IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.713 of 2026
Reserved on: 01.09.2026
Date of Decision: 09.09.2026
Date of uploading: 09.09.2026

Arshad Ali

.....Petitioner

Versus

State of H.P. & Ors.

.....Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? [1] Yes.

For the petitioner: Mr. Sanjeev Bhushan, Senior Advocate with Mr. Rakesh Chauhan, Advocate.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for the respondent-State.

Mr. Ajay Kochhar, Senior Advocate with Mr. Anubhav Chopra and Ms. Preetika Thakur, Advocates.

Sandeep Sharma, Judge(oral):

Instant petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, (hereinafter referred to as "the ***BNSS***"), lays challenge to order dated 08.06.2026 passed by the learned Additional Sessions Judge, Paonta Sahib, District Sirmaur, in Criminal Miscellaneous Application No. 125 of 2026, thereby

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[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

High Court of H.P.

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dismissing the application filed by the petitioner, (hereinafter referred to as "the ***complainant***"), under Section 193(9) of BNSS, seeking directions for further investigation in respect to FIR No. 249 of 2025, dated 05.11.2025, registered under Sections 103(1), 109, and 61(2) of the BNS.

2. For having bird's eye view, facts relevant for adjudication of the case at hand are that on 05.11.2025, FIR No. 249 was registered against respondents No. 2 and 3 (hereinafter referred to as "the accused") on the allegation of committing murder of the deceased Ashraf Ali, i.e., the brother of the complainant. Police, after having conducted the investigation, filed a charge-sheet under Section 105 of the BNSS against the accused in the court of the learned ACJM, Court No. 1, Paonta Sahib, on 02.02.2026, from where it was further committed to the court of the learned Additional Sessions Judge, Paonta Sahib, District Sirmaur, on 19.03.2026. In the month of May 2026, the brother of the deceased Ashraf Ali, i.e., complainant herein, filed an application under Section 193(9) of the BNSS (Annexure P-2), seeking therein direction to Investigating Officer for further investigation in the FIR detailed hereinabove.

3. In a nutshell, complainant alleged in the application that investigating officer has not conducted the investigation in accordance with law and has arrived at a wrong conclusion that offence, if any, is

High Court of H.P.

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made out under Section 105 of BNS, not under Section 103 of BNS. Complainant further alleged that Investigating Officer failed to send the mobile phone of the accused to FSL Junga, in which whole incident was recorded by the accused themselves, which is a material piece of evidence, and they had also circulated the video to various persons. Complainant also claimed in the application that allegations in the FIR clearly disclose the commission of offence punishable under Section 103 of the BNS, as the act of the accused clearly discloses intention, manner of assault, motive and prior enmity. He further alleged that Investigating Officer did not collect the CCTV footage of the Behral barrier and other relevant points where the incident took place, which may prove the fact that accused were chasing the deceased from his house with an intention to commit murder. Complainant further alleged that Investigating Officer deliberately did not record the statement of a person, namely Sher Khan, who was also present on the spot and had witnessed the whole incident. Complainant alleged that Investigating Officer had deliberately ignored material evidence, which prejudiced the case of the victim, because a fair investigation was not conducted. He also pleaded that the nature of the injuries clearly shows intention and knowledge of the accused to commit murder. Lastly, complainant alleged that it has come in laboratory examination results that parcel

High Court of H.P.

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P-6 containing blood sample of the deceased was having 53.35 mg/dL quantity of ethyl alcohol, whereas deceased had never consumed alcohol. He stated that blood sample is also required to be examined again, as on the same day one more sample was sent to laboratory and it is quite possible that samples may have been interchanged.

4. Since application for further investigation was filed by the complainant in his individual capacity, court concerned, besides issuing notice to the accused, also issued notice to prosecution. Though no reply to the application was filed, but learned counsel representing the accused contested the application. Learned Additional Sessions Judge, while placing reliance upon judgment passed by the Hon'ble Apex Court in ***Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel & Others***, (2017) 4 SCC 177, vide order impugned in the instant proceedings, proceeded to dismiss the application on two grounds:

- First, application, praying therein for further investigation, has been filed after presentation of charge sheet, cognizance whereof was taken by the learned ACJM, Paonta Sahib, and after presentation, accused were produced and copies of challan along with relevant documents were supplied to them.

High Court of H.P.

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- Second, an application, seeking therein further investigation is not maintainable if filed at the behest of the complainant; rather, such prayer can only be made by the Investigating Agency

5. In the aforesaid background, petitioner has approached this court in the instant proceedings, praying therein to set aside the aforesaid order and pass appropriate orders for further investigation in the FIR detailed hereinabove.

6. In nutshell case of the complainant, as has been highlighted in the grounds of the petition and further canvassed by Mr. Sanjeev Bhushan, learned Senior Counsel duly assisted by Mr. Rakesh Chauhan, learned counsel for the complainant, is that Investigating agency has not conducted a fare investigation, as a result thereof, great prejudice has been caused to the complainant as well as other family members of the deceased, who was brutally murdered by the accused. Mr. Bhushan submitted that the entire incident was recorded by the accused themselves on their mobile phones, while they were chasing the deceased. He submitted that after the alleged incident, the accused themselves circulated the video on social media, which clearly shows that the accused intentionally hit the deceased. He further submitted that in the aforesaid video, one of the accused can be seen clearly asking

High Court of H.P.

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another accused to crush the deceased *(Kuchal de)*. Mr. Bhushan submitted that though complainant handed over afore video clip to the investigating officer, but still he did not take any cognizance of the same. He submitted that once it is evident from aforesaid video that accused deliberately hit the deceased with intention to murder him, there was no occasion, if any, for the Investigating Agency to present challan under Section 105 of BNS against the accused, rather, they ought to have been charge-sheeted under Section 103(1) of BNSS. He submitted that since mobile phones of the accused were a material piece of evidence, they were required to be sent to the FSL, especially when a video clip recorded on the mobile phone of the accused was shown to the police, wherein it is clearly evident that the accused deliberately hit the deceased twice with the intention to murder him. Mr. Bhushan further submitted that in the case at hand, the Investigating Officer deliberately did not collect the CCTV footage of Behral barrier and other relevant points where the incident took place. He submitted that had investigating officer collected the CCTV footage of the places detailed hereinabove, he could have easily proved that accused persons were actually chasing the deceased from his house and they had the intention to kill him. He submitted that Investigating Officer purposefully failed to record the statement of one of the witnesses, Sh. Sher Khan, who, being present on the spot,

High Court of H.P.

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was an eyewitness and non-recording of his statement has actually caused great prejudice to the complainant's family. He submitted that deceased never consumed alcohol, but laboratory result adduced on record along with charge sheet shows that he had consumed liquor. He submitted that since different samples were sent on the same day, there is a possibility that blood samples got intermingled, which clearly vitiates the investigation. Lastly, Mr. Bhushan also submitted that the reliance placed upon the judgment passed by the Hon'ble Apex Court in ***Amrutbhai Shambhubhai Patel*** (supra) is wholly misplaced for the reason that in that case, application for further investigation was filed at the stage of final arguments, whereas in the present case, it was filed before the framing of charges. Mr. Bhushan further submitted that subsequent to judgment delivered in ***Amrutbhai Shambhubhai Patel*** (supra), three-Judge Bench of Hon'ble Apex Court passed judgment in case titled ***Vinubhai Haribhai Malaviya and Others v. State of Gujarat and Others, (2019) 17 SCC 1***, wherein observations made in ***Amrutbhai*** were overruled/disapproved. He also placed reliance upon the latest judgment passed by the Hon'ble Apex Court in SLP (Criminal) No(s). 7968 of 2016, titled ***Rampal Gautam & Ors. v. The State by Mahadevapura Police Station, Mahadevapura Bengaluru & Anr.***, to state that an application under Section 193(3) of the BNSS,

High Court of H.P.

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seeking therein further investigation can also be filed by the complainant, provided he is able to establish on record that the investigation is faulty and the Investigating Officer has failed to collect a valuable piece of evidence.

7. To the contrary, Sh. Ajay Kochhar, learned Senior Counsel, duly assisted by Mr. Anubhav Chopra, learned counsel for the accused, while supporting the impugned order passed by the Additional Sessions Judge, Paonta Sahib, vehemently argued that by now it is well settled that no order for further investigation can be passed by competent court of law on the request of the complainant, rather, such power can be exercised by competent court of law *suo motu* or on the basis of application, if any, filed by the investigating agency. He submitted that law laid down by the Hon'ble Apex Court in ***Amrutbhai Shambhubhai Patel*** (surpa) still holds good and has not been interfered/ diluted in the subsequent judgments, if any, passed by the Hon'ble Apex Court. He submitted that since in the case at hand, cognizance of the charge sheet submitted by the police stood taken by the court of learned ACJM on 02.02.2026 and thereafter process was issued against the accused and they were also supplied copies of charge sheet along with relevant documents, application filed before the learned Additional Sessions Judge was not maintainable, and as such, no illegality can be said to have been

High Court of H.P.

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committed by the court below, while passing the impugned order. In support of his aforesaid contentions, he placed reliance upon the following judgments passed in ***Athul Rao v. State of Karnataka and Anr.***, (2018) 14 SCC 298; ***Randhir Singh Rana v. State***, (1997) 1 SCC 361; ***Mary v. State of Kerala***, 2017 Supreme (Online) (Ker) 49601; ***M. Vishwanathan v. State Represented by Inspector of Police***, 2017 Supreme (Mad) 2450; and ***E. Jeevan Kumar v. State***, 2011 CrLJ 418.

8. I have heard learned counsel for the parties and gone through the record.

9. Precisely, the question, which needs to be determined in the case at hand, is "whether Magistrate / Sessions Judge can order further investigation on an application moved / filed by the complainant, if yes, at what stage such application can be entertained?" In the case at hand, an application under Section 193(9) of the BNSS, praying therein for further investigation filed at the behest of the complainant, has been rejected by the learned Additional Sessions Judge primarily on two grounds: first, that the application has been filed after the presentation of the charge-sheet, cognizance whereof stood taken by the learned ACJM. Besides above, court has also held that request for further investigation under Section 193(9) of BNSS has been made by the complainant/informant

High Court of H.P.

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and not by the investigating agency. While drawing aforesaid conclusion, heavy reliance has been placed by the learned Additional Sessions Judge in ***Amrutbhai Shambhubhai Patel*** (supra). Relevant paras whereof are reproduced hereinbelow: 37, 38, and 47.

> *"37. After referring to Section 156(3) in particular and Section 190 Cr.P.C, this Court reverted to Section 173 and ruled that a very wide power was vested in the investigating agency to conduct further investigation after it had filed its report in terms of sub-Section (2) thereof. It held on an elucidation of the contents of Section 173(8) that the investigating agency was thus competent to file a report supplementary to its primary report and that the former was to be treated by the Court in continuation of the latter, and that on an examination thereof and following the application of mind, it ought to proceed to hear the case in the manner prescribed. It was elaborated that after taking cognizance of the offence, the next step was to frame charge in terms of Section 228 of the Code unless the Court found, upon consideration of the record of the case and the documents submitted therewith, that there did exist no sufficient ground to proceed against the accused, in which case it would discharge him on reasons to be recorded in terms of Section 227 of the Code. Alluding to the text of Section 228 of the Code which is to the effect that if a Judge is of the opinion that there is ground for presuming that the accused had committed an offence, he could frame a charge and try him, this Court propounded that the word "presuming" did imply that the opinion was to be formed on the basis of the records of the case and the documents submitted therewith along with the plea of the defence to a limited extent, if offered at that stage. The view of this Court in Amit Kapoor v. Ramesh*

High Court of H.P.

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Chander and another, (2012) 9 SCC 460 underlining the obligation of the Court to consider the record of the case and the documents submitted therewith to form an opinion as to whether there did exist or not any sufficient ground to proceed against an accused was underlined. This aspect was dilated upon logically to respond to the query in the contextual facts as to whether both the reports submitted by the Special Cell of the Delhi Police and the CBI were required to be taken note of by the Trial Court.

38. Additionally, this Court also dwelt upon the three facets of investigation in succession i.e. (i) initial investigation (ii) further investigation and (iii) fresh or de novo or reinvestigation. Whereas initial investigation was alluded to be one conducted in furtherance of registration of an FIR leading to a final report under Section 173(2) of the Code, further investigation was a phenomenon where the investigating officer would obtain further oral or documentary evidence after the final report had already been submitted, so much so that the report on the basis of the subsequent disclosures/discoveries by way of such evidence would be in consolidation and in continuation of the previous investigation and the report yielded thereby. "Fresh investigation" "reinvestigation" "de novo investigation", however is an exercise, which it was held, could neither be undertaken by the investigating agency suo motu nor could be ordered by the Magistrate and that it was essentially within the domain of the higher judiciary to direct the same and that too under limited compelling circumstances warranting such probe to ensure a just and fair investigation and trial. Adverting to Section 173 of the Code again, this Court recalled its observations in State of Punjab v. CBI and others, (2011) 9 SCC 182 that not only the police had the power to conduct further investigation in terms of Section 173(8) of the Code,

High Court of H.P.

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even the Trial Court could direct further investigation in contradistinction to fresh investigation even where the report had been filed.

47. As adumbrated hereinabove, Chapter XIV of the Code delineates the conditions requisite for initiation of proceedings before a Magistrate. Section 190, which deals with cognizance of offences by Magistrate, sets out that any Magistrate of the first Class and any Magistrate of the second class specially empowered, as contemplated, may take cognizance of any offence either upon receiving a complaint of facts which constitute such offence or upon a police report of such facts or upon information received from any person other than the police officer, or upon his own knowledge that such offence had been committed. Section 156, which equips a police officer with the power to investigate a cognizable case mandates vide sub- section 3 thereof that any Magistrate empowered under Section 190 may order such an investigation. The procedure for dealing with complaints to Magistrate is lodged under Chapter XV of the Code. Section 202 appearing therein predicates that any Magistrate on receipt of a complaint of an offence of which he is authorized to take cognizance or which had been made over to him under Section 192, may, if he thinks fit and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. The contents of this text of Section 202(1) of the Code unmistakeably attest that the investigation that can be directed by the Magistrate, to be undertaken by a police officer would

High Court of H.P.

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essentially be in the form of an enquiry for the singular purpose of enabling him to decide whether or another there is sufficient ground for proceeding with the complaint of an offence, of which he is authorised to take cognizance. This irrefutably is at the pre-cognizance stage and thus logically before the issuance of process to the accused and his attendance in response thereto. As adverted to hereinabove, whereas Section 311 of the Code empowers a Court at any stage of any inquiry, trial or other proceeding, to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, if construed to be essential to be just decision of the case, Section 319 authorizes a Court to proceed against any person, who though not made an accused appears, in course of the inquiry or trial, to have committed the same and can be tried together. These two provisions of the Code explicitly accoutre a Court to summon a material witness or examine a person present at any stage of any inquiry, trial or other proceeding, if it considers it to be essential to the just decision of the case and even proceed against any person, though not an accused in such enquiry or trial, if it appears from the evidence available that he had committed an offence and that he can be tried together with the other accused persons.

10. The very crux of the aforesaid judgment passed by the Hon'ble Apex Court is that application for further investigation, if any, can only be filed by the Investigating Agency, which, after discovery of material evidence, if any, may approach court concerned for further investigation. Besides above, it has also been held in aforesaid

High Court of H.P.

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judgment that further investigation is not permissible at the fag end of the trial at the instance of complainant.

11. Though having carefully perused the impugned order vis-à-vis findings/observations made in the aforesaid judgment passed in ***Amrutbhai Shambhubhai Patel*** (supra), no illegality can be said to have been committed by the court below, while passing the order impugned in the instant petition, however, having carefully perused judgment passed by the three-Judge Bench of the Hon'ble Apex Court in ***Vinubhai Haribhai Malaviya*** (supra), which appears to have escaped the notice of the learned Judge below, this Court is persuaded to agree with the learned Senior Counsel for the complainant that further investigation can be ordered at the instance of the complainant prior to the framing of charge. In ***Vinubhai Haribhai Malaviya*** (supra), Hon'ble Apex Court affirmed some of observations made in ***Amrutbhai Shambhubhai Patel*** (supra) and reiterated that after framing of charge, there should not be an order for further investigation. However, it also overruled some of the observations made in ***Amrutbhai Shambhubhai Patel*** (supra), especially with regard to finding that no further investigation could be ordered by the Magistrate in cases where, after cognizance is taken, accused had appeared in pursuance of process being issued. In nutshell, Hon'ble Apex Court in aforesaid judgment observed that in

High Court of H.P.

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recent judgments of this Court, no importance has been given to Article 21 of Constitution of India and the fact that afore article demands no less than a fair and just investigation. After observing that power of Magistrate to order further investigation cannot be curtailed, the Hon'ble Apex Court, on facts of the case, though refused to continue the order for further investigation sought at the instance of the accused, but directed the registration of a fresh FIR. Most importantly, in aforesaid case, Hon'ble Apex Court held that such power can be exercised *suo motu* by the Magistrate himself depending upon facts of each case. Whether further investigation should or should not be ordered is within the discretion of learned Magistrate, who will exercise such discretion on facts of each case and in accordance with law. Relevant paras of the afore judgment are extracted hereinbelow:-

> *"38. However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct "further investigation" and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] has, in no uncertain terms, stated that principle, as aforenoticed."*

High Court of H.P.

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12. It is also apt to take note of recent judgment passed by Hon'ble Apex Court in ***Rampal Gautam*** (supra), wherein it came to be ruled that further investigation after filing of the charge sheet and commencement of trial is permissible in law. While making aforesaid observation, Hon'ble Apex Court, in aforesaid case, specifically made reference to its earlier judgment passed in ***Hasanbhai Valibhai Qureshi v. State of Gujarat*, (2004) 5 SCC 347**. Relevant paras of the afore judgment are extracted hereinbelow:-

> *"12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the Court as such, it is open to the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.*
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> *13. In Ram Lal Narang v State (Delhi Admn.) (AIR 1979 SC 1791), it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much*

High Court of H.P.

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relevant, desirable and necessary as an expeditious disposal of the mater by the Courts. In view of the aforesaid position in law if there is necessity for further investigation the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand on the way of further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case."

13. In afore case, Hon'ble Apex Court held that the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and doing real, substantial, and effective justice. Hon'ble Apex Court further held that when a defective investigation comes to light during the course of a trial, it may be cured by further investigation if circumstances so permit. It is desirable that the police should inform the court and seek formal permission to conduct further investigation when fresh facts come to light, instead of remaining silent over the matter by merely keeping in view the need for an early trial.

14. At this stage, this Court also finds it necessary to take note of the judgments pressed into service by the learned Senior Counsel representing the accused i.e. ***Athul Rao v. State of Karnataka and Anr.***, (2018) 14 SCC 298; ***Randhir Singh Rana v.***

High Court of H.P.

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State, (1997) 1 SCC 361; ***Mary v. State of Kerala***, 2017 Supreme (Online) (Ker) 49601; ***M. Vishwanathan v. State Represented by Inspector of Police***, 2017 Supreme (Mad) 2450; and ***E. Jeevan Kumar v. State***, 2011 CrLJ 418. If the afore judgments are read in entirety, same are based upon the analogy as has been drawn by Hon'ble Apex Court in ***Amrutbhai Shambhubhai Patel*** (supra).

15. In case titled ***Athul Rao*** (supra), Hon'ble Apex Court, taking note of its earlier judgment passed in ***Amrutbhai Shambhubhai Patel*** (supra), held that neither the Magistrate *suo motu* nor on an application filed by the complainant can order further investigation, rather, further investigation in a given case may be ordered only on the request of the investigating agency, and that too in circumstances warranting further investigation on the discovery of material evidence, only to secure fair investigation and trial.

16. Similarly, in Criminal Appeal No. 248 of 1989, titled as ***Randhir Singh Rana Vs. The State Being the Delhi Administration***, Hon'ble Apex Court held that Magistrate on his own cannot order for further investigation, rather same can only be ordered on an application, if any, filed by the Investigating Agency. High Court of Kerala in ***Mary*** *(supra)* again placed reliance upon ***Amrutbhai Shambhubhai Patel*** (supra) to conclude that after taking

High Court of H.P.

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cognizance, no court can direct further investigation on the application of any person except the investigating officer.

17. Similarly, High Court of Madras in ***M. Vishwanathan*** (supra) held that further investigation can only be sought by the police/prosecution based on additional material or evidence and not by the aggrieved party after the charge sheet has been filed.

18. At this stage, it is also apt to take note of the judgment passed by the High Court of Bombay in Criminal Application No. 573/2019, titled ***Shri Dinesh Kumar Gokuldas Kalantri v. State of Maharashtra***, wherein the aforesaid Court, taking note of all the judgments passed by the Hon'ble Apex Court as well as various High Courts referenced hereinabove, held that a complainant's application under Section 173(8) of the Cr.P.C. [now Section 193(9) of the BNSS] is maintainable even after the framing of charges, however, the question of whether to allow such an application depends on the facts and circumstances of each case. If it is at the fag end of the trial, the trial court should be reluctant to allow it. Careful perusal of various judgments passed by the Hon'ble Apex Court, as have been taken note hereinabove, reveals the following settled legal principles:

- In ***Amrutbhai Shambhubhai Patel*** (supra): Further investigation is not permissible at the fag end of the trial at the instance of the complainant.

High Court of H.P.

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- In ***Vinubhai Haribhai Malaviya*** (supra): After cognizance is taken, Magistrate can order further investigation at the instance of the complainant; however, on the specific facts of that case, the prayer for further investigation was sought at the instance of the accused and was declined.
- In ***Rampal Gautam*** (supra): Though on the facts of the case, further investigation was disallowed after the complainant had concluded the evidence, but the Hon'ble Apex Court held that the filing of an application by the complainant for further investigation is permissible to arrive at the truth and to do real and substantial justice.

19. True it is that in ***Amrutbhai Shambhubhai Patel*** (supra), a view was taken by the Hon'ble Apex Court that application, if any, for further investigation is not maintainable at the behest of the complainant, rather same can only be filed by the investigating agency, however, aforesaid finding rendered by the Hon'ble Apex Court in ***Amrutbhai Shambhubhai Patel*** (supra) came to be overruled by the Hon'ble Apex Court in the subsequent judgment passed in ***Vinubhai Haribhai Malaviya*** (supra), wherein it was held that even after cognizance is taken, the Magistrate can order further investigation at the instance of the complainant.

High Court of H.P.

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20. Though subsequently in ***Rampal Gautam*** (supra), which was also delivered by a three-Judge Bench of the Hon'ble Apex Court, reference was not made to its earlier judgment in ***Vinubhai Haribhai Malaviya*** (surpa), but Hon'ble Apex Court, taking note of its observations made in ***Hasanbhai Valibhai Qureshi*** (surpa), categorically held that direction to conduct further investigation, even after the submission of the charge-sheet and commencement of trial, is permissible in law, because the prime consideration for directing further investigation is to arrive at the truth and achieve real and substantial justice.

21. At this stage, it would be apt to take note of Section 193(9) of BNSS, which reads as under:

> *(9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) 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 as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) 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 (3):*
>
> *Provided that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety*

High Court of H.P.

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days which may be extended with the permission of the Court."

22. Careful perusal of aforesaid provision of law clearly reveals that it is in two parts. Part I provides that "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 Magistrate". Aforesaid provision of law implies that when charge-sheet is filed, it does not prevent further investigation. It nowhere specifies by whom such an investigation can be initiated, that is to say, whether by the police, by the complainant, or by the Magistrate *suo motu*. The key questions that arise are "whether it can be initiated *suo motu* by the Magistrate or at the instance of the complainant, and if so, at what stage?" In the case at hand, court is concerned, with the fact that whether "investigation can be initiated at the instance of complainant and that too at the stage after framing of charge?"

23. Part II provides that "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)".

High Court of H.P.

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24. The aforesaid part clearly provides that the investigation is always to be conducted by the police, irrespective of whether such prayer is made by the police or by someone else. Though sub-section (8) of Section 173 Cr.P.C (corresponding to Section 193(9) of BNSS) does not use the word "Magistrate", but yet such power can be exercised by Magistrate. Part II of the aforesaid provision of law provides that in case the officer in charge of a police station, upon further investigation, obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; whereupon the Magistrate, taking note of the relevance of such further information or evidence collected on record vis-à-vis the facts of the case, may order further investigation. On many occasions, there may be a grievance against the police, either due to oversight or faulty investigation on account of some pressure and if complainant comes to know about defective investigation and he raises a grievance before the Magistrate seized of the case, such prayer cannot be rejected. Sub-section (8) of Section 173 (corresponding to Section 193(9) of BNSS) is worded in a negative way. Instead of saying what is permissible, legislature has specified what is not prohibited. There is no prohibition contained therein, and when a Magistrate is seized of the matter, the complainant is fully justified in approaching the Court of the

High Court of H.P.

::: Downloaded on - 10/09/2026 07:40:47 :::CIS

Magistrate at the first instance. Moreover, there are different stages in a criminal trial. There is a stage for considering and deciding an application for discharge and a stage for evaluating the material to satisfy whether a case is made out for the framing of charges; however, there is no formal mechanism or stage where the Magistrate is required to independently evaluate whether there are lacunas in the material collected during the investigation. It is not expected from the accused to point out any lacuna in the investigation. Similarly, public prosecutor also proceeds on the basis of papers. It is only police, which, in the event of getting some additional material, can report to Magistrate and seek further investigation. The key stakeholder who remains is the complainant/first informant. In recent criminal jurisprudence, the victim or complainant is well-recognized and afforded a right of audience at various stages. Merely because charge has been framed, it does not mean that the Magistrate must shut his eyes to glaring lacunas, if any, pointed out by the complainant in the investigation. It is the duty of the police to ensure a fair investigation and to rectify any lacunae. Though under relevant provision of law, it is police, which has every right, but in case police itself is at fault, it is only complainant, who can approach Magistrate or court concerned.

25. Moreover, under Section 239 of BNSS, court has power to alter the charge at any stage prior to the pronouncement of

High Court of H.P.

::: Downloaded on - 10/09/2026 07:40:47 :::CIS

judgment. There are various provisions embedded in the Code that are specifically incorporated to secure a fair trial for both the accused and the complainant. Hence, it cannot be said that complainant's application under Section 193 (9) of BNSS seeking further investigation is not maintainable, rather, this court is of the view that it is not only maintainable, but can also be filed after framing of charge. However, it is the domain of court concerned to allow such application or not, because that would depend upon the facts and circumstances of each case. However, as per law laid down by the Hon'ble Apex court, as has been discussed hereinabove, application for further investigation, if any, filed at the fag end of the trial, should not be entertained.

26. In the instant case, precise grouse of the complainant, who happens to be the brother of the deceased, is that though there is overwhelming material available on record, suggestive of the fact that accused persons named in the FIR murdered the deceased by crushing him under the tires of their vehicle, but yet police proceeded to present challan under Section 105 of BNSS. Though record reveals that during *jama talashi* of the accused persons, police took into possession mobile phones of the accused persons, but yet failed to send the same to FSL Junga. As per complainant, whole incident was recorded by the accused themselves on their mobile phones, which

High Court of H.P.

::: Downloaded on - 10/09/2026 07:40:47 :::CIS

was material piece of evidence, and they also circulated said video to various persons, but yet no steps, if any, were taken by the police to send the mobile phones of the accused persons to FSL, Junga, for expert analysis.

27. At this stage, this court finds it necessary to take note of the fact that during proceedings of the case at hand, video allegedly recorded by the accused of the incident was played in the court. Though authenticity of aforesaid video is yet to be established on record, but certainly after having seen video played before this Court, this Court is of the view that had Investigating Agency probed the matter further by sending mobile phones of the accused persons for forensic investigation, it would have resulted in fair investigation.

28. Though it has also been alleged that Investigating Officer did not collect CCTV footage from the Behral barrier and other relevant points, but having carefully perused charge sheet filed under Section 193 of BNSS, this Court is not persuaded to agree with aforesaid allegation of the complainant. Though footage of CCTV at Behral barrier was taken, but since nothing was visible, same was not found to be of any help for the case of the prosecution.

29. Similarly, this Court is of the view that no prejudice, if any, would have been caused to the case of prosecution in case it had recorded the statement of Sh. Sher Khan, who was alleged to be

High Court of H.P.

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present at the spot of incident. “Whether such person was present on the spot at relevant time or he had seen the alleged incident with his eyes?” is a question to be decided by the learned trial Court in totality of evidence led on record by parties to the dispute.

30. No doubt, in the case at hand, application for further investigation came to be filed after committal of case to the Court of learned Additional Sessions Judge, but at the relevant time, charges were not framed, which came to be framed after passing order impugned in the instant proceedings.

31. Having taken note of judgments passed by Hon’ble Apex Court in ***Vinubhai Haribhai Malaviya (surpa)***, whereby certain observations made in ***Amrutbhai Shambhubhai Patel*** (supra) came to be overruled, and judgment passed by the Hon'ble Apex Court in ***Rampal Gautam*** *(surpa)*, this Court is persuaded to conclude that for ascertaining the truth and doing complete justice, prayer, if any, made by the complainant for further investigation can be considered even at the post-trial stage. Fair criminal trial is possible only when it is preceded by a fair investigation. Fair investigation implies granting sufficient opportunity to the investigating agency to conduct a thorough investigation. It also implies extending an opportunity to the complainant to point out any grave flaw or lapse in the investigation. However, pointing out faults does not mean that complainant can

High Court of H.P.

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challenge the investigation unless there is a justifiable ground, thereby doubting the investigation.

32. In the instant case, omission on the part of the police to send the mobile phones of the accused persons to FSL, wherein allegedly entire incident has been recorded, certainly creates a doubt with regard to fair investigation, if any, conducted by the Investigating Agency. Hence, prayer made on behalf of the complainant for further investigation ought to have been allowed by the learned trial Court.

33. By now it is well established that High Court, in exercising its extraordinary powers under Section 482 of Cr.P.C (corresponding to Section 528 of BNSS), may pass orders to prevent the abuse of the process of the Court or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision, but yet High Court is required to exercise such powers sparingly. The conditions for invoking such powers are embedded within Section 482 of Cr.P.C (corresponding to Section 528 of BNSS) itself, allowing the High Court to act only in cases of clear abuse of process of the Court or where intervention is essential to uphold the ends of justice.

34. SEE: ***Ajay Malik v. State of Uttarakhand***, 2025 SCC OnLine SC 185; **State of Karnataka** v. **L. Muniswamy and others**, 1977 (2) SCC 699; **State of Haryana and others** v. **Bhajan Lal and**

High Court of H.P.

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others, 1992 Supp (1) SCC 335; **Prashant Bharti** v. **State (NCT of Delhi); Anand Kumar Mohatta and Anr**. v. **State (Government of NCT of Delhi) Department of Home and Anr**, AIR 2019 SC 210; and **B.N. John v. State of U.P., 2025 SCC OnLine SC 7.**

35. Consequently, in view of detailed discussion made hereinabove as well as law taken into consideration, this Court, in the given facts and circumstances, is persuaded to exercise its inherent power under Section 528 of BNSS to quash and set aside the impugned order dated 08.06.2024 passed by the learned Additional Sessions Judge. Ordered accordingly. As a consequence of quashing of the impugned order detailed hereinabove, the application filed under Section 193(9) of the BNSS by the complainant is also allowed. Investigating Agency, i.e. (Officer of Police Station Paonta Sahib), is directed to conduct further investigation, especially on points raised by the complainant in the application. Needless to say, further investigation shall be completed by the Investigating Agency within a period of 90 days, which can be further extended with the permission of the Court, if required.

The petition stands disposed of in the aforesaid terms, along with all pending applications.

(Sandeep Sharma),
Judge

September 09, 2026
(sunil)

High Court of H.P.

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