

Statements & Confessions u/s 164 CrPC

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- 1.1. No one except investigating officer can request Magistrate to record statement u/s 164 CrPC:** Informant, witness or anybody else other than the investigating officer cannot on his own motion approach a Magistrate with the request to record his statements u/s 164 CrPC. Magistrate has no power to record statement of such a stranger u/s 164 CrPC. See: Jogendra Nahak vs. State of Orissa, 1999 (4) Crimes 12 (SC).

- 1.2. An accused can outright approach a Judicial Magistrate to record his confession u/s 164 CrPC:** An accused person himself can appear before a Magistrate to request him to record his confession and it is not necessary that such accused should be produced by the police before the Magistrate for recording his confession. But it is necessary that such appearance must be in the course of an investigation under Chapter XII of the CrPC. If the Magistrate does not know that the person concerned is an accused in a case for which investigation has been commenced under the provisions of Chapter XII of the CrPC, it is not permissible for the Magistrate to record the confession. If any person simply barges into the Court and demands the Magistrate to record his confession as he has committed a cognizable offence, the course open to the Magistrate is to inform the police about it. The police in turn has to take the steps envisaged in Chapter XII of the Code. It may be possible for the Magistrate to record a confession if he has reason to believe that investigation has commenced and that the person who appeared before him demanding recording of his confession is concerned in such case. Otherwise the Court of a Magistrate is not a place into which all and sundry can gatecrash and demand the Magistrate to record whatever he says as self-incriminatory. See: Mahabir Singh vs. State of Haryana, AIR 2001 SC 2503.

- 2.1. Recording of statement of witness or confessional statement of accused u/s 164 CrPC by audio–video electronic means in presence of advocate of accused wef 31.12.2009:** A new Proviso substituted to

sub-section (1) of Section 164 CrPC wef 31.12.2009 reads thus: **"Provided** that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in presence of the advocate of the person accused of an offence: **Provided** further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force."

- 2.2. Statement of eye witnesses u/s 164 CrPC to be recorded by audio-video electronic means:** It is necessary that the statements of eye witnesses are got recorded during investigation itself u/s 164 of the CrPC. In view of the amendments in Section 164 CrPC in 2009 w.e.f. 31.12.2009, such statement of witnesses should be got recorded by audio-video electronic means. The eye-witnesses must be examined by the prosecution as soon as possible. Statements of eye-witnesses should invariably be recorded u/s 164 CrPC as per the procedure prescribed thereunder. See: Doongar Singh vs. State of Rajasthan, 2017 SCC OnLine SC 1391 (paras 12 & 13).
- 3.1. Confession made u/s 164 CrPC during police custody remand not invalid, if made voluntarily:** Merely because confession of accused was recorded a day or so before the police remand was to expire would not make the confession involuntary (if it was otherwise made voluntarily). See: State of Tamil Nadu vs. Nalini, AIR 1999 SC 2640.
- 3.2. Section 463 CrPC cures lapse on part of Magistrate if certificate appended by him indicates that confession was made by accused voluntarily:** Where the mandatory requirements provided under Section 164(2) CrPC namely explaining to the accused that he was not bound to make any statement and if a statement is made the same might be used against him had been complied with, then the defect of failure by the Magistrate to record the question as to whether there was any pressure on the maker of the confession, will stand cured by Section 463 CrPC, particularly when the Magistrate in the certificate appended to the statement has inter alia stated that he believed the confession to be voluntary. See: Ram Singh vs. Sonia, (2007) 3 SCC 1.
- 3.3. Warning by Magistrate to accused that he is not bound to make confession u/s 164 CrPC:** The Magistrate in order to remove the influence of the police must tell the accused that he is not before a police officer, rather he has to make his statement before a Magistrate. The Magistrate should tell the accused that he would not be remanded to police custody even if he did not confess. If no such warnings are given the confession is not voluntary. The Magistrate shall not record any

confession unless he has reason to believe that it has been made voluntarily. The term 'believe' in the sense in which it is used in Section 164 CrPC, has "logical confidence" or "rational conviction" as its essential element. It imports a very high degree of expectation wrought by reason, a satisfaction *fastrooted in terrafirma*, free from doubt as to the truth of the fact perceived and believed. There is a marked difference between "believe" and "hope" See:

(i). Devendra Prasad vs. State of UP, AIR 1978 SC 1544.

(ii). Chandran vs. State of Madras, AIR 1978 SC 1574.

3.4. Confession u/s 164 CrPC recorded by Magistrate without warning accused that he was not bound to confess not admissible in evidence:

In the instant case, Magistrate had failed to explain to the accused that he was not bound to make the confession and that if he did so, such confession might be used as evidence against him. This is *sine qua non* for recording a confession. Further, a Magistrate is forbidden from recording any such confession until he gets satisfaction that the person is going to make a voluntary confession. Therefore, confession of accused recorded by the Magistrate could not be taken into consideration. See: Mahabir Singh vs. State of Haryana, AIR 2001 SC 2503.

3.5. Magistrate must give a reasonable time to accused before recording his confession u/s 164 CrPC:

There can be no doubt that when an accused person is produced before a Magistrate there is some influence of the police over the mind of the accused and for the effective way of securing freedom from the fear of the police, it is necessary that he should be sent to jail custody and given adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person. However, speaking generally, it would be reasonable to insist at upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make confession, a longer period have to be given to him before his statement is recorded. When an accused is produced before the Court by the police for making confession, the proper course for the Magistrate would be to inform the accused that he is not bound to make the confession and to put the question about notice etc. and then send him to jail custody before recording the confession. See: Sarwan Singh vs. State of Punjab, AIR 1957 SC 637.

3.6. Giving 24 hours to accused before recording confession u/s 164 CrPC not a mandatory rule:

There is no rule of law that there should be an

interval of 24 hours or more between the preliminary questions and the recording of the confession. The only rule of law is that a Magistrate should not record any confession unless he has reason to believe that it is being made voluntarily. The object of giving time to accused is to remove police influence. See: *Shankaria vs. State of Rajasthan*, 1978 (3) SCC 435.

- 3.7. Confession or statement recorded u/s 164 CrPC by not following procedure of Section 164 CrPC would be irrelevant and invalid:** Confession of accused or statement of witness recorded u/s 164 CrPC by not following procedure of Section 164 CrPC would be irrelevant and invalid. An oral evidence of the Magistrate will not be admissible. See:
- (i). *Zwinglee Ariel vs. State of MP*, AIR 1954 SC 15
 - (ii). *Badri vs. State of UP*, 1973 CrLJ 1478 (Allahabad)
- 3.8. Obtaining signature of maker of confession u/s 164 CrPC mandatory:** The words "shall be signed by the person making the confession" are mandatory in nature and the Magistrate recording the confession has no option. Mere failure to get the signature of the person making the confession may not be very material if the making of such statement is not disputed by the accused but in cases where the making of the statement itself is in controversy, the omission to get the signature is fatal. See: *Dhananjaya Reddy vs. State of Karnataka*, AIR 2001 SC 1512 at 1518.
- 3.9. Section 281 CrPC to apply for recording of confession of an accused u/s 164 CrPC:** As per Section 164 (4) CrPC, procedure in Section 281 CrPC shall apply for recording of confession of an accused u/s 164 CrPC.
- 3.10. Section 281 CrPC reads thus:** Section 281 CrPC is being reproduced below:
- “(1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.
 - (2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and

superintendence by an officer of the Court appointed by him in this behalf.

- (3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable in the language of the Court.
- (4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.
- (5) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.
- (6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.”

3.11. Confession recorded on oath or affirmation not admissible in evidence: A confessional statement recorded on solemn affirmation would be inadmissible in evidence as made under compulsion of oath. See:

- (i). State vs. Suram Singh, 1976 Cri LJ 96 (Karnataka)
- (ii) Philips vs. State of Karnataka, 1980 Cri LJ 171 (Karnataka)
- (iii) Akanman Bora vs. State of Assam, 1988 Cri LJ 573 (Gauhati)

3.12. Legal aid should be provided to accused at the time of recording his confession u/s 164 CrPC: Free legal aid must be provided to an indigent accused at the time of recording his confession. See: State of Assam vs. Ravindranath Guha, 1982 Cri LJ 216 (Gauhati) (DB).

3.13. Accused not to be cross examined while recording his confession u/s 164 CrPC: Accused should not be cross examined while recording his confession u/s 164 CrPC. See: State of MP vs. Dayaram, 1981 Cri LJ 1688 (MP).

3.14. Person declining to confession not to be sent to police custody: Sub-section (3) of Section 164 CrPC makes it mandatory that when an accused is produced before a Magistrate for recording his confession and he states that he is not willing to make confession, the Magistrate shall not give the accused in police custody.

4.1. Copy of statement u/s 164 CrPC and copy of case diary can be provided to accused only after taking cognizance of offence: Copy of

statement recorded u/s 164 CrPC or case diary can be provided to the accused only after taking of cognizance of offence. Right of an accused to claim copy of statement recorded u/s 164 CrPC and copy of case diary will arise only after cognizance of the offence is taken as contemplated u/s 207 and 208 CrPC. See: A vs. State of UP, (2020) 10 SCC 505 (Three-Judge Bench).

- 4.2. Prior to taking of cognizance of offence, copy of statement recorded u/s 164 CrPC can be provided only to IO and not to accused or anybody else:** Copy of statement recorded u/s 164 CrPC can be provided by the court only to the investigating officer and not to the accused prior to the stage of Section 207 CrPC and that stage arrives after taking of cognizance of offence by court. See: A vs. State of UP, (2020) 10 SCC 505 (Three-Judge Bench)
- 4.3. Certified copy of confessional statement of accused recorded u/s 164 CrPC can be provided to Investigating Officer:** Certified copy of confessional statement of accused recorded u/s 164 CrPC can be provided to Investigating Officer. See: State of Madras vs. G. Krishnan, AIR 1961 (Madras) 92 (Full Bench).
- 5. Omission to obtain signature of accused on his confessional statement fatal if he later denies to have made the confession u/s 164 CrPC:** The function of the Magistrate in recording confession under Section 164 of the Code is a very solemn act which he is obliged to perform by taking due care to ensure that all the requirements of Section 164 are fully satisfied. The Magistrate recording such a statement should not adopt a casual approach. Besides ensuring that the confessional statement being made before him is voluntary and without pressure, the Magistrate must record the confession in the manner laid down by the Section 164(4) CrPC read with Section 281 CrPC. Omission to comply the mandatory provisions, one of such being as incorporated in sub-section (4) of Section 164 is likely to render the confessional statement inadmissible. The words "shall be signed by the person making the confession", are mandatory in nature and the Magistrate recording the confession has no option. Mere failure to get the signature of the person making the confession may not be very material if the making of such statement is not disputed by the accused but in cases where the making of the statement itself is in controversy, the omission to get the signature is fatal. See: Dhananjaya Reddy vs. State of Karnataka, (2001) 4 SCC 9.
- 6. When witness resiles from his previous statement recorded u/s 164 CrPC, conviction cannot be based upon his such previous statement:**

When a witness resiles from his earlier statement recorded by a Judicial Magistrate u/s 164 CrPC, then his previous statement u/s 164 CrPC may not be of any relevance nor it can be considered as substantive evidence to base conviction solely thereupon. See:

- (i) Somasundaram vs. State, (2020) 7 SCC 722
- (ii) State of Karnataka vs. P. Ravikumar, (2018) 9 SCC 614.

7. Statements u/s 161 & 164 CrPC not substantive evidence: FIR does not constitute substantive evidence. The statement of a witness recorded u/s 161 or 164 CrPC can be used to contradict or corroborate the witness u/s 145 or 157 Evidence Act but it cannot be used as substantive evidence. See:

- (i) Somasundaram vs. State, (2020) 7 SCC 722
- (ii) R. Shaji vs. State of Kerala, (2013) 14 SCC 266
- (iii) Utpal Das vs. State of WB, AIR 2010 SC 1894
- (iv) Baijnath Singh vs. State of Bihar, 2010(70)ACC 11(SC)
- (v) Nabi Ahmad vs. State of U.P., 1999 (2) Crimes 272 (All) (DB).
- (vi) Judgement dated 29.03.2023 passed by Hon'ble Justice Alok Kumar Pandey of Patna High Court in Criminal Appeal (SJ) No. 1011/2022, Deepak Kumar vs. State of Bihar.

7.1 Improvements by witnesses beyond their statements u/s 161/164 CrPC or u/s 32 Evidence Act not to be read: "If the prosecution witnesses had failed to mention in their statements u/s 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the improved fact is of no significance. See :

- (i) Rohtash vs. State of Haryana, (2012) 6 SCC 589
- (ii) Sunil Kumar Shambhu Dayal Gupta vs. State of Maharashtra, 2011 (72) ACC 699 (SC).
- (iii) Rudrappa Ramappa Jainpur vs. State of Karnataka, (2004) 7 SCC 422
- (iv) Vimal Suresh Kamble vs. Chaluverapinake, (2003) 3 SCC 175

7.2. Improvements or variations in subsequent statements by witness having survived after his previous statement u/s 32 of Evidence Act not to be rejected: Improvements or variations made by witnesses (u/s 32 Evidence Act as they had survived) in their earlier and later statement alone is not sufficient ground to reject their otherwise reliable testimony.

See: Maqsoodan vs. State of U.P., (1983) 1 SCC 218 (Three-Judge Bench)

- 7.3. A credible improvement in statement of witness before court not to be rejected on ground that no such statement was made by him u/s 161 CrPC:** If a relevant fact is not mentioned in the statement of the witness recorded u/s 161 CrPC but the same has been stated by the witness before the court as P.W., then that would not be a ground for rejecting the evidence of the P.W. if his evidence is otherwise credit worthy and acceptable. Omission on the part of the police officer would not take away nature and character of the evidence. See : Alamgir vs. State of NCT, Delhi, (2003) 1 SCC 21.
- 8. Magistrate can summon additional accused not mentioned in charge-sheet on the basis of statement of victim recorded u/s 164 CrPC:** In the present case, name of the accused-applicant has come into light from the statement of the victim recorded u/s 164 CrPC. While summoning the applicant on the basis of the statement under Section 164 CrPC, the Magistrate acted on the basis of an independent application of mind to the application filed by the de facto complainant and found that there was sufficient material before him showing complicity of the applicant in the aforesaid case although his name did not find place in the charge-sheet. Thus, for summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police, some other persons are involved in the offence. These materials need not remain confined to the police report, charge sheet or the FIR. The statement made under Section 164 of the Code could also be considered for such purpose. See:
- (i) Judgment dated 20.04.2020 passed by Hon'ble Allahabad High Court upon application u/s 482 CrPC No. 5500/2023, Asif Ahmad Siddqui vs. State of UP (Para 31)
 - (ii) Nahar Singh vs. The State of U.P. and Another, (2022) 5 SCC 295.
- 9. Statement of witness recorded u/s 164 CrPC not to be read if he was subsequently arraigned as accused in charge-sheet:** Where the author of statement recorded under Section 164 CrPC had already been arraigned as accused in the case and charge had been framed against him and on a reading of the statement, it was exculpatory in nature, the said statement could only lie in store and no court could possibly treat it as evidence. See: State of Tamil Nadu vs. J. Jayalalitha, AIR 2000 SC 1589

- 10. Witness contradicting before court his previous statement recorded on oath u/s 164 CrPC can be prosecuted for perjury u/s 193 IPC:** Witness contradicting before court his previous statement recorded on oath u/s 164 CrPC can be prosecuted for perjury u/s 193 IPC. The freedom to speak the truth is only theoretical. The peril of being prosecuted for perjury is always hanging before him. Therefore, the salient rule of caution must always be borne in mind, and the court has to scrutinize such evidence a bit more closely and see if other circumstances lend support to it. See: Balak Ram vs. State of UP, AIR 1974 SC 2165
- 11.1. Statement of witness or confession of accused recorded by Executive Magistrate u/s 164 CrPC not to be read in evidence:** If the statement u/s 164 CrPC is recorded by an Executive Magistrate, it is not admissible in evidence. Only Judicial Magistrate or Metropolitan Magistrate is competent to record confession of an accused u/s 164 CrPC. See:
(i) State of Haryana vs. Parmanand, 1995 Cri LJ 396 (Punjab & Haryana).
(ii) Phundi vs. State of MP, 1993 Cri LJ 1881.
- 11.2. Confession of accused recorded by Special Judicial Magistrate u/s 164 CrPC illegal:** Confession of accused recorded by Special Judicial Magistrate u/s 164 CrPC is illegal. See: Bhausahab vs. State of Maharashtra, 1997 Cri LJ 467 (Bombay).
- 12. Magistrate recording statement of witness or confession of accused u/s 164 CrPC cannot be summoned as witness to give oral evidence:** Section 164 CrPC by conferring on Magistrate the power to record statements of a witness or confessional statements of an accused, by necessary implication, prohibits the Magistrate from giving oral evidence of the statements or confessions made to him. Magistrate cannot be summoned by courts as witness to prove the statement of the witness or confession of the accused recorded by him u/s 164 CrPC. Such statements or confessions recorded by the Magistrate is a public document. See:
(i) Dhananjayaya Reddy Vs. State of Karnataka, AIR 2001 SC 1512
(ii) State of UP Vs. Singhara Singh, AIR 1964 SC 358 (Three-Judge Bench)(*para 8*)
(iii) Saleem Vs. State of UP, 2011 (74) ACC 744 (All)
(iv) Judgment dated 05.02.2014 of the Lucknow Bench of the Hon'ble Allahabad High Court passed in Criminal Revision No. 32/2014, Manoj Kumar Singh vs. State of UP.

- 13. Magistrate has discretion to record or not to record statement of witness or confession of accused u/s 164 CrPC:** A Magistrate has discretion to record the statement u/s 164 CrPC. He may exercise his discretion at his option. The language of the section leaves it optional to the Magistrate to record the confession or not as he thinks fit; but if he proceeds to record, he is bound to do so in the manner laid down in Section 164 CrPC. There is no option in the manner of the recording. It is clear that in the situation envisaged in the section i.e., when a confession is made to him in the course of an investigation or at any time before the commencement of enquiry or trial, he is bound to observe the provisions of the section in a faithful manner as possible so as to guarantee the result in that by such record. See: *Badri vs. State of UP*, 1973 Cri LJ 1478 (Allahabad).
