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	Duration : 3Y. 6M. 6D.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PARBHANI.
 (Presided over by S. P. Pingle)

Criminal Revision Petition No.61/2019.

Exhibit-20.

The State of Maharashtra
 Through Police Station Manwat,
 Tq. Manwat Dist. Parbhani.

.... Revision Petitioner.
 (Ori. Complainant)

VERSUS

Rahul Bhirsing Sahare,
 Age 28 years, Occupation:Service,
 R/o Dashpur, Post Berwati, Tq.
 Dist. Kanker State Chattisgarh
 At present R.H.N.8, Sai Residency
 Row House, near Dwarka Hospital
 & Reliance Petrol Pump, Meri Didori
 Road, Nashik.

....Respondent /Original
 Accused No.1.

Revision: u/Sec. 397 of Cr.P.C.

.....
 Shri. D.U. Darade, P.P. for the Revision Petitioner/State.
 Shri. Saurish Shetye i/b Adv. Premkumar Pandey a/w Adv.
 S.B. Ghungre for the respondent.

.....
ORAL-JUDGMENT
 (Delivered on 3rd day of November, 2022)

This is the revision filed u/s 397 of Cr.P.C., invoking revisional

jurisdiction challenging the legality, propriety and validity of the impugned order passed below **Exh.152** dated 16.01.2019 in RCC No.135/2017 whereby an application moved u/s 91 and 242(2) of Cr.P.C came to be rejected by the ld. JMFC, Manwat.

02- In brief, it is the case of revision-petitioner/State that respondent, who is accused No.01 was the Branch Manager of Kanara Bank, Branch Manwat. In furtherance of their common intention, accused No.01 along with accused Nos.02 to 09 committed fraud by misappropriating huge public money to the tune of Rs.2,69,00,000/- by showing bogus and imaginary 27 fictitious farmers/agriculturists. All the accused in collusion & in furtherance of their common intention fabricated false & bogus accounts by fabricating false, bogus and concocted documents with seal and signatures of 27 fictitious farmers. Respondent/accused No.01 by sanctioning those 27 farmers sanctioned agricultural loan to the tune of Rs.10,00,000/- each and withdrawn the said amount from the accounts of those fictitious farmers with the help of accused Nos.02 and 03.

03- On the basis of complaint, Crime No.05/2017 came to be registered against the accused and after completing investigation, charge-

sheet came to be filed in the Court of ld. JMFC, Manwat which is registered as RCC No.35 of 2017.

04- It is the case of prosecution that they have examined witness Nos.10 to 16 who are Gramsevak / village servants. The purpose of their examination was to establish the non-existence of agriculturists in those relevant villages in whose name fictitious accounts, disbursing a huge amount of agricultural loan, subsequently withdrawn by accused No.01 to 09. These witnesses (No. 10 to 16) are Government and public servants. They have submitted their reports relating to their official record. During trial, the State of Maharashtra/Prosecution moved an application u/s 91 and 242(2) of Cr.P.C. for giving direction to these witness Nos.10 to 16 to produce voters list and other relevant documents for proving factum of opening fake accounts in the name of those fictitious farmers/persons and usurped the public money. However, the ld. Magistrate rejected the said application on the assumption that it was an attempt to fill up lacunae by the prosecution. Hence, come up before this Court invoking revisional jurisdiction vested u/s 397 of Cr.P.C.

05- Following points arise for my determination to which I have noted my findings for the reasons stated below :

POINTS	FINDINGS
1) Whether the revision is maintainable ? ?	..No.
2) Whether the impugned order dated 16.01.2019 below application at Exh.152, moved u/s 91 and 242(2) of Cr.P.C. is interlocutory order ?	..Yes.
3) Whether the impugned order is legal, proper and valid ?	...Yes.
4) Whether interference is required in the impugned order ?	...No.
5) What order ?	..Revision is dismissed.

REASONS

06- Heard the ld. Public Prosecutor Shri. D.U. Darade at length and Shri. Saurish Shetye holding for Mr. Premkumar Pandey for respondent No.01/original accused No.01. The bone of contention of Public Prosecutor Shri. D.U. Darade is that the impugned order below Exh.152 passed by the ld. Magistrate on 16.01.2019 is not an interlocutory order. By rejecting the said application, the ld. Magistrate who is vested with ample power u/s 91 and 242(2) of Cr.P.C. ought to have not closed the doors of justice when the prosecution/State was intending to seek direction from Court to be given to the witnesses Nos.10 to 16 for filing a vital document such as voters list and other relevant documentary evidence, to prove that respondent/original accused No.01, who was serving at the relevant time as a Branch Manager of Canara Bank of

Manwat Branch, in connivance with accused Nos.02 to 09 duped the bank by misappropriating a huge amount of 2,69,00,000/-, which was a public money, causing loss to the public exchequer by opening fake accounts in the bank. Accused No.01 Branch Manager sanctioned the loan of Rs.10,00,000/- each to 27 fictitious farmers and disbursed the said loan amount to them and subsequently withdrawn the said amount with the help of accused Nos.02 to 09. Therefore, it was necessary for the prosecution to prove that loan was disbursed to 27 fictitious persons who were not residing in their respective villages as shown, whose fake accounts were opened in the bank by the Branch Manager. However, the ld. Magistrate failed to appreciate the gravity and seriousness of the charges facing by all the accused, including respondent/original accused No.01, who was serving as a Branch Manager at the relevant time and unnecessarily came to the wrong conclusion that the said application was moved with a view to fill up lacunae, when there was no material to conclude that it was an attempt to filling lacunae. The said observation is totally unwarranted and erroneous.

07- The ld. Public Prosecutor also relied upon ratios in the matter of our Hon'ble High Court Bench at Aurangabad in **Abdul Jaweed s/o Sy. Rasheed & Ors. Vs. The State of Maharashtra & Anr., Criminal Writ**

Petition No.155 to 157 of 2018; B.L. Udaykumar & Ors. Vs. The State of Karnataka, dated 23rd July 2018 and recent ruling of Hon'ble Apex Court in the matter of **Honnaiah T.H. vs. State of Karnataka and Ors. 2022(3) Crimes 284(SC)**. Hence, prayed to allow the revision petition as our Hon'ble High Court in the matter of **Abdul Jaweed s/o Sy. Rasheed (Supra)** allowed to produce certain documents.

08- Further the attention of the Court has been drawn towards the observation made by the Hon'ble Karnataka High Court in the matter of **B.L. Udaykumar & Ors. Vs. The State of Karnataka (Supra)** towards Para No.13 where it is observed as under:

13. Thus it is clear that sub-section (3) of section 242 casts a mandatory duty on the Magistrate to take all such evidence as may be produced in support of the prosecution. The word "produced" in sub-section (3) also cannot be given a restrictive meaning to hold that only the materials collected during investigation could be permitted to be produced in evidence. Such a construction would defeat the very purpose of trial. If the main object of criminal trial is to discover truth, necessarily all and every piece of evidence while could help the court to arrive at a just decision should be allowed to come on record. Therefore, it is immaterial whether the "evidence" sought to be produced during trial was either collected in the course of investigation or subsequent thereto.

09- It is pointed out that Section 91 Cr.P.C. empowers the court or the officer in charge of the Police Station to ensure the production of any

'document or thing' 'necessary or desirable' for the purpose of any investigation, enquiry or other proceedings by issuing summons or written order to the person in whose possession or power such document or thing is; but section 242(3) of Cr.P.C. requires the court to take all such evidence which the prosecution desires to produce including the documents which are not mentioned in sub-section (5) of section 173 Cr.P.C. subject of court furnishing to the accused a copy thereof and providing him a reasonable opportunity to meet the same.

10- The only safeguard or restriction that could be thought of in view of the provisions of the Evidence Act is that such evidence must relate to the matters of fact in enquiry. In other words, as long as the proposed evidence, either oral or documentary, is relevant and in support of the prosecution case, the Magistrate cannot refuse to receive it.

11- Lastly, the ld. P.P. Shri. Darade brought attention of the Court towards the recent judgment of the Hon'ble Apex Court in the matter of Honnaiah T.H. vs. State of Karnataka & Ors. (supra). It is observed that revision jurisdiction u/s 397 of Cr.P.C. can be exercised **where interest of public justice requires interference for correction of manifest illegality or prevention of gross miscarriage of justice**. In such circumstances,

court can exercise its revision jurisdiction against a final order of acquittal or conviction or an intermediate order not being interlocutory in nature. Further specifying that expression "interlocutory order" denotes orders of a purely interim or temporary nature which do not decide or touch upon important rights of liability of parties. Further specifying that any order which substantially affects rights of the party cannot be said to be an interlocutory order.

12- Per contra, the ld. Advocate Saurish Shetye for the respondent/original accused No.01 Branch Manager of Canara Bank, Branch Manwat, vehemently submitted that if the powers and scope vested with the Court u/s 91 and 242(2) of Cr.P.C. is compared no doubt, the powers vested u/s 91 of Cr.P.C. are much broader as compared to the scope of Section 241 of Cr.P.C.

13- According to the ld. Advocate Shri. Saurish Shetye the nature of the order passed under these sections are interlocutory order and not a final order. In support of his contention, he relied upon ratio in the matter of **Sethuraman vs. Rajamanickam (2009) 5 Supreme Court Cases 153: (2009) 2 Supreme Court Cases (Cri) 627:2009 SCC OnLine SC 575 of Hon'ble Apex Court** and brought the attention of the Court that the

Hon'ble Apex Court has dealt with the nature of order passed u/s 91 Cr.P.C. as well as u/s 311 of Cr.P.C. and ruled that the order passed under these sections are interlocutory orders.

14- The ld. Advocate Shri. Shetye also relied upon the ratio of the Hon'ble Karnataka High Court in the matter of **Sheshayya Ganguli and others vs. State by A.P.P. Bangalore, 2010 SCC OnLine Kar 372: (2010) 4 Kant LLJ 333 : (2010)4 AIR Kant R 713: (2011) 1 CCR 124** and brought the attention of the Court that the Hon'ble Karnataka High Court has also ruled that the order passed u/s 242 of Cr.P.C. and u/s 311 Cr.P.C. are interlocutory orders.

15- Thus, Shri, Saurish Shetye strenuously argued that by no stretch of imagination, in view of the aforesaid ratio, the order passed by the ld. Magistrate impugned and challenged in the present revision, is an interlocutory order and cannot be said to be a final order. Therefore, there is an express bar u/s 397(2) of Cr.P.C. in entertaining the revision petition. Hence, prayed to dismiss the revision petition being nature of the impugned order is not a final order in view of the aforesaid judgment. Therefore, pointed out that being order challenged is an interlocutory order, there is no question to be gone into the merits of the case. Hence,

prayed to dismiss the revision.

16- After considering the rival submissions and having gone carefully through the ratios relied upon by the rival parties in the matter of Hon'ble Apex Court in the matter of **Sethuraman vs. Rajamanickam (supra) in Para No.09**, has clearly spell out that nature of the order passed u/s 91 of Cr.P.C. is of an interlocutory in nature. Hence, revision is not maintainable. Similarly, also the order passed u/s 311 of Cr.P.C. is also held to be an interlocutory order. Therefore, the revision is not maintainable.

17- Similarly, in the matter of **Sheshayya Ganguli and others vs. State of A.P.P., Bangalore (supra)** the Hon'ble Karnataka High Court has considered the ratio of the **Hon'ble Apex Court in the matter of 'Sethuraman vs. Rajamanickam'** (supra) and also ruled that the nature of the order passed u/s 242 and 311 of Cr.P.C. are interlocutory in nature and therefore, revision is not maintainable.

18- No doubt, the ld. Prosecutor also relied upon the ratio of the Karnataka High Court in the matter of **B.L. Udaykumar (supra)** wherein, the Hon'ble Karnataka High Court in Para No.13 has elaborately dealt with the powers of the Court vested u/s 91 of Cr.P.C. and 242(3) of Cr.P.C. The

opening para of the said judgment/ruling dealt **with the question** which was arose before the Hon'ble Karnataka High Court as under:

Whether the documents which are not the part of the charge-sheet could be received in evidence for prosecution after the commencement of trial ?

19- So the above question falls for determination and consideration of the Hon'ble Karnataka High Court and it is ruled that the Magistrate cannot refused to receive documents u/s 91 of Cr.P.C.

20- Therefore, considering the ratio of **Sethuraman's (supra)** the Hon'ble Apex Court has crystal clearly ruled that the nature of the order u/s 91 and 311 of Cr.P.C. are of interlocutory in nature. Therefore, the said issue becomes no longer "*res integra*" being authoritative pronouncement is given by the Hon'ble Apex Court. It being so, I have no hesitation to hold that the nature of the order u/s 91 of Cr.P.C. is interlocutory. Therefore, the revision is not maintainable.

21- So far the ratio relied upon either by the ld. P. P. Shri. D.U.Darade and ld. Advocate Shri. Saurish Shetye. The ratio laid in **B.L. Udaykumar's** case is latest view of the Hon'ble Karnataka High Court, whereas, the ratio relied upon by the respondent/original accused No.01 Branch Manager of Canara Bank, Branch Manwat in the matter of

Sheshayya Ganguli & Ors. (supra) is of dated 23.04.2010. Thus, for deciding whether the nature of the order passed u/s 242(2) of Cr.P.C. is an interlocutory order or final order, **none of the parties to the petition have placed before the Court any authoritative pronouncement over the said subject of the Hon'ble Apex Court.** Therefore, it appears that the said issue i.e. what is the nature of the order passed u/s 242(2) of Cr.P.C., whether this is interlocutory order or final order; there appears no pronouncement of Hon'ble Apex Court. That might be the reason that none of the parties have place before this Court any such authoritative pronouncement on the said issue.

22- In such circumstances being the ratio relied upon by the ld. PP in the matter of **B.L. Udaykumar's (supra)** appears to be latest view of the Hon'ble Karnataka High Court. However, it appears that question before the Hon'ble High Court was not as to what is the nature of the order i.e. interlocutory or final order passed u/s 242(2) of Cr.P.C. However said issue being squarely dealt with in the authority of **Sheshayya Ganguli and others (supra).** Hence, I have no hesitation to come to the conclusion that order also u/s 242(2) of Cr.P.C. is also an interlocutory order.

23- Therefore, I noted my finding to point No.01 in negative and point No.02 in affirmative being revision u/s 397(2) of Cr.P.C. is expressly barred against interlocutory order. Therefore, no question of interference arise. Hence, revision petition falls. Therefore, the impugned order is perfectly legal, proper and valid. Therefore, I answer point Nos.03 and 04 accordingly.

24- Hence, I proceed to pass following order:

ORDER

- 1) The **Revision Petition is dismissed.**
- 2) The impugned order passed below **Exh.152**, dated 16th January, 2019 in RCC No.**35 of 2017** (State vs. Rahul Shahare & Ors.) by ld. JMFC Manwat is **confirmed** and made it **absolute**.
- 3) Parties to the revision petition shall appear before Ld. JMFC Manwat on or before **11/11/2022**. positively.
- 5) Trial be proceeded against the accused in accordance with the law.
- 6) Copy of this order be sent to Ld. JMFC, Manwat for information and necessary action in accordance with the law.

[Dictated, delivered & pronounced in open Court.]

Date :03.11.2022.

(S.P.Pingle)
Addl. Sessions Judge,
Parbhani.