OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE,
NEW DELHI DISTRICT, PATIALA HOUSE COURTS, NEW DELHI

CIRCULAR

In compliance of the directions of the Ld. Principal District & Sessions Judge, New Delhi District, PHC, New Delhi, a letter No. 86034/Crl dated 12-11-2025 alongwith a copy of Judgment dated 29-10-2025 passed by Hon'ble High Court of Delhi in Criminal Ref. 2/2022 titled as Court on its Own Motion Vs. State has been uploaded on the official website i.e. newdelhi.dcourts.gov.in.

Therefore, it is requested to kindly peruse the abovesaid judgment from the official website for kind information & necessary compliance of the said judgment.

18/12/25

(Deepali Sharma)
Officer-in Charge, General Branch
Ld. District Judge-Commericial Court-03
New Delhi District, PHC, New Delhi.

No. 04 /Genl./NDD/PHC/2025 Dated, Delhi the 5.1.26

Copy to :-

1. All the Ld. Judicial Officers at PHC, New Delhi.
2. The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.
3. PS to the Ld. Principal District & Sessions Judge, NDD, PHC, New Delhi for information.
4. Ld. Officer-in Charge, Computer Branch, PHC, New Delhi with the request to direct the concerned official to upload the same on the website of New Delhi District Courts as per rules.
5. Dealing Assistant, R & I Branch for uploading the same on LAYERS.
6. Administrative Officer (Judicial), PHC, to circulate the aforesaid judgment through WhatsApp. Group of Ld. Judicial Officers of New Delhi District.

18/12/25

Officer-in Charge, General Branch
Ld. District Judge-Commericial Court-03
New Delhi District, PHC, New Delhi.

Circulate

R-2

Dismissed / Disposed of

IN THE HIGH COURT OF DELHI AT NEW DELHI

NO. 86034 /CRL. DATED 12/11/25

FROM:

The Registrar General,
High Court of Delhi,
New Delhi.

Office of District & Sessions
Patiala House Court, New Delhi
Diary No. 6043
Dated 12/11/2025
New Delhi District

TO:

1. The Ld., Principal District & Sessions Judge, Hq's (Central), Tis Hazari Courts, Delhi.
2. The Ld., Principal District & Sessions Judge, New Delhi Distt., Patiala House Courts, New Delhi.
3. The Ld., Principal District & Sessions Judge, North West Distt., Rohini Courts, Delhi.
4. The Ld., Principal District & Sessions Judge, South West Distt., Dwarka Courts, Delhi.
5. The Ld., Principal District & Sessions Judge, West Distt., Tis Hazari Courts, Delhi
6. The Ld., Principal District & Sessions Judge, East Distt., Karkardooma Courts, Delhi.
7. The Ld., Principal District & Sessions Judge, South Distt., Saket Courts, Delhi.
8. The Ld., Principal District & Sessions Judge, Shahdara Distt., Karkardooma Courts, Delhi.
9. The Ld., Principal District & Sessions Judge, North East Distt., Karkardooma Courts, Delhi.
10. The Ld., Principal District & Sessions Judge, North Distt., Rohini Courts, Delhi.
11. The Ld., Principal District & Sessions Judge-cum-Spl. Judge, (PC Act) (CBI), Rouse Avenue Courts, Delhi.
12. The Ld., Principal District & Sessions Judge, South East Distt., Saket Courts, Delhi.

Criminal Ref. 2/2022

Court on Its Own Motion .....Petitioner

Versus

State .....Respondent

Criminal Reference under section 395(2) of the Code of Criminal Procedure.

Sir,

I am directed to forward herewith for immediate compliance/necessary action a copy of judgement/order dated **29.10.2025** passed **by Hon'ble Court** of this Court in the above noted case.

Necessary directions are contained in the enclosed copy of order.

Yours faithfully,

10/11/25

Admn. Officer (J)/Crl.I
For Registrar General

Encl.: A copy of order dated **29.10.2025**
and Memo of parties.

$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 22nd August, 2025

Date of Decision : 29th October, 2025

\+ **CRL.REF. 2/2022**

COURT ON ITS OWN MOTION .....Appellant

Through: Mr. Rajesh Mahajan, Amicus Curiae with Mr. Ranjeeb Kamal Bora & Ms. Jyoti Babbar, Advocates

versus

STATE .....Respondent

Through: Mr. Amol Sinha, ASC (Criminal) Insp. Govind along with SI Manish, PS Inder Puri.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

Rajneesh Kumar Gupta, J.

1. The present Criminal Reference under Section 395(2) of the Code of Criminal Procedure, 1973, (hereinafter referred to as the *"CrPC"*) has been referred by the court of ld. Metropolitan Magistrate-04, New Delhi District, Patiala House Court, Delhi (hereinafter referred to as the *"Referral Magistrate"*), in ***Criminal Case bearing No. 756/2020***, titled ***'State V Dev Raj Nagar'***, arising out of ***FIR bearing No. 239/2018*** registered at Police Station Inder Puri on the following two questions:

(i) Upon committal of a case, before whom should the supplementary chargesheet be filed, whether an Ilaqa Magistrate or a Court of Session qua the Trial Court?

(ii) Upon committal of a case, who is the repository of power to order further investigation, whether an Ilaqa Magistrate or a Court of Session qua the Trial Court?

2. Before adverting to answer the reference, it would be appropriate to refer to the factual background in which the aforesaid order for referral was passed by the Referral Magistrate, which is as follows: -

2.1. The FIR in this case was registered against the accused Dev Raj Nagar for the offence under Section 307 IPC at PS Inder Puri. Upon the completion of the Investigation, the Investigating Officer (hereinafter referred to as the *"IO")* filed the chargesheet before the concerned MM Court.

2.2. In compliance with Section 207 of the CrPC, the copies of the chargesheet and documents were supplied to the accused, and as the case was triable exclusively by the Court of Session, the same was committed as per Section 209 CrPC vide order dated 7th December, 2020 to the Court of Session.

2.3. Subsequently, the IO filed a supplementary chargesheet on 12th September, 2022, before the concerned Referral Magistrate and on 12th September, 2022 the following order was passed:

> *"Supplementary chargesheet has been filed before this court in the instant case FIR in-spite of the fact that the case already stands committed to the Ld. Court of Session with a consequence that this court has become functus officio not to mention that committal of case ipso jure invested the Ld. Court of Session with all the powers exercisable by court of original jurisdiction as elucidated in myriad judgments of the Hon'ble Apex Court with respect to the scope and ambit of Section 193 of the Code of Criminal Procedure 1973.*

That said, it is informed by the 10 that the NDOH fixed before the Ld. Court of Session is 18.10.2022, IO is directed to supply copy of the supplementary chargesheet along with the accompanying documents, if any to the Accused before the Ld. concerned court on the date fixed itself.

Ahlmad is directed to put up the supplementary chargesheet before the Id. Court of Session through Ld. District & Sessions judge.

Put up before Ld. District & Sessions Judge on 14.10.2022."

2.4. On 14th October, 2022, the court of Additional Sessions Judge-04, New Delhi, passed the following order:

"Therefore, the supplementary chargesheet be sent back to the l.d. MM and copy of this order be sent to the ld. CMM concerned, to bring it to the notice of all the Magistrates that the duty to supply copy of supplementary chargesheet to the accused persons, is of the Court of Magistrate, which must be exercised in letter and spirit and the satisfaction that the copy supplied to the accused is complete and proper, must be recorded before supplementary chargesheet is forwarded to the Court of Sessions."

2.5. The Referral Magistrate, being dissatisfied with the reasoning of the Court of Session, referred the matter *vide* a letter dated 5th December, 2022, under Section 395(2) CrPC, observing the various practices prevailing in Delhi, as also the fact that some Court of Session accept the supplementary chargesheet directly while others insist that it be routed through an *Ilaqa* Magistrate. Similarly, some Courts of Session entertain applications for further investigation post-committal, while others direct such requests before the *Ilaqa* Magistrate. Accordingly, two questions were framed for the purpose of this reference.

3. Before adverting to the questions framed for reference of this Court, it is clarified that during the pendency of this reference, it has also come to notice of this Court that the case from which the present reference has arisen *i.e.*, ***SC No. 289/2020*** titled ***State v. Dev Raj Nagar***, arising out of ***FIR No. 239/18, PS Inderpuri***, has also been finally disposed of *vide* an order of acquittal passed by the concerned Additional Sessions Judge on 1st February, 2023.

4. Coming to the present reference, the following questions were raised for consideration of the Court:

Question No. 1: *Upon Committal of a case, before whom should the supplementary chargesheet be filed, whether an Ilaqa Magistrate or a Court of Session qua the trial court?*

5. Upon this question, learned Amicus Curiae has submitted that the CrPC provides that every police report, be it initial or supplementary has to be forwarded to the Magistrate under Section 173 CrPC. The provision does not create any kind of exception as to the cases triable exclusively by a Court of Session. Therefore, the legislature never intended to bypass the committing Magistrate, even at the stage of further investigation under Section 173(8) CrPC.

6. It is further submitted that any supplementary chargesheet under Section 173(8) CrPC must be filed before the concerned Magistrate by virtue of Sections 207/208 CrPC, as in such cases, during further investigation, new accused person(s) may be added. The ministerial act of issuing process to the accused, notifying the prosecutor, granting copies, etc., can be better performed by the Magistrate, who would have performed similar function when the main or initial chargesheet was filed.

4.1 Reliance has been placed upon the following judgments: *Dharam Pal V State of Haryana* (2014) 3 SCC 306, *Gangula Ashok V State of AP* (2000) 2 SCC 504, *Natesan V Peethambaran* 1984 CriLj 324 (Kerala High Court), *State V Mohd. Zaman* 1980 SCC Online J&K 37 (J&K High Court). *GE Narayana V State of Karnataka* ILR 1979 Kar 2536 (Karnataka High Court), *Arjun Kumar Pujhari V State of Orissa* 1989 CriLI 449 (Orissa High Court), *Rama Chaudhary V State of Bihar* (2009) 6 SCC 346 and *State through CBI V Hemendhra Reddy* (2023) SCC OnLine SC 515.

7. In response to Question no.1, the Respondents, in their written submissions, have submitted as follows:

> *"3. With regard to the first issue framed by the Court, it is stated that as per prevailing practice, supplementary chargesheets are being filed before the Ilaqa Magistrate/concerned designated Metropolitan Magistrate as well as before the Court of Session qua the direction of the Trial Court.*
>
> *4. Further, the Apex Court has also provided clarity on the matter in Luckose Zachariah vs Joseph Joseph 2022 SCC OnLine SC 241, it was held that "in view of the clear position of law which has been enunciated in the judgments of this court both in Vinay Tyagi (supra) and Vinubhai Haribhai Malviya (supra), it is necessary for the Magistrate to have due regard to both the reports, the initial report which was submitted u/s 173(2) as well as the supplementary report which was submitted after further investigation in terms of section 173(8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence. (para-16)"."*

8. Upon hearing the submissions made, this Court deems it apposite to

discuss the relevant provisions of CrPC, as also certain judicial decisions, which are as follows:

Section 173 CrPC provides as follows:

*" **173.Report of police officer on completion of investigation.***

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

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(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating------

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(8) 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 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 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).

Section 190 CrPC provides as follows:

190. Cognizance of offences by Magistrates. -

1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence;

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a

police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

Section 193 CrPC provides as follows:

193. Cognizance of offences by Courts of Session. *- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."*

9. The Kerala High Court in *Natesan v. Peethambaran*, (supra),observed as under:

"24. It deals with a situation after a police charge or a final report is submitted as contemplated under S. 173(2). There could be further investigation in respect of the same offence, that is, offence covered by the police report already submitted and where further evidence is obtained, the investigating officer has to forward to the Magistrate further report or reports regarding such evidence and in regard to such further report or reports, the provisions of sub-sections (2) to (6) shall apply as far as may be, as they apply regarding the original report. We can conceive of a situation where the Magistrate has taken cognizance on the basis of an original police report and subsequently further report or reports are submitted by the investigating officer indicating more evidence or implicating additional accused. Such further report or reports shall be treated as police reports within the meaning of S. 173(2). Naturally, that has to be followed by the application of provisions of Chapter XVI of the Code, such as issue of summons or warrant, supply of copies of records to the additional accused etc., and enquiry or trial, as the case may be. There is no reason to hold that sub-s. (8) of S. 173 of the

Code applies only to an offence triable by Magistrates or not to offences exclusively triable by Sessions Courts. Where such reports are submitted in relation to offences exclusively triable by Sessions Courts and where a committal order has already been passed on the basis of the original report, necessarily, there must be another committal proceeding followed by a fresh committal order. Thus, plurality of committal proceedings and committal orders are within the contemplation of the provisions of the Code."

10. The Hon'ble Supreme Court in *Gangula Ashok v State of AP* (supra) observed as under:

"11. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session."

11. The Orissa High Court in *Arjuna Kumar Pujhari v. State of Orissa,* (supra), observed as under:

"5. ....., In fact, a Division Bench of the Karnataka, High Court in the case of G.E. Narayana v. State of Karnataka [ILR 1979 KAR 2536.] , considered this point and disagreeing with the Patna view, referred to earlier, came to hold that the word "Magistrate", in section 173 of the new Code had nothing to da with the trial of the case or the enquiry or trial in a case pending or being held by a particular forum. That word is used to describz the authority to whom the officer-in-charge of the

station house has to forward the final report under section 173(2) of the Code. It was thus held that the reasoning that there being no provision available in the Code for forwarding the report under section 173(8) of the new Code by a Magistrate to the Sessions Judge, section 173(8) of the new Code would not be applicable when the case has been committed by a Magistrate to the Court of Session is not correct. After analysing section 173 of the Code, the learned Judges of the Karnataka High Court have held that the word "Magistrate" referred to in section 173(8) of the Code is the Magistrate referred to in section 173(2) of the Code and, therefore, it follows that the further report under the Code has to be forwarded to the Magistrate to whom the report under section 173(2) has been forwarded by the officer-in-charge of the concerned police station and the said Magistrate on receiving the report in turn has to forward that report to the Sessions Judge or the Special Judge, as the case may be, who would exercise final discretion in regard to the further action on such report. In my opinion, the aforesaid decision represents the correct view in interpreting section 173(8) of the Code of Criminal Procedure."

12. The Hon'ble Supreme Court in *Kallu Nat Alias Mayank Kumar Nagar V State of U.P. and Anr. (2025) SCC OnLine SC 1606,* observed as under:

"74. A reading of the aforesaid provision, makes it manifest, that there is a clear embargo cast upon the Court of Session from taking cognizance of any offence, as a Court of original jurisdiction i.e., no cognizance of an offence can be taken by a Court of Session in its original capacity, as a point of initiation of any proceedings under the Code. The expression "as a Court of original jurisdiction" warrants a careful interpretation. The said expression cannot be construed to mean that merely because the Court of Session is precluded from taking cognizance of an offence as forum of inception of proceedings under the Code i.e., as an original forum, that it must by necessary implication, be presumed to be empowered to take cognizance of an offence as a forum of superior jurisdiction or as an intermediate procedural forum at a

subsequent stage in the proceedings already initiated. To say so, would go against the well-established rule, that cognizance of an offence can only be taken once, as held in Dharam Pal (supra) and Balveer Singh (supra). The negative language employed in Section 193 of the Code, more particularly, "no Court of Session shall take cognizance of any offence" which has been used in conjunction with "unless the case has been committed to it" is not suggestive of the fact that, where a case has been committed to the Court of Session, it has to then mandatorily take cognizance of the offence. To say would, resulting in turning the very tenets of the act of "taking cognizance" over its head. It would lead to an absurd interpretation, where, although the Magistrate, by way of Section 190 of the Code has the discretion to take cognizance of an offence, no such discretion exists insofar as the Court of Session is concerned."

13. The Hon'ble Supreme Court in *Dharam Pal V State of Haryana* (supra) observed as under:

"38. Section 193 of the Code speaks of cognizance of offences by the Court of Session and provides as follows:

"193. Cognizance of offences by Courts of Session.—Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

The key words in the section are that "no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code". The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not

inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section.

39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge."

14. A perusal of the above provisions and decisions would show that upon completion of investigation, a police report is to be submitted to the concerned Magistrate. Upon the Magistrate receiving the said report in terms of Section 173 (2), CrPC, the Magistrate is to examine the report for taking cognizance of any offence that may have been disclosed.

15. Section 173(2), CrPC makes it clear that even after a first report is submitted, further investigation can continue and if any further report or reports are to be submitted, the same procedure as prescribed under Section 173, CrPC, for the initial report shall be followed even for the subsequent

reports.

16. Thus, in the opinion of this Court, under Section 190 CrPC, cognizance is to be taken by the Magistrate upon receipt of a police report and this would apply not just to the first report but even to the subsequent reports.

17. The question that has been raised is whether after the case has been committed to the Court of Session, whether further cognizance of any offence could be taken or not by the Magistrate. This issue has been decided now in a number of cases wherein it has been held that even where subsequent reports are filed, a fresh committal order can be passed by Magistrate.

18. The rationale and logic behind this is that the Court of Session, being in a superior hierarchical position, ought not be saddled with the preliminary formalities which may be required at the stage of initial consideration. So even after a case is committed to Court of Session, a supplementary chargesheet filed by police ought to be treated as a police report under Section 173(2) of CrPC and the concerned Magistrate would be the same, as referred to in Section 173(8) of CrPC.

19. Thus, in light of the legal position discussed above, this Court is of the opinion that the term "Magistrate" referred to in section 173(8) of the CrPC denotes the same Magistrate as referred to in Section 173(2) of the CrPC. A supplementary chargesheet shall thus, be treated as a police report within the meaning of Section 173(2) of the CrPC and must be filed before the concerned Magistrate, who is required to take cognizance of that supplementary chargesheet and commit the case to the Court of Session. Accordingly, Question no.1 stands answered.

Question No. 2: Upon Committal of a Case, who is the Repository of

power to order further Investigation, Whether an *Ilaqa* Magistrate or a Court of Session qua the trial court?

20. In this regard, learned Amicus Curiae, submitted that upon committal of the case, the repository of power to order further investigation lies with the Court of Session *qua* the trial court. It is contented that once the case is committed, the Court of Session is seized of the matter and thereafter, the further proceedings are determined by the Court of Session alone. Once the Court of Session has taken cognizance as a court of original jurisdiction under Section 193, CrPC, it acquires all the powers including the power to order further investigation. The role of a Magistrate, after committing a case under Section 209, CrPC is narrow and limited and therefore, a Magistrate cannot exercise any supervisory power to direct further investigation, once the matter is committed.

20.1 Reliance is placed on the following judgments : *Bimal Kumar V State of Bihar* (2007) SCC OnLine Pat 1611, *Kamlapati Trivedi V State of West Bengal* (1980) 2 SCC 91, *Hemant Dhasmana V CBI* (2001) 7 SCC 536, *Ram Lal Narang V State (Delhi Admn.)* (1979) 2 SCC 322, *Vinay Tyagi V Irshad Ali* (2013) 5 SCC 762, *Sanjay Gandhi v. Union of India* (1978) 2 SCC 39, *Ajay Kumar Parmar V State of Rajasthan* (2012) 12 SCC 406, *M.Rubben Britto V Inspector of Police* 2019 SCC OnLine Kar 3604, *Mohd. Yunus Bhat V State of J&K* 2013 SCC OnLine J&K 41, and *Sarlaben Virsing Bamaniya V State of Gujarat* 1988 SCC OnLine Guj 79.

21. In response to Question no.2, the respondent in their written submissions has submitted as follows:

"5. With regard to the second issue framed by this Hon'ble Court, the Supreme Court has held the following in Vinubhai Haribhai vs the State of Gujarat (2019) 17 SCC 1, "... Article 21 of the Constitution mandates that powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him u/s 173(2), and which power would continue to ensure in such Magistrate at all stages of the criminal proceedings until the trial itself commences (para-25)."

6. Similarly, in Gurjinder Singh vs State of Punjab & Anr. 2012 SCC OnLine P&H 19974, the Hon'ble Punjab & Haryana High Court has held that "... referring to the provisions of section 173(8), the court has held that this provision makes it clear that further investigation is permissible but reinvestigation is prohibited. In addition, the court has gone on to observe that the law does not mandate taking of prior permission from the Magistrate for further investigation but carrying out a further investigation even after filing of charge sheet is a statutory right of the police and reinvestigation without prior permission is prohibited. Explaining the word "further" the court has clearly held that it cannot be fresh investigation all reinvestigation. Meaning of further is explained as additional, more or supplemental. Accordingly, it is held that it is in continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. (Para-34)"."

22. It has been held by the Hon'ble Supreme Court in *Dharam Pal* (supra) that:

...The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction.....

23. In *M.Rubben Britto V Inspector of Police* (supra), the Karnataka High Court observed as under:

> ***27.*** *In the case on hand the Court below, when an application is filed under Section 173(8) of Cr. P.C. rejected the application on the ground that the petitioner ought to have been approached the Magistrate and further observed in the order that there is no any provision to refer the case for further investigation by the Session Court.* ***The Sessions Court can order for reinvestigation and the very approach of the Sessions Court is erroneous and failed to exercise its powers when the matter has been committed to the Sessions Court. Admittedly, no dispute with regard to fact that the matter has already been committed and pending before the Sessions Court.***
>
> ***28.*** *The Magistrate after receipt of the report under Section 173(8) of Cr. P.C., has committed the matter to the Sessions Court, since the matter is exclusively triable by the Sessions Court. Once the matter has been committed to the Sessions Court, it is well-settled that the Magistrate is forbidden to apply his mind to the merit of the matter and to determine as to whether any accused need be added or subtracted to face the trial before the Court of Sessions and this principle is held by the Patna High Court in Bhola Rai v. State of Bihar, (1997) 3 Crimes 48 (Pat.).*
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> ***31.*** *In the case on hand, after the committal of the case, an application is filed by the applicant invoking Section 173(8) of Cr. P.C. The main grounds of the applicant before the Trial Court is that the Investigating Officer failed to investigate the matter in a perspective manner and made certain allegations in the application that the accused has not been questioned by the Investigating Officer during the investigation and further contended that in the case of death by hanging, urine and motion has to be come out at the time of death; excess gathering of blood will appear in finger tips; in the inquest report it did not reveal*

such things; the position of the refill pen used for writing in the diary with blood found unopened initially on the floor and the position of the pen has been changed in the subsequent scene in the videograph; the instrument used by the deceased in cutting her hand is not so far identified and not recovered and contend that investigation is defective and when such allegation is made in the application, by invoking Section 173(8) of Cr. P.C., the Sessions Court ought to have considered the said application on merits but not on the technicality in coming to the conclusion that the applicant has to approach the Magistrate and there is no provision to refer the case for further investigation by the Sessions Court.

***32.** In view of the principles laid down referred supra, the Court below has committed an error in rejecting the application on the ground that the Sessions Court has no such jurisdiction for order for investigation and other ground. that no provision for order for investigation by Sessions Court and the same is liable to be interfered.....*

24. In *Mohd. Yunus Bhat V State of J&K*, (supra), the Jammu and Kashmir High Court observed as under:

***20.** It is pertinent to point out that amendment to the Code by Act XXXVII of 1978 has done away with committal proceedings. The Charge-sheet in a case exclusively triable by Court of Sessions, presented before the Magistrate is to be committed in terms of Section 205-D of the Code to the Court of Sessions without any proceeding before the Magistrate except recording satisfaction that the case is triable exclusively by the Court of Sessions. In the circumstances the case is committed by the Magistrate more often on the very date the Charge-sheet is presented by the Station House officer Incharge Police Station. The complainant of the victim obviously may not have an opportunity to approach the Magistrate with an application seeking "further investigation" on the ground that some important evidence-oral or documentary has been deliberately or otherwise left out and that a direction is required to be given to the Investigating Officer to further investigate the matter. It would be irrational and against the object of the Code to restrict the power to direct "further investigation" to the Magistrate and not to the*

Court to which the case is committed.

25. After examining the aforesaid judgments and Section 193 CrPC, this Court is of the view that once the case is committed to the Court of Session by the Magistrate, the Court of Session assumes jurisdiction to proceed further with the trial of the case. The Sessions Court, once invested with original jurisdiction and seized of the case, is the Court that can direct further investigation in the case, as the entire material of the case is before that court and it can better decide whether the matter requires further investigation or not, according to the facts of the case.

26. With the enactment of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the '*BNSS*'), which has come into force on 1st July 2024, it has repealed the pre-existing CrPC. Section 193(9) of BNSS corresponds to Section 173(8) of CrPC. Section 193(9) of BNSS reads as follows:

> *"**Section 193. Report of police officer on completion of investigation.***
> ***xxx***
> *(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 days which may be extended with the permission of the Court."

In terms of Section 193(9) BNSS, further investigation during a trial may be conducted with the permission of the court trying the case.

27. After committal of the case by the Magistrate, it is the Court of Session that is trying the case. The proviso to Section 193(9) BNSS does not leave any doubt that after committal, the power to order further investigation is with the Court of Session.

28. In view of the above discussion, Question no. 2 stands answered by holding that upon committal of a case, the power to order further investigation is with the Court of Session.

29. The questions raised by the Referral Magistrate are, therefore, answered as under:

Question No. 1: Upon Committal of a case, before whom should the supplementary chargesheet be filed, whether an *Ilaqa* Magistrate or a Court of Session qua the trial court?

The supplementary chargesheet, in terms of Section 173(2) CrPC and Section 193 is to be filed before the concerned Magistrate who shall complete the procedural formalities, take cognizance, if any, and then commit the case to the Court of Session.

Question No. 2: Upon Committal of a Case, who is the repository of power to order further Investigation, whether an *Ilaqa* Magistrate or a Court of Session qua the trial court?

After a case is committed, the repository to direct further investigation would

be the Court of Session. Post the enactment of Section 193(9) BNSS, the proviso thereto makes it clear that further investigation during trial can be conducted with the permission of the concerned Court trying the case, which, once a case is committed would be the Sessions Court.

30. Accordingly, the Reference is answered and disposed of.

31. Let a copy of this judgment be circulated to all the learned Principal District and Sessions Judges for information and necessary compliance.

Sd/

RAJNEESH KUMAR GUPTA
JUDGE

Sd/

PRATHIBA M. SINGH
JUDGE

OCTOBER 29, 2025/*nd/abk/ss*

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