

VRJ

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

CRIMINAL APPLICATION NO.964 OF 2021

Madhav Narayan Nene & Ors. ... Applicants
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. Niranjana Mundargi a/w Mr. Vikrant B. Shinde for
the applicants.

Mr. A.R. Patil, APP for the respondent No.1/State.

Ms. Kalyani Pathak for the respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 6, 2022

PC.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The applicant is challenging order dated 26th April, 2021 passed in RCC No.9 of 2007 permitting further investigation under section 173(A) of the Code of Criminal Procedure, 1973.
- 3.** The applicant is an accused in C.R. No.62 of 2005 registered with Pen Police Station. The offences alleged against the applicants are under sections 468, 471, 419, 420, 406 read with section 34 of the Indian Penal Code.
- 4.** On 30th December, 2006 charge-sheet came to be filed against the applicant and the same came to be registered as RCC No.9 of 2007. On 17th August, 2017 charges were framed against

the applicant. On 18th August, 2018 examination in chief of the complainant started.

5. On 11th January, 2019 prosecution has filed an application before the learned Trial Court seeking direction to the Pen Police Station to submit handwriting expert's report. On 22nd March, 2021, the investigating agency filed an application under section 173(8) for further investigation which has been allowed by the impugned order.

6. Question involved in the petition is as to whether after the commencement of trial the Court has power to grant permission for further investigation. The precise question is no longer *res integra* in view of judgment of the Apex Court in the case of **Vinubhai Haribhai Malaviya Vs. The State Of Gujarat** reported in (2009) 17 SCC 1.

7. The Apex Court in paragraph 42 of the said judgment held that the power of police to further investigate offences continues till the stage of trial commences. In that view of the matter, the order of further investigation under section 173(8) of the Code of Criminal Procedure would not have been passed.

8. In view of the aforesaid reasons, rule is made absolute in terms of prayer clause (a). No costs.

(AMIT BORKAR, J.)