiani	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr.Niteen Pradhan i/b Ms.Shubhada Khot for the Applicant.

Mr.S.V.Walve, A.P.P for the Respondent-State.

PSI – Pramod Pandurang Salokhe, Worli Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 22nd JANUARY, 2018

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives service on behalf of Respondent-State.
3. By this application, the Applicant has impugned the order

dated 23rd February, 2017, passed by the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, in R.C.C.No.4115/PW/2016 (arising out of C.R.No.59 of 2016 registered with the Malabar Hill Police Station, Mumbai).

4. At the outset, learned counsel for the applicant does not press prayer clauses (b) and (c1). As far as prayer clause (a) is concerned, learned counsel for the applicant submits that the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, had erred in law by issuing notice to the accused, on an application (Exhibit – 8), preferred by the Malabar Hill Police Station, Mumbai, seeking further investigation under Section 173(8) of the Code of Criminal Procedure. Learned Counsel relied on a Judgment of the Apex Court in the case of ***Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v/s State of A.P. and Others***¹, in support of his submission.

5. Learned APP does not dispute the fact that the learned Magistrate has no power to issue notice to the accused on an application preferred by the police, seeking further investigation.

¹ (1999) 5 SCC 740

6. Perused the papers. The applicant is the first informant. On 21st April, 2016, the applicant's complaint came to be registered vide C.R.No.59 of 2016, with the Malabar Hill Police Station, Mumbai, for the alleged offence punishable under Section 498A r/w 34 of the Indian Penal Code. After investigation, charge-sheet was filed as against the accused. After the applicant received a copy of the charge-sheet in January, 2017, the applicant found that certain vital material/evidence was not part of the charge-sheet, which was filed by the Malabar Hill Police Station, and hence she wrote a letter to the Senior Police Inspector of Malabar Hill Police Station, requesting them to carry out further investigation and for filing a Supplementary Charge-sheet. Pursuant thereto, the Senior Police Inspector of Malabar Hill Police Station, Mumbai, through the Assistant Public Prosecutor filed an application before the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai and sought permission to carry out further investigation under Section 173(8) Cr.PC. The said application was filed on 23rd February, 2017. The learned Magistrate on the very day i.e. 23rd February, 2017, was pleased to issue notice against the accused.

7. The Apex Court in the case of **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v/s State of A.P. and Others** has observed in paragraphs 10 and 11, as under:-

- “10. Power of the police to conduct further investigation, after laying final report, is recognised under [Section 173\(8\)](#) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in [Ram Lal Narang v. State \(Delhi Admn.\)](#) (AIR 1979 SC 1791). The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.
11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in [Section 173\(8\)](#) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the magistrate with such an obligation.”

8. It is thus evident, that when an application under Section 173(8) Cr.PC is filed by the police, the Court is not obliged to hear the accused, before giving any direction.

9. In view of the aforesaid, the impugned order dated 23rd February, 2017, passed by the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, in R.C.C.No.4115/PW/2016 (arising out of C.R.No.59 of 2016 registered with the Malabar Hill Police Station, Mumbai), is quashed and set aside. The learned Judge shall decide the application filed by the Malabar Hill Police Station, seeking further investigation under Section 173(8) Cr.PC, expeditiously.

10. Rule is made absolute in above terms.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.