

The Sword That Never Sheathes: Supplementary Chargesheets and Investigative Overreach

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In a criminal justice system, the state is shouldered with the onerous duty to investigate and prosecute offences that mar the societal fabric of the country. The manner in which this duty is discharged becomes a yardstick of fairness in the justice dispensation system. When police hold the power to investigate in perpetuity and exercise it without substantive fetters, then the accused is subjected to a constant fear of stigmatization in society due to protraction of trial or prolonged incarceration in several cases. Section 193(9) of the Bharatiya Nagarik Suraksha Sanhita ('BNSS') (Section 173(8) Code of Criminal Procedure ('CrPC')) empowers the police to conduct further investigation and file a supplementary chargesheet after the conclusion of the investigation.¹ Admittedly, such wide powers are necessary so that the accused are brought to justice. However, the expansive powers are vested in the police without stringent threshold conditions as to at which stage such power may be exercised and under which circumstances should these powers be invoked. In light of the amorphous jurisprudence and conflicting judgments on the issue as discussed in the ensuing sections, powers under Section 193(9) of BNSS become susceptible to misuse. Such wide powers can lead to a multitude of problems like inordinate delay in concluding a trial, multiplicity of proceedings, belated rectification of evidence marshalled by the prosecution and prolonged incarceration. This wide spectrum of problems that Section 193(9) presents runs counter to the essence of the criminal codes in India by tinkering with the right of the accused to a fair and just trial.

Supplementary Chargesheet as an Instrument to Prolong Trial

Section 193(9) of the BNSS is the fount of power for the police to conduct further investigation and file a supplementary chargesheet after the investigation is concluded, if deemed necessary in the interest of justice. There is no legislatively engrafted mandate imposed on the police to take the court's leave before conducting such an investigation. It is only through judicial interpretation that such practice has evolved and has been put in place.² However, in *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.*, the Apex Court has held that the discretion to decide if a supplementary chargesheet is to be taken on record may be exercised without affording an opportunity to be heard to the accused.³ This legal proposition essentially reduces the admission of supplementary chargesheets to a routine exercise in the absence of any cogent opposition to the same. The problem becomes starker in light of the nebulous jurisprudence on the interpretation of Section 173(8) of CrPC (193(9) BNSS), particularly on the stage until which powers under Section 173(8) can be invoked by the police. In *Vinubhai Haribhai Malaviya v. State of Gujarat*,⁴ a three-judge bench of the Supreme Court elaborately defined the scope of Section 173(8) of CrPC and held that a supplementary

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¹ Bharatiya Nagarik Suraksha Sanhita, 2023, § 193(9), No. 46, Acts of Parliament, 2023 (India); Code of Criminal Procedure, 1973, § 173(8), No. 2, Acts of Parliament, 1974 (India).

² *Vinay Tyagi v. Irshad Ali*, MANU/SC/1101/2012.

³ *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.*, MANU/SC/0402/1999.

⁴ *Vinubhai Haribhai Malaviya v. State of Gujarat*, MANU/SC/1427/2019.

chargesheet can be filed up until the trial commences, and as settled by a catena of judgments, a trial is said to commence, once charges have been framed. The position of law postulated in *Vinubhai* inserted a safeguard for the accused persons in the form of a stage-based restriction on the powers under Section 173(8), which in turn prevented the arbitrary misuse of power to perpetuate the trial behind the veil of further investigation.⁵ However, a recent judgment of the Supreme Court has departed from the principles propounded in the aforementioned judgment wherein it was held that in order to secure the ends of justice, Section 173(8) powers can be invoked even after the commencement of trial. Notably, the judgment in *Rampal Gautam v. State*,⁶ relies on another judgment of the Apex Court in *Hasanbhai Valibhai Qureshi v. State of Gujarat*,⁷ which predates the judgment in *Vinubhai*,⁸ without taking into account the rationale expounded by a larger bench in the latter case. Consequently, high courts have begun to premise their decisions on *Rampal Gautam*⁹ as is discernible from the decision of the Bombay High Court in *Dineshkumar Gokuldas Kalantry v. State of Maharashtra*.¹⁰ Additionally, the change in language of Section 193(9) of the new code is reflective of the legislative intent being in tandem with the recent judgment of the Supreme Court. Section 193(9) stipulates that further investigation can be conducted, even during the trial, subject to permission from the court. The judgment of the Supreme Court read with the tweak in Section 193(9) creates a vexed position of law that further investigation can be conducted and supplementary chargesheets can be filed at any stage, thereby impeding the trial process from attaining finality.

Once a supplementary chargesheet is filed, the court has two available courses at its discretion as per *Ram Lal Narang v. State (Delhi Admn.)*.¹¹ First, the court can take the supplementary chargesheet on record along with the original chargesheet and adjudicate the matter. Second, if the trial has commenced to some extent, the court takes cognizance of the supplementary chargesheet separately and conducts proceedings independently on the material disclosed therefrom. This proposition renders the accused susceptible to a portentous possibility of multiplicity of proceedings because of the inability of the police to conclude the investigation in a timely manner.

Delayed Curing of Evidentiary Defects: The Veiled Power with the Police

The legal position that emerges after *Rampal Gautam*¹² and the newly introduced proviso under Section 193(9) BNSS miserably fails to account for the misuse to which further investigation and supplementary chargesheets are susceptible. In practice, further investigations and the resultant supplementary chargesheets, as permitted by Section 193(9) BNSS (Section 173(8) CrPC), are a tool that can be used by the prosecuting agencies to repair defects that come to light during the trial.

The defence counsel, during arguments on charge and cross-examination, often exposes gaps and inconsistencies in the case put forth by the prosecuting agency. These gaps drastically reduce the prosecution's ability to discharge its burden of proof. Albeit with the magistrate's permission, such investigations and chargesheets allow the prosecuting agency a second bite at the cherry by

⁵ *Id.*

⁶ *Rampal Gautam v. State*, MANU/SCOR/15953/2025.

⁷ *Hasanbhai Valibhai Qureshi v. State of Gujarat*, MANU/SC/0302/2004.

⁸ *Vinubhai Haribhai Malaviya*, supra note 4.

⁹ *Rampal Gautam*, supra note 6.

¹⁰ *Dineshkumar Gokuldas Kalantry v. State of Maharashtra*, MANU/MH/9346/2025.

¹¹ *Ram Lal Narang v. State (Delhi Admn.)*, MANU/SC/0216/1979.

¹² *Rampal Gautam*, supra note 6.

giving them room to file a supplementary chargesheet that can be used to cure defects revealed by the defence. In the past, the Supreme Court has been wary of criminal procedure being used as an instrument to fill lacunae in the prosecution's case. While acknowledging the wide powers under Section 311 CrPC,¹³ the court in *Mohanlal Shamji Soni v. Union of India* cautioned that such powers should not be used to fill lacunae left by either side, cause prejudice to the accused, or provide either side with an unfair advantage.¹⁴ The Apex Court in *Rajendra Prasad v. Narcotic Cell*, while distinguishing a "lacuna" from a mere "oversight in the management of the prosecution" observed that a lacuna constitutes an "inherent weakness or a latent wedge in the matrix of the prosecution case," and its benefit should accrue to the accused.¹⁵

Similar issues can also come up under Section 193(9) BNSS, where supplementary chargesheets can be strategically used to introduce foundational evidence at late stages, recalibrate cases, and strengthen weak investigations that are exposed during the later stages of trial. The Gujarat High Court in *Poonam Madha Parmar v. State of Gujarat* prevented such rectification.¹⁶ In this case, the prosecution sought voice samples at the "fag end" of the trial, something which they were aware of from the inception of the case. The court strictly applied the *Vinubhai*¹⁷ cutoff and prevented such filling of lacunae. One of the primary concerns that the court dealt with was that foundational evidence that was known from inception cannot be introduced later merely because the weakness became apparent during trial. In *Poonam Madha Parmar*, it was held that further investigation cannot be used simply to fix lacunae in the prosecution's case.¹⁸ Taken together, the observations from *Mohanlal Shamji Soni*¹⁹ and *Rajendra Prasad*²⁰ pertaining to such tactics reflect judicial discomfort with allowing procedural powers to be used to fill gaps in the prosecution case. Without clear safeguards, supplementary chargesheets may simply become a way to fix weaknesses in the prosecution case once they are exposed during trial.

The Circumvention of Default Bail and Misuse of Section 193(9) of the BNSS

Section 187(3) BNSS (Section 167(2) CrPC) stipulates time periods for investigations to be completed.²¹ Any failure to comply with such time periods crystallizes the accused's infeasible right to apply for a default bail. It has been held by the Supreme Court, first in *S. Kasi v. State* and then in *M. Ravindran v. Intelligence Officer*, that denial of default bail to an eligible accused is a direct violation of their fundamental rights under Article 21 of the Constitution.²² This constitutional backing significantly alters its nature from a statutory technicality to a constitutional protection that is afforded to the suspect. The consequence of not concluding an investigation within the stipulated period, default bail, helps in imposing a certain temporal discipline upon investigating agencies.

¹³ Code of Criminal Procedure, 1973, § 311, No. 2, Acts of Parliament, 1974 (India).

¹⁴ *Mohanlal Shamji Soni v. Union of India*, MANU/SC/0318/1991.

¹⁵ *Rajendra Prasad v. Narcotic Cell*, MANU/SC/0397/1999.

¹⁶ *Poonam Madha Parmar v. State of Gujarat*, MANU/GJ/1681/2022.

¹⁷ *Vinubhai Haribhai Malaviya*, supra note 4.

¹⁸ *Poonam Madha Parmar*, supra note 16.

¹⁹ *Mohanlal Shamji Soni*, supra note 14.

²⁰ *Rajendra Prasad*, supra note 15.

²¹ Bharatiya Nagarik Suraksha Sanhita, 2023, § 187(3), No. 46, Acts of Parliament, 2023 (India); Code of Criminal Procedure, 1973, § 167(2), No. 2, Acts of Parliament, 1974 (India).

²² *S. Kasi v. State*, MANU/SC/0491/2020; *M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence*, MANU/SC/0788/2020.

Investigating agencies have been found to file an incomplete or piecemeal chargesheet right before the limitation period runs out to defeat the right to default bail. Upon filing of such an incomplete report, the right to default bail is extinguished. Supplementary chargesheets come to the aid of the agency as they can continue their investigation through subsequently filed reports. The prosecution here essentially gets the benefits of a completed investigation, the custody of the individual, without having actually completed it. Since Section 193(9) BNSS lacks any stringent safeguards like obligations to explain why investigation could not have been completed earlier or a strict necessity threshold, the provision is prone to abuse by the prosecution. The proviso to Section 193(9) BNSS furthers this abuse by permitting the prosecution to file such a report during trial, enabling a more lackadaisical prosecution. The Supreme Court in *Mariam Fasihuddin v. State by Aduogodi Police Station* held that a supplementary chargesheet is valid only if there is fresh evidence discovered.²³ If the prosecution originally filed an incomplete chargesheet, the threshold for fresh evidence can be met with ease. This furthers the prosecution's ability to file an incomplete report without having any adverse implications for their case. In *Ritu Chhabaria v. Union of India*, it was held that piecemeal chargesheets cannot be used to “scuttle the right of default bail.”²⁴ In 2024, the Supreme Court delivered a strikingly different decision in *Central Bureau of Investigation v. Kapil Wadhawan*, where the court held that filing of a chargesheet is sufficient enough to defeat default bail, even if the investigation was still ongoing or documents were pending.²⁵ This decision of the Apex Court legitimizes the functioning of Section 173(8) CrPC to be used as a mechanism through which investigation is permitted to continue even after the default bail has been defeated. Significant conflicts also exist regarding whether a chargesheet, which has been filed without a foundational Forensic Science Laboratory (‘FSL’) report, can be deemed to be complete under Section 193(3) BNSS and if such mechanical compliance extinguishes the right to default bail. The Punjab & Haryana High Court in *Ajit Singh v. State of Punjab* held that such omissions render the chargesheet incomplete and cannot be used to defeat statutory bail.²⁶ On the contrary, the Delhi High Court in *Bhushan @ Veera v. State (NCT of Delhi)* has held that a chargesheet without an FSL report is complete and such a report can be introduced later by taking recourse to Section 173(8) CrPC and that such a chargesheet can extinguish the right to statutory bail.²⁷ The adjudicating bench of the Supreme Court in *Hanif Ansari v. State (Govt. of NCT of Delhi)* in light of the conflicting opinions was “of the opinion that a larger Bench may decide the question” of law, which remains unanswered.²⁸ The result of such inconsistencies is that the investigating agencies are incentivized, instead of being penalized, to adopt a mechanical approach towards filing of chargesheets. Such a mechanism, which permits this piecemeal approach, fails to ensure that an investigation has been completed substantively before any such right is extinguished. Supplementary chargesheets, therefore, interfere with the temporal discipline, which is supposed to be of the utmost importance in criminal proceedings. Such discipline is necessary to ensure that a suspect or accused who is languishing in custody does not have weakened Article 21 protections, which underlie default bail.

²³ *Mariam Fasihuddin v. State by Aduogodi Police Station*, MANU/SC/0051/2024.

²⁴ *Ritu Chhabaria v. Union of India*, MANU/SC/0459/2023.

²⁵ *Central Bureau of Investigation v. Kapil Wadhawan*, MANU/SC/0058/2024.

²⁶ *Ajit Singh v. State of Punjab*, MANU/PH/2799/2018.

²⁷ *Bhushan @ Veera v. State (NCT of Delhi)*, MANU/DE/2144/2024.

²⁸ *Hanif Ansari v. State (Govt. of NCT of Delhi)*, MANU/SCOR/53980/2024.

Constitutional Repercussions and the Way Forward

The criminal codes in India hinge on the presumption of innocence of the accused up until conviction,²⁹ and such presumption can only be effectuated by putting in place sufficient procedural safeguards in favour of the accused. Therefore, the ultimate result of a trial and procedural justice is of paramount importance within the criminal justice framework of India. In *Hussainara Khatoon v. Home Secretary, State of Bihar*, the Supreme Court held that speedy trial is “an essential ingredient of ‘reasonable, fair and just’ procedure guaranteed by Article 21” of the Constitution.³⁰ The Supreme Court has time and again held that the state should not create impediments to speedy trial that an accused is entitled to under the Constitution, and pre-trial detention should not transform the process into undue punishment.³¹ Any technical manoeuvring by the police to increase the period of trial or detention for the sole reason of creating a stumbling block to the opportunity afforded to the accused to present his defence is in absolute derogation of the highly regarded right to a fair trial under Article 21 of the Constitution. The unfettered powers, with otiose and theoretical restrictions under Section 193(9) of the BNSS, render the entire criminal procedure susceptible to arbitrariness. It has been expounded by the Apex Court on multiple occasions that arbitrariness on the part of the state is antithetical to Article 14 of the Constitution.³² The powers at the disposal of the police to conduct further investigation and file supplementary chargesheets at any stage after the commencement of trial without sufficient safeguards and in light of judicial cleavage on the subject can be invoked by the police to impede the speedy conclusion of trials without any cogent reasons. A question that needs consideration is whether the ends of justice can be secured at the expense of procedural fairness. Therefore, legislative or judicial resolve is warranted to put the issue to rest. A two-pronged solution is required to plug the legal lacunae. Firstly, a stage-based restriction needs to be engrafted in the procedural framework as was laid in the case of *Vinubhai*.³³ Secondly, a more stringent threshold for acceptance of supplementary chargesheets needs to be prescribed. In *Mariam Fasihuddin*, it was held that it is only upon disclosure of new evidence that a supplementary chargesheet can be filed “rather than re-evaluating or reassessing the material already collected.”³⁴ However, what constitutes new evidence remains undefined. Therefore, an authoritative threshold needs to be laid down that facilitates the just compliance and use of powers under Section 193(9), without rendering the right to a fair trial nugatory.

²⁹ *Kailash Gour v. State of Assam*, MANU/SC/1505/2011.

³⁰ *Hussainara Khatoon v. Home Secretary, State of Bihar*, MANU/SC/0121/1979.

³¹ *Arvind Dham v. Directorate of Enforcement*, MANU/SC/0028/2026.

³² *State of West Bengal v. Anwar Ali Sarkar*, MANU/SC/0033/1952; *E.P. Royappa v. State of Tamil Nadu*, MANU/SC/0380/1973; *Maneka Gandhi v. Union of India*, MANU/SC/0133/1978.

³³ *Vinubhai Haribhai Malaviya*, supra note 4.

³⁴ *Mariam Fasihuddin*, supra note 23.