

## Uttarakhand Judicial and Legal Academy

### Capsule Course on 'Recording of Confession & Statement under Section 183 BNSS' (16.03.2026)

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## 1. Legal Provisions

### Section 183 Bharatiya Nagarik Suraksha Sanhita, 2023 :

Section 183 of Bharatiya Nagarik Suraksha Sanhita, 2023 (In short 'BNSS') makes provision for 'recording of confessions and statements'. Section 183 is a part of Chapter XIII of BNSS. This chapter is related to 'Information to the police and their powers to investigate'. Therefore, section 183 is used during the investigation proceedings. Section 183 of BNSS replaces Section 164 of the Code of Criminal Procedure (CrPC), 1973. Section 183 of BNSS reads as thus :

***“(1) Any Judicial Magistrate of the District in which the information about commission of any offence has been registered, may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards but before the commencement of the inquiry or trial:***

***Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the 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) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.***

***(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.***

***(4) Any such confession shall be recorded in the manner provided in section 316 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—***

***"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.***

**(Signed) A. B.  
Magistrate."**

**(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Judicial Magistrate, best fitted to the circumstances of the case; and the Judicial Magistrate shall have power to administer oath to the person whose statement is so recorded.**

**(6) (a) In cases punishable under section 66, section 67, section 68, section 70, section 71, section 73, section 74, section 75, section 76, section 77, sub-section (1) or sub-section (2) of section 74, or section 78 of the Bhartiya Nyaya Sanhita, 2023, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner specified in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:**

**Provided that such statement shall, as far as practicable, be recorded by a woman Judicial Magistrate and in her absence by a male Judicial Magistrate in the presence of a woman:**

**Provided further that in cases relating to the offences punishable with imprisonment for ten years or more or imprisonment for life or with death, the Judicial Magistrate shall record the statement of the witness brought before him by the police officer:**

**Provided also that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:**

**Provided also that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be recorded through audio-video electronic means preferably cell phone.**

**(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 142 of the Bhartiya Sakshya Adhinyam, 2023 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.**

**(7) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried."**

Section 183 of BNSS brings some changes in the former provision i.e. Section 164 of CrPC.

In Sub section (1) of Section 183 of BNSS, it has been provided that "Magistrate of the District in which the information about commission of any offence has been registered may whether or not he has jurisdiction in the case, record any confession or statement made to him". In Section 164(1) CrPC the words had been "Any Metropolitan Magistrate or Judicial Magistrate, whether or not he has jurisdiction in the case". After this change the "Magistrate of the District" in which the information about commission of any offence has been registered, can record the confession or statement.

Sub-Sections (1) to (5) of Section 183 of BNSS are identical to sub-Sections (1) to (5) of Section 164 Cr.P.C. Section (5A) including clauses (a) and (b) of Section 164 Cr.P.C is reproduced

with some changes as sub-Section (6) of Section 183 of BNSS.

Newly inserted 1<sup>st</sup> proviso to Section 183 (6) (a) of BNSS provides that as soon as any of the sexual offences specified in the Section have been committed, the statement of the victim shall, as soon as practicable, be recorded by a woman Magistrate or by a male Magistrate in the presence of a woman.

Newly inserted 2<sup>nd</sup> proviso to clause (a) of sub-section (6) of Section 183 makes the provision that in cases relating to the offences punishable with imprisonment for ten years or more or imprisonment for life or with death, the Magistrate shall record the statement of the witness brought before him by the police officer.

Fourth proviso to section 183(6)(a) provides that where the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be recorded through audio-video electronic means preferably cell phone instead of the earlier requirement that the statement be videographed.

Sub-Section (7) of Section 183 of BNSS is identical to sub-Section (6) of Section 164 Cr.P.C. The text of both these sub-section is same.

### **Section 316 and 509 Bharatiya Nagarik Suraksha Sanhita, 2023 :**

Reference of Section 316 and 509 of BNSS, 2023 (Section 281 and 463 of CrPC, 1973) is also necessary to give a complete meaning to Section 183 of BNSS, 2023.

Section 316 of BNSS (Section 281 of CrPC) provides for 'Record of examination of accused'. Which reads as under :

***"(1) Whenever the accused is examined by any 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.***

***(2) 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.***

***(3) 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.***

***(4) 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:***

***Provided that where the accused is in custody and is examined through electronic communication, his signature shall be taken within seventy-two hours of such examination.***

***(5) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial."***

Section 509 of BNSS (Section 463 of CrPC) deals with the legal implications of non-compliance with Sections 183 and 316 of the BNSS. It provides a mechanism to "cure" procedural

irregularities that occur when a Magistrate records a confession or statement from an accused person. Section 509 of BNSS reads as thus :

***"(1) If any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under section 183 or section 316, is tendered, or has been received, in evidence finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in section 94 of the Bharatiya Sakshya Adhiniyam, 2023, take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.***

***(2) The provisions of this section apply to Courts of appeal, reference and revision."***

## 2. Key ingredients of Sec 183 BNSS/164 CrPC

### ***The ingredients of Section 164 CrPC :***

The ingredients of the said provision state that any Judicial Magistrate can record any confession or statement made to him in the course of investigation of crime under Chapter XI. The proviso to sub-section (1) also empowers the Magistrate recording the confession to record it by audio-video electronic means in the presence of the advocates of the person accused of an offence. Sub-section (2) stipulates that the Magistrate should before recording any such confession explain to the person making it that he is not bound to make a confession, that the said confession may be used as evidence against him and that that apart if the Magistrate gets the impression that the person making the confession was not making it voluntarily he should not record such a confession. Under sub-section (3) the person who initially comes forward to make a confession can at any time while before the confession is recorded express his desire or unwillingness to make the confession and in such an event the Magistrate should not authorise police custody for such person. Under sub-section (4) any confession should be recorded in the manner provided under Section 281 which provides for recording the examination of the accused. The confession should be signed by the person making the confession and the Magistrate should record at the foot of the confession the prescribed format provided in the said sub-section (4). Under sub-section (6) the Magistrate who records the confession or statement under Section 164 CrPC should forward it to the Magistrate by whom the case is to be enquired into or tried.

***[Mohd. Jamiludin Nasir v. State of W.B. (2014) 7 SCC 443]***

### ***Article 20(3) of the Constitution does not apply at all to a case where the confession is made without any inducement, threat or promise:***

A confession has to be voluntary before it can be used against a person making it, and a Magistrate is bound to satisfy himself that it is being made without any inducement, threat or promise. No person accused of a crime is bound to make a confession, and if there is any compulsion or threat, it has to be ruled out as irrelevant and inadmissible. Clause (3) of Article 20 does not apply at all to a case where the confession is made without any inducement, threat or promise. It is true that a retracted confession has only little value as the basis for a conviction, and that the confession of one accused is not evidence against a co-accused tried jointly for the same offence, but can only be taken into consideration against him. This deals with its probative value and has nothing to do with any repugnancy to the Constitution.

***[Kalawati v. State of H.P. (1953) 1 SCC 86]***

### ***Objective of statement under Section 164 CrPC :***

The Hon'ble Supreme Court discussed the two-fold objective of a statement under Section 164 CrPC as:

“15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted ...”

“16. ... During the investigation, the Police Officer may sometimes feel that it is expedient to

record the statement of a witness under Section 164 Code of Criminal Procedure. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced ...”

***[R. Shaji v. State of Kerala (2013) 14 SCC 266]***

### 3. Procedural Safeguards and Duties of Magistrates and Courts

#### **Locus standi to get one's statement recorded under section 164 CrPC :**

A three-Judge Bench of Hon'ble Supreme Court held that sub-section (5) of Section 164, deals with the statement of a person, other than the statement of an accused i.e. a confession. Such a statement can be recorded, only and only when, the person making such statement is produced before the Magistrate by the police.

There can be no doubt that a confession of the accused can be recorded by a Magistrate. An accused is a definite person against whom there would be an accusation and the Magistrate can ascertain whether he is in fact an accused person. Such a confession can be used against the maker thereof. If it is a confessional statement, the prosecution has to rely on it against the accused. But that cannot be said of a person who is not an accused. No such person can straight away go to a Magistrate and require him to record a statement which he proposes to make.

In the scheme of the Chapter XII of the Code "Information to the police and their power to investigate" there is no set or stage at which a Magistrate can take note of a stranger individual approaching him directly with a prayer that his statement may be recorded in connection with some occurrence involving a criminal offence. If a Magistrate is obliged to record the statements of all such persons who approach him the situation would become anomalous and every Magistrate's Court will be further crowded with a number of such intending witnesses brought up at the behest of accused persons.

*[Jogendra Nahak v. State of Orissa (2000) 1 SCC 272]*

#### **When I.O. is disinclined to record the statements of willing witnesses then what remedy is available to such witnesses :**

If a Magistrate has power to record the statement of any person under Section 164 of the Code, even without the investigating officer moving for it, then there is no good reason to limit the power to exceptional cases. We are unable to draw up a dividing line between witnesses whose statements are liable to be recorded by the Magistrate on being approached for that purpose and those not to be recorded. The contention that there may be instances when the investigating officer would be disinclined to record the statements of willing witnesses and therefore such witnesses must have a remedy to have their version regarding a case put on record, is no answer to the question whether any intending witness can straight away approach a Magistrate for recording his statement under Section 164 of the Code. Even for such witnesses provisions are available in law e.g. the accused can cite them as defence witnesses during trial or the court can be requested to summon them under Section 311 of the Code. When such remedies are available to witnesses (who may be sidelined by the investigating officers) we do not find any special reason why the Magistrate should be burdened with the additional task of recording the statements of all and sundry who may knock at the door of the court with a request to record their statements under Section 164 of the Code.

*[Jogendra Nahak v. State of Orissa, (2000) 1 SCC 272]*

#### **Person should be produced by the police :**

A person should be produced before a Magistrate, by the police for recording his statement under Section 164 CrPC. Recording of statements without satisfactory identification of

witness/complainant is not proper.

**[Ajay Kumar Parmar v. State of Rajasthan (2012) 12 SCC 406]**

***Duty of Magistrate while recording confession statement :***

Going by the prescriptions contained in Section 164 CrPC, what is to be ensured is that the confession is made voluntarily by the offender, that there was no external pressure particularly by the police, that the person concerned's mindset while making the confession was uninfluenced by any external factors, that he was fully conscious of what he was saying, that he was also fully aware that based on his statement there is every scope for suffering the conviction which may result in the imposition of extreme punishment of life imprisonment and even capital punishment of death, that prior to the time of the making of the confession he was in a free state of mind and was not in the midst of any persons who would have influenced his mind in any manner for making the confession, that the statement was made in the presence of the Judicial Magistrate and none else, that while making the confession there was no other person present other than the accused and the Magistrate concerned and that if he expressed his desire not to make the confession after appearing before the Magistrate, the Magistrate should ensure that he is not entrusted to police custody. All the above minute factors were required to be kept in mind while recording a confession made under Section 164 CrPC in order to ensure that the confession was recorded at the free will of the accused and was not influenced by any other factor.

**[Mohd. Jamiludin Nasir v. State of W.B. (2014) 7 SCC 443]**

***Voluntary nature of the confession depends upon different factors :***

The law as to confessions is perhaps too widely stated. Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however, stands on a slightly different footing.

**[Bharat v. State of U.P. (1971) 3 SCC 950]**

***To ensure voluntariness of confessional statement:***

Provisions permitting use of confessional statements in criminal trials were statutorily included as an acknowledgment of the possibility that in certain circumstances an accused may voluntarily confess to his offence(s).

**[Manoharan v. State (2020) 5 SCC 782]**

***Before a confessional statement made under Section 164 CrPC can be acted upon, it must be shown to be voluntary and free from police influence :***

“13. ... It is also true that before a confessional statement made under Section 164 of the Code of Criminal Procedure can be acted upon, it must be shown to be voluntary and free from police influence and that the confessional statement made by the appellant in the instant case cannot be taken into account, as it suffers from serious infirmities in that

- (1) there is no contemporaneous record to show that the appellant was actually kept in jail as ordered on 6-9-1974 by Shri R.P. Singh, Judicial Magistrate, Gorakhpur,
- (2) Shri R.P. Singh who recorded the so-called confessional statement of the appellant did not question him as to why he was making the confession, and

(3) there is also nothing in the statement of the said Magistrate to show that he told the appellant that he would not be remanded to the police lock-up even if he did not confess his guilt. It cannot also be gainsaid that the circumstantial evidence relied upon by the prosecution must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused.”  
**[Davendra Prasad Tiwari v. State of U.P. (1978) 4 SCC 474]**

***Magistrate to ensure that the confession is free from police interference :***

A Magistrate who proposed to record the confession has to ensure that the confession is free from police interference. Even if he was produced from police custody, the Magistrate was not to record the confession until the lapse of such time, as he thinks necessary to extricate his mind completely from fear of the police to have the confession in his own way by telling the Magistrate the true facts.

**[State of Maharashtra v. Damu (2000) 6 SCC 269]**

***Presence of the advocate(s) is not necessary during Section 164 CrPC statements:***

The plea regarding absence of a counsel during proceedings before the Magistrate under Section 164 CrPC resulting into any prejudice, are misconceived. What mandatorily is needed, is that the Magistrate must satisfy himself of the voluntariness of the statement and all the statutory safeguards which include bringing the repercussions and the voluntariness of making confessions to the knowledge of the accused, must be meticulously complied with. It is pertinent to take note of the first proviso to Section 164(1), added with effect from 31-12-2009, which specifies that:

“Provided that any confession or statement made under this sub-section *may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence.*”

Section 164 of the Code thus does not contemplate that a confession or statement should necessarily be made in the presence of the advocate(s), except, when such confessional statement is recorded with audio-video electronic means.

**[Manoharan v. State (2020) 5 SCC 782]**

***Statements of eyewitnesses during investigation :***

“9. It is also necessary that the statements of eyewitnesses are got recorded during investigation itself under Section 164 CrPC. In view of amendment to Section 164 CrPC by Act 5 of 2009, such statement of witnesses should be got recorded by audio-video electronic means.”

**[Doongar Singh v. State of Rajasthan (2018) 13 SCC 741]**

## **Defect in recording of confession – Curability :**

***When Magistrate failed to record the question that was put by him to the accused whether there was any pressure on her to give a statement :***

23. On 24-8-2001, upon receipt of an application moved by Superintendent of Police for recording dying declaration of A-1 by a Magistrate, DSP Man Singh, who partly investigated the case, approached the Chief Judicial Magistrate, Hissar, who, in turn, marked the said application to Pardeep Kumar, PW 62. On its presentation to PW 62 by DSP Man Singh at 10 p.m. the same day, both PW 62 and DSP Man Singh left for Janta Hospital, Barwala. After reaching the hospital and before recording the statement, PW 62 first sought opinion of Dr. Anant Ram (PW 32) as to the fitness of A-1 to make the statement. As in the opinion of PW 32, A-1 was fit to make the statement,

PW 62 proceeded to record it, which is in question and answer form. It appears from Ext. 187 as well as from the questions and answers which were put to A-1 that PW 62 warned A-1 that she was not bound to make any confessional statement and in case she did so, it might be used against her as evidence. In spite of this warning, A-1 volunteered to make the statement and only thereafter the statement was recorded by PW 62. In the certificate that was appended to the said confessional statement PW 62 has very categorically stated that he had explained to A-1 that she was not bound to make a confession and that if she did so, any confession she would make, might be used as evidence against her and that he believed that the confession was voluntarily made. He further stated that he read over the statement to the person making it and admitted by her to be correct and that it contained a full and true account of the statement made by her. It has been further stated by PW 62 in his evidence that at the time of recording of the confession it was he and PW 32, who were present in the room and there was neither any police officer nor anybody else within the hearing or sight when the statement was recorded. It also appears from the evidence of PW 62 that it took about 2½ hours for him to record the statement of A-1, which runs into 5 pages, which he started at 10.53 p.m. and ended at 1.28 a.m. which goes to show that A-1 took her time before replying to the questions put. PW 62 has also stated that she had given the statement after taking due time after understanding each aspect. It also appears that he was satisfied that she was not under any pressure from any corner. Therefore, it is evident from the certificate appended to the confessional statement by PW 62 that the confessional statement was made by the accused voluntarily. Of course, he failed to record the question that was put by him to the accused whether there was any pressure on her to give a statement, but PW 62 having stated in his evidence before the court that he had asked the accused orally whether she was under any pressure, threat or fear and he was satisfied that A-1 was not under any pressure from any corner, that in the room in which the said confessional statement was recorded it was only he and PW 32 who were present and none else and that no police officer was available even within the precincts of the hospital. The said defect, in our view, is cured by Section 463 as the mandatory requirement provided under Section 164(2), namely, explaining to the accused that he was not bound to make a statement and if a statement is made the same might be used against him has been complied with and the same is established from the certificate appended to the statement and from the evidence of PW 62. Therefore, in the light of our discussion above, we have no hesitation in holding that the judicial confession (Ext. 187) having been recorded according to the procedure set out in Section 164 read with Section 281 and the defect made while recording the same being curable by Section 463, it is admissible in evidence.

**[Ram Singh v. Sonia (2007) 3 SCC 1]**

***When the confession was not recorded according to the procedure and the record of the confession was not available as evidence either. As there was no record in existence at the material time, there was nothing to be shown or to be read to the accused and nothing he could sign or refused to sign :***

This is a case where recording Magistrate did not at all follow the procedure prescribed by Section 164 of the Code as a result of which, he violated the provisions thereof.

In this case the accused, who was charged with dacoity and murder, was convicted on the strength of a confession said to have been made by him to a Magistrate of the class entitled to proceed under the provisions of Section 164 relating to the recording of confession. The confession was not recorded according to the procedure and the record of the confession was not available as evidence either. The Magistrate, however, appeared as a witness and gave oral evidence about the making of the confession. He stated that he made rough notes of what he was told, got a memorandum typed from the typist on the basis of the rough notes and thereafter destroyed the rough notes. The said

memorandum, signed by him contained only the substance but not all of the matter to which he spoke orally. The recording Magistrate in the said memorandum just above his signature appended a certificate somewhat to the same effect as that prescribed in Section 164 and, in particular, stating that the Magistrate believed that the statements were voluntarily made. As there was no record in existence at the material time, there was nothing to be shown or to be read to the accused and nothing he could sign or refused to sign. The Judicial Committee held that the oral evidence of the Magistrate of the alleged confession was inadmissible. The Magistrate offered no explanation as to why he acted as he did instead of following the procedure required by Section 164. When questioned by the Sessions Judge, the response of the accused was a direct and simple denial that he had ever made any confession. The Judicial Committee, considering the abject disregard by the Magistrate of the provisions contained in Section 164 of the Code, observed that “where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all”.

***[Nazir Ahmad v. King-Emperor, 1936 SCC OnLine PC 41]***

***When the accused remained in police custody for six days immediately before the recording of his confession by the Magistrate and upon being produced before a Magistrate for recording his confession, he was given two hours' time to reflect :***

In this case the accused was arrested on 17-6-1973 and when produced before the Magistrate on the following day he was sent to police custody, where he remained until 22-6-1973 and, thereafter he was sent to judicial custody. Upon being produced before a Magistrate on 25-6-1973 for recording his confession, he was given two hours' time to reflect. After cautioning the accused that he was not bound to make a confession and that if he did so, it might be used against him, the Magistrate went on to record his confession. Failure of the recording Magistrate to put questions to the accused to satisfy himself that the confession was voluntary so as to enable him to give the requisite certificate under sub-section (4) was termed by the Hon'ble Supreme Court as flagrant violation of the provisions of Section 164(2) and in utter disregard of the mandatory requirements of the said section.

*This is a case where the accused remained in police custody for six days immediately before the recording of his confession by the Magistrate and, therefore, could be said to have been pressurised, tortured and harassed by the police. In such a situation, omission on the part of the recording Magistrate to put a question to the accused to satisfy himself that the confession was being made voluntarily can be said to be flagrant violation of law.*

***[Preetam v. State of M.P. (1996) 10 SCC 432]***

***When the recording Magistrate did not explain to the accused that he was not bound to make a confession and that if he did so, it might be used against him, nor did he put any question to him to satisfy that the confession was being voluntarily made although, an endorsement to this effect was made by him in the certificate that was appended to the confessional statement :***

In this case the appellant remained in police custody for a week and the recording Magistrate neither explained to the accused that he was not bound to make a confession and if he did so, it might be used against him nor satisfied himself upon questioning the accused that the confession was being voluntarily made.

The Hon'ble Supreme Court, while setting aside the conviction and sentence recorded against the accused under Section 302 IPC, held that the Special Court was not at all justified in entertaining the confession as a voluntary one, observing that mere endorsement would not fulfil the requirements of sub-section (4) of Section 164.

***[Tulsi Singh v. State of Punjab (1996) 6 SCC 63]***

***Whether non-compliance with the provisions of Section 164 or Section 364 (Section 281 of the CrPC, 1973 now Section 316 BNSS) is a defect which could be cured by Section 533 (Section 463 of the CrPC now Section 509 BNSS) :***

“Section 533(1) lays down that if any court before which a confession recorded or purporting to be recorded under Section 164 or Section 364 is tendered or has been received in evidence finds that any of the provisions of either of such sections have not been complied by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and it adds that notwithstanding anything contained in Section 91 of the Evidence Act, 1872 such statement shall be admitted if the error has not injured the accused as to his defence on the merits. Mr Khanna contends that the Magistrate has in fact given evidence in the trial court and the evidence of the Magistrate shows that the statement had been duly recorded; and he argues that unless it is shown that prejudice has been caused to the accused the irregularity committed by the Magistrate in not complying with Section 364(3) will not vitiate the confessions nor will it make them inadmissible. There is some force in this contention.”

In this case (*Babu Singh's Case*) after observing that the confessions were duly recorded, the Hon'ble Court proceeded to discern from the factual matrix of the case whether the confessions were voluntary or not and taking note of three unusual features qua the confession recorded, namely,

- (1) that the accused was kept in the police custody even after the substantial part of the investigation was over;
- (2) that the confession so recorded did not indicate as to how much time the accused was given by the Magistrate before they made their confessions, and
- (3) that the Magistrate who recorded the confession had taken part in assisting the investigation by attesting recovery memos in two cases, the confessional statement of the accused was excluded from consideration.

The three unusual features noticed by the Hon'ble Court impelled the Hon'ble Judges to exclude from consideration the confessional statement made before the Magistrate by the accused after having observed that the confession was inadmissible in evidence. As the charge of murder was founded exclusively on the confession, both the accused persons were acquitted of the charge under Sections 302/34 IPC.

***[Babu Singh v. State of Punjab, 1962 SCC OnLine SC 160]***

***If the confession is not recorded in proper form as prescribed by Section 164 read with Section 281, it is a mere irregularity which is curable by Section 463 :***

In *State of U.P. v. Singhara Singh AIR 1964 SC 358* a three-Judge Bench of Hon'ble Supreme Court observed that if the confession is not recorded in proper form as prescribed by Section 164 read with Section 281, it is a mere irregularity which is curable by Section 463 on taking evidence that the statement was recorded duly and has not injured the accused in defence on merits. It was observed at para 10 thus:

“What Section 533 [Section 463 of the CrPC, now Section 509 BNSS] therefore, does is to permit oral evidence to be given to prove that the procedure laid down in Section 164 had in fact been followed when the court finds that the record produced before it does not show that that was so. If the oral evidence establishes that the procedure had been followed, then only can the record be

admitted. Therefore, far from showing that the procedure laid down in Section 164 is not intended to be obligatory, Section 533 [Section 463 of the CrPC, now Section 509 BNSS] really emphasises that that procedure has to be followed. The section only permits oral evidence to prove that the procedure had actually been followed in certain cases where the record which ought to show that does not on the face of it do so.”

*[State of U.P. v. Singhara Singh, 1963 SCC OnLine SC 23]*

#### 4. Special consideration for vulnerable witnesses

##### **Recording of evidence of victim of child sex abuse or rape :**

“34. The writ petition is accordingly disposed of with the following directions:

(1) The provisions of sub-section (2) of Section 327 CrPC shall, in addition to the offences mentioned in the sub-section, also apply in inquiry or trial of offences under Sections 354 and 377 IPC.

(2) In holding trial of child sex abuse or rape:

(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

These directions are in addition to those given in *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384.”

**[Sakshi v. Union of India, (2004) 5 SCC 518]**

##### **Statements of Rape Victim :**

“4. We are of the considered opinion that there is pressing need to introduce drastic amendments to CrPC in the nature of fast-track procedure for Fast Track Courts and here is an occasion where we deem it just and appropriate to issue notice and call upon the Union of India to file its response as to why it should not take initiative and sincere steps for introducing necessary amendment into CrPC, 1973 involving trial for the charge of “rape” by directing that all the witnesses who are examined in relation to the offence and incident of rape cases should be straightaway produced before the Magistrate for recording their statement to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial which may be put to test by subjecting it to cross-examination. We are further of the view that the statement of victim should as far as possible be recorded before the Judicial Magistrate under Section 164 CrPC skipping over the recording of statement by the police under Section 161 CrPC which in any case is inadmissible except for contradiction so that the statement of the accused thereafter be recorded under Section 313 CrPC. The accused then can be committed to the appropriate court for trial whereby the trial court can straightaway allow cross-examination of the witnesses whose evidence were recorded earlier before the Magistrate.

5. What we wish to emphasise is that the recording of evidence of the victim and other witnesses

multiple times ought to be put to an end which is the primary reason for delay of the trial. We are of the view that if the evidence is recorded for the first time itself before the Judicial Magistrate under Section 164 CrPC and the same be kept in sealed cover to be treated as deposition of the witnesses and hence admissible at the stage of trial with liberty to the defence to cross-examine them with further liberty to the accused to lead his defence witnesses and other evidence with a right to cross-examination by the prosecution, it can surely cut short and curtail the protracted trial if it is introduced at least for trial of rape cases which is bound to reduce the duration of trial and thus offer a speedy remedy by way of a fast-track procedure to the Fast Track Court to resort to.”

***[State of Karnataka v. Shivanna, (2014) 8 SCC 916]***

***Recording of statement of victim by Court as per Section 164 (5-A) CrPC [Now Sec. 183 (6)(a) BNSS]:***

“20. Sub-section (5-A) of Section 164 CrPC provides for recording of statement of the victim by the court. Other than recording of statements under Section 164, for the purpose of recording of statements during the trial, Section 119 of the Evidence Act provides for assistance of an interpreter or a special educator in recording the statement of the witness unable to speak but capable to give evidence in any other manner. It further provides that such statement shall be videographed.”

***[Assessment of the Criminal Justice System in Response to Sexual Offences, In re, (2020) 18 SCC 540]***

***Difference in statements recorded under section 161 and 164 CrPC :***

The mere fact that the statement of the victim was subsequently recorded will not overshadow the statement recorded under section 164 CrPC. The victim cannot be treated with suspicion or discredited that she had not disclosed the complicity of accused in her statement recorded under section 161 of CrPC.

***[Nahar Singh v. State of U.P. (2022) 5 SCC 295]***

## 5. Evidentiary value of Confession and Statements recorded under Section 183 BNSS/164 CrPC

### ***Confessions not recorded in the manner prescribed by Section 164 of the CrPC, not admissible :***

The confessions will not be admissible in evidence if these are not recorded by the Magistrates in the manner prescribed by Section 164 of the Code of Criminal Procedure.

***[Zwinglee Ariel v. State of M.P. (1952) 2 SCC 560]***

### ***A confession is an important piece of evidence :***

A confession, if voluntary and truthfully made is an “efficacious proof of guilt”. It is an important piece of evidence and therefore it would be necessary to examine whether or not the confession made by the appellant was voluntary, true and trustworthy.

The statutory provisions dealing with the recording of confessions and statements by the Metropolitan Magistrate and Judicial Magistrates are contained in Section 164 CrPC and the rules framed by the High Court containing guidelines for recording of confessions. Unless the Court is satisfied that the confession is voluntary in nature, it cannot be acted upon and no further enquiry as to whether it is true and trustworthy need be made.

***[Shivappa v. State of Karnataka, (1995) 2 SCC 76]***

### ***Statement under Section 164 CrPC is not substantive evidence :***

It has been held that a statement under Section 164 CrPC is not substantive evidence and can be utilised only to corroborate or contradict the witness vis-à-vis statement made in court. In other words, it can be utilised only as a previous statement and nothing more.

***[Ram Kishan Singh v. Harmit Kaur (1972) 3 SCC 280]***

### ***When prosecutrix was not produced as a witness :***

The prosecutrix was not produced as a witness as she had since been married in Nepal and her husband had refused to let her return to India for the evidence. In this light her statement under Section 164 cannot be used against the appellant/accused.

***[Baij Nath Sah v. State of Bihar, (2010) 6 SCC 736]***

### ***Duty of Trial Judge/Sessions Judge in appreciation of evidence :***

Therefore, while considering a confession so recorded and relied upon by the prosecution, the duty of the Sessions Judge is, therefore, to carefully analyse the confession keeping in mind the above factors and if while making such analysis the learned Sessions Judge develops any iota of doubt about the confession so recorded, the same will have to be rejected at the very outset. It is, therefore, for the Sessions Judge to apply his mind before placing reliance upon the confessional statement made under Section 164 CrPC and convince itself that none of the above factors were either violated or given a go-by to reject the confession outright.

***[Mohd. Jamiludin Nasir v. State of W.B. (2014) 7 SCC 443]***

### ***Where the prosecution relies upon the confession of one accused person against another accused person :***

In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the

court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

***[Kalawati v. State of H.P. (1953) 1 SCC 86]***

***A statement made under Section 164 of the CrPC could also be considered for purpose of summoning the persons upon taking cognizance of an offence :***

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. A statement made under Section 164 of the Code could also be considered for such purpose.

***[Nahar Singh v. State of U.P. (2022) 5 SCC 295]***

***Retracted Statements :***

“31. Having said so, we deem it fit to observe that a statement under Section 164 CrPC cannot be discarded at the drop of a hat and on a mere statement of the witness that it was not recorded correctly. For, a judicial satisfaction of the Magistrate, to the effect that the statement being recorded is the correct version of the facts stated by the witness, forms part of every such statement and a higher burden must be placed upon the witness to retract from the same. To permit retraction by a witness from a signed statement recorded before the Magistrate on flimsy grounds or on mere assertions would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate.”

Section 164 CrPC Statement can't be discarded on a mere witness statement that it wasn't recorded correctly.

***[Vijaya Singh & Anr. Vs. State Of Uttarakhand 2024 INSC 905]***

***Statement made by accused during the course of investigation :***

There is authority however for the proposition that once the investigation had started any non-confessional statement made by the accused also required to be recorded in the manner indicated in that section (Sec. 164) and if no such record had been made by the Magistrate, the Magistrate would not be competent to give oral evidence of such statement having been made by the accused.

***[Rao Shiv Bahadur Singh (II) v. State of Vindhya Pradesh, (1954) 1 SCC 296]***

***Evidence of Trap witnesses :***

Every statement made to a person assisting the police during an investigation cannot be treated as a statement made to the police or to the Magistrate and as such excluded by Section 162 or Section 164 of the Criminal Procedure Code. The question is one of fact and has got to be determined having regard to the circumstances of each case.

***[Rao Shiv Bahadur Singh (II) v. State of Vindhya Pradesh, (1954) 1 SCC 296]***

***A retracted confession requires the general assurance that the retraction was an after thought and that the earlier statement was true :***

In India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an after thought or advice, the retraction may not weigh with the court if the general facts proved in the case

and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its use. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an after thought and that the earlier statement was true.

**[Subramania Gounden v. State of Madras AIR 1958 SC 66]**

***Confession of a co-accused :***

“96. What is the evidentiary value of a confession made by one accused as against another accused apart from Section 30 of the Evidence Act? While considering that aspect we have to bear in mind that any confession, when it is sought to be used against another, has certain inherent weaknesses. First is, it is the statement of a person who claims himself to be an offender, which means, it is the version of an accomplice. Second is, the truth of it cannot be tested by cross-examination. Third is, it is not an item of evidence given on oath. Fourth is, the confession was made in the absence of the co-accused against whom it is sought to be used.

97. It is well-nigh settled, due to the aforesaid weaknesses, that confession of a co-accused is a weak type of evidence. A confession can be used as a relevant evidence against its maker because Section 21 of the Evidence Act permits it under certain conditions. But there is no provision which enables a confession to be used as a relevant evidence against another person. It is only Section 30 of the Evidence Act which at least permits the court to consider such a confession as against another person under the conditions prescribed therein. If Section 30 was absent in the Evidence Act no confession could ever have been used for any purpose as against another co-accused until it is sanctioned by another statute. So, if Section 30 of the Evidence Act is also to be excluded by virtue of the non obstante clause contained in Section 15(1) of TADA, under what provision can a confession of one accused be used against another co-accused at all? It must be remembered that Section 15(1) of TADA does not say that a confession can be used against a co-accused. It only says that a confession would be admissible in a trial of not only the maker thereof but a co-accused, abettor or conspirator tried in the same case.”

**[State v. Nalini (1999) 5 SCC 253]**

***Relevancy and admissibility of confession :***

“51. The learned counsel appearing for the State is right that the failure to comply with Section 164(3) of the Criminal Procedure Code, or with the High Court circulars will not render the confessions inadmissible in evidence. Relevancy and admissibility of evidence have to be determined in accordance with the provisions of the Evidence Act. Section 29 of that Act lays down that if a confession is otherwise relevant it does not become irrelevant merely because, inter alia, the accused was not warned that he was not bound to make it and the evidence of it might be given against him. If, therefore, a confession does not violate any one of the conditions operative under Sections 24 to 28 of the Evidence Act, it will be admissible in evidence. But as in respect of any other admissible evidence, oral or documentary, so in the case of confessional statements which are otherwise admissible, the court has still to consider whether they can be accepted as true. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession even if it is

admissible in evidence. That shows how important it is for the Magistrate who records the confession to satisfy himself by appropriate questioning of the confessing accused, that the confession is true and voluntary. A strict and faithful compliance with Section 164 of the Code and with the instructions issued by the High Court affords in a large measure the guarantee that the confession is voluntary. The failure to observe the safeguards prescribed therein are in practice calculated to impair the evidentiary value of the confessional statements.”

**[Dagdu v. State of Maharashtra (1977) 3 SCC 68]**

### **Comparison of Section 164 of CrPC with Section 9 of Indian Evidence Act, 1872 :**

Section 9 of the Evidence Act says that facts which establish the identity of any thing or person whose identity is relevant, are relevant insofar as they are necessary for that purpose. These two sections deal with different situations : Section 164 of the Code of Criminal Procedure prescribes a procedure for the Magistrate recording statements made by a person during investigation or before trial; Section 9 of the Evidence Act, on the other hand, makes certain facts which establish the identity of a thing as relevant evidence for the purpose of identifying that thing. If a statement of a witness recorded by a Magistrate in derogation of the provisions of Section 164 will go in as evidence under Section 9 of the Evidence Act, the object of Section 164 of the said Code will be defeated. It is, therefore, necessary to resort to the rule of harmonious construction so as to give full effect to both the provisions. If a Magistrate speaks to facts which establish the identity of any thing, the said facts would be relevant within the meaning of Section 9 of the Evidence Act; but if the Magistrate seeks to prove statements of a person not recorded in compliance with the mandatory provisions of Section 164 of the Code of Criminal Procedure, such part of the evidence, though it may be relevant within the meaning of Section 9 of the Evidence Act, will have to be excluded. By such a construction of the provisions a satisfactory solution could be evolved.

**[Deep Chand v. State of Rajasthan, 1961 SCC OnLine SC 27]**

## **Verification Proceedings and Evidence of Magistrate**

### **Scope of verification proceedings :**

A Magistrate when called upon in a case to conduct verification proceedings should confine his attention only to the steps to be taken to ensure that the witnesses were able to identify certain persons alleged to have been concerned in the commission of the crime or to identify certain things which were said to be the subject-matter thereof. The Code of Criminal Procedure does not sanction his transgression of this limit and recording of other statements which may have a bearing in establishing the guilt of the accused except in accordance with Section 164 of the Code.

**[Harnath Singh v. State of M.P., 1968 SCC OnLine SC 301 ( 5 Judges Bench )]**

### **Evidence of Magistrate regarding evidence of an unrecorded statement made to him by the accused :**

In this case a Magistrate sought to give evidence of an unrecorded statement made to him by the accused. The Privy Council held that it was not permissible.

**[Legal Remembrancer v. Lalit Mohan Singh Roy (1921) ILR 49 Cal 167]**

### **In this case a Magistrate conducted verification proceedings with a view to test the truth of a confession made by the accused:**

Hon'ble Teunon, J., made the following observations at p. 564:

“They are undertaken, it would seem, with a view to testing the truth of a confession and to obtain evidence either corroborating the confession or indicating its falsity. Insofar at least as such

evidence may be obtained, for instance, in ascertaining that the prisoner is familiar with, or wholly ignorant of, the localities of which he has spoken, or in furnishing clues to further enquiry, such proceedings may be useful. In connection with such proceedings, the main concern of the courts would seem to be to ensure that evidence not strictly admissible is not admitted. In the present case that precaution has not been taken : for we and that the verifying Magistrate has been permitted to speak to statements said to have been made to him in the course of his proceedings. Such additional statements being statements made in the course of an investigation, when not recorded in the manner provided in Section 164 of the Code of Criminal Procedure, are, in my opinion, inadmissible.”

The other Hon’ble Judge, Shamsul Huda, J., made the following observations at p. 572:

“I think, ‘verification’ under conditions such as these lends itself to very great abuses and should be avoided. There is perhaps nothing objectionable in a verification made independently of the confessing accused and unaided by him.”

*[Amiruddin Ahmed v. Emperor (1917) ILR 45 Cal 557]*

***When the statements are not recorded in the manner provided in Section 164 CPC:***

It was observed by the Special Bench of the Calcutta High Court, that “Statements made by the accused to the verifying Magistrates in the course of the proceedings, if they are not recorded in the manner provided in Section 164 CPC, are however inadmissible.”

*[Jitendra Nath v. Emperor AIR 1937 Cal 99]*

### **Marking of Exhibit**

**A document becomes inadmissible in evidence unless the author thereof is examined :**

“37. It is true that ordinarily if a party to an action does not object to a document being taken on record and the same is marked as an exhibit, he is estopped and precluded from questioning the admissibility thereof at a later stage. It is, however, trite that a document becomes inadmissible in evidence unless the author thereof is examined; the contents thereof cannot be held to have been proved unless he is examined and subjected to cross examination in a court of law. The document which is otherwise inadmissible cannot be taken in evidence only because no objection to the admissibility thereof was taken.”

*[Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee and Others (2009) 9 SCC 221]*

## 6. Supply of the copy of Statements recorded under Sec 183 BNSS/164 CrPC

### **Supply of copy of the statement of the victim recorded under Section 164 CrPC- Stage – Entitlement of I.O. and accused:**

It is only after taking of the cognizance and issuance of process that the accused is entitled, in terms of Sections 207 and 208 CrPC, to copies of the documents referred to in the said provisions.

A copy of the statement of the victim recorded under Section 164 CrPC be handed over by the Judicial Magistrate concerned to the investigating officer with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC was filed.

**[A v. State of U.P. (2020) 10 SCC 505]**

## 7. Necessity of confidentiality in cases relating to Sexual Offences

### **Copy of statement recorded u/s 164 CrPC in sexual offences – Right of accused to receive & Necessity of confidentiality :**

The filing of the charge-sheet by itself does not entitle an accused to copies of any of the relevant documents including statement under Section 164 CrPC, unless the stages indicated above are undertaken.

No person is entitled to a copy of statement recorded under Section 164 CrPC till the appropriate orders are passed by the court after the charge-sheet is filed.

The right to receive a copy of such statement will arise only after cognizance is taken and at the stage contemplated by Sections 207 and 208 CrPC and not before.

Especially in such matters where the offences alleged against the accused are of sexual exploitation utmost confidentiality is required to be maintained.

**[A v. State of U.P. (2020) 10 SCC 505]**

### **Whether the contents of the memory card/pen-drive referred to in the charge-sheet or the police report submitted to Magistrate under Section 173 of the 1973 Code, need to be furnished to the accused if the prosecution intends to rely on the same by virtue of Section 207 of the 1973 Code?**

“40. Reverting to the preliminary objection taken by the respondent for dismissing the appeal at the threshold because of the disclosure of identity of the victim in the memo of the special leave petition forming the subject-matter of the present appeal, we find that the explanation offered by the appellant is plausible inasmuch as the prosecution itself had done so by naming the victim in the first information report/crime case, the statement of the victim under Section 161, as well as under Section 164 of the 1973 Code, and in the charge-sheet/police report filed before the Magistrate. Even the objection regarding incorrect factual narration about the appellant having himself viewed the contents of the memory card/pen-drive does not take the matter any further, once we recognise the right of the accused to get the cloned copies of the contents of the memory card/pen-drive as being mandated by Section 207 of the 1973 Code and more so, because of the right of the accused to a fair trial enshrined in Article 21 of the Constitution of India.”

**[P. Gopalkrishnan v. State of Kerala, (2020) 9 SCC 161]**

## 8. Guidelines and Directions issued by Hon'ble Supreme Court

### Shivappa v. State of Karnataka, (1995) 2 SCC 76

#### **Recording of confession under Section 164 CrPC – Procedure to be followed :**

“6. From the plain language of Section 164 CrPC and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 CrPC, it is manifest that the said provisions emphasise an inquiry by the Magistrate to ascertain the *voluntary* nature of the confession.

This inquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 CrPC.

The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same.

Full and adequate compliance not merely in form but in essence with the provisions of Section 164 CrPC and the rules framed by the High Court is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused.

In case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence.

An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession.

Besides administering the caution, warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody.

7. The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him.

That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 CrPC and the rules framed by the High Court for the guidance of the subordinate courts.

Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and the statutory provisions were strictly complied with."

### **Tulsi Singh v. State of Punjab (1996) 6 SCC 63**

#### ***Necessary Compliance by Magistrate :***

The Magistrate, must explain to the accused that he is not bound to make a confession and that if he does so it might be used against him. The Magistrate, must also put question(s) to accused to satisfy himself that the confession is being voluntarily made, as required under sub-section (2) of Section 164 CrPC.

In this case, the Hon'ble Court find that after his arrest the accused was produced before the Magistrate on 16-6-1984 and sent to police custody for a week on the prayer of the Investigating Officer. He was thereafter produced before the Magistrate on 22-6-1984 when he volunteered to make a confession. The Magistrate remanded him to judicial custody with a direction that he be produced on the following date, that is, on 23-6-1984. It appears that immediately after he was produced on that day the learned Magistrate recorded his confession.

Though the learned Magistrate testified that before recording the confession he satisfied himself that the accused (appellant) was making a voluntary statement and that after giving due caution he recorded it, the confession does not anywhere indicate as to whether before recording the same he gave him the requisite caution and put questions to satisfy himself that it was being made voluntarily. These are the basic prerequisites for recording a confession under sub-section (2) of Section 164 CrPC and a mere endorsement in accordance with sub-section (4) after recording it would not fulfil the requirements of the former sub-section. Since none of the two requirements of Section 164(2) CrPC has been complied with it was held that the Special Court was not at all justified in entertaining the confession as a voluntary one.

### **Bhagwan Singh v. State of M.P. (2003) 3 SCC 21**

#### ***Precautions that a Judicial Magistrate is required to take :***

"27. ... The first precaution that a Judicial Magistrate is required to take is to prevent forcible extraction of confession by the prosecuting agency (see *State of U.P. v. Singhara Singh* [AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] ). It was also held by this Court in *Shivappa v. State of Karnataka*

[(1995) 2 SCC 76 : 1995 SCC (Cri) 323] that the provisions of Section 164 CrPC must be complied with not only in form, but in essence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.

28. It has also been held that the Magistrate in particular should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial. He should be granted sufficient time for reflection. He should also be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement. Unfortunately, in this case, the evidence of the Judicial Magistrate (PW 1) does not show that any such precaution was taken before recording the judicial confession.

29. The confession is also not recorded in questions-and-answers form which is the manner indicated in the criminal court rules. ...

30. It has been held that there was custody of the accused Pooran Singh with the police immediately preceding the making of the confession and it is sufficient to stamp the confession as involuntary and hence unreliable. A judicial confession not given voluntarily is unreliable, more so when such a confession is retracted. It is not safe to rely on such judicial confession or even treat it as a corroborative piece of evidence in the case. When a judicial confession is found to be not voluntary and more so when it is retracted, in the absence of other reliable evidence, the conviction cannot be based on such retracted judicial confession.”

### **Dara Singh v. Republic of India (2011) 2 SCC 490**

#### **Section 164 CrPC- Principles :**

64. The following principles emerge with regard to Section 164 CrPC:

- (i) The provisions of Section 164 CrPC must be complied with not only in form, but in essence.
- (ii) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.
- (iii) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.
- (iv) The maker should be granted sufficient time for reflection.
- (v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.
- (vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.

(vii) Non-compliance with Section 164 CrPC goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

(viii) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.

(ix) At the time of recording the statement of the accused, no police or police official shall be present in the open court.

(x) Confession of a co-accused is a weak type of evidence.

(xi) Usually the court requires some corroboration from the confessional statement before convicting the accused person on such a statement.

### **State of Karnataka v. Shivanna (2014) 8 SCC 913**

***Directions issued by Hon'ble Supreme Court in form of mandamus to all Police Station's In – Charge :***

“10. On considering the same, we have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the Police Stations-in-Charge in the entire country to follow the directions of this Court which are as follows:

10.1. Upon receipt of information relating to the commission of offence of rape, the investigating officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC is filed.

10.2. The investigating officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

10.3. The investigating officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.

10.4. If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the investigating officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

10.5. Medical examination of the victim: Section 164-A CrPC inserted by Act 25 of 2005 in CrPC imposes an obligation on the part of investigating officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC

11. A copy of this order thus be circulated to all the Directors General of Police of all the States/Commissioners of Police in Metropolitan cities/Commissioners of Police of Union Territories who are then directed to send a copy of this order to all the Police Stations-in-Charge in their States/Union Territories for its compliance in cases which are registered on or after the receipt of a copy of these directions. Necessary instructions by the DGPs/Commissioners of Police be also issued to all the Police Stations-in-Charge by the DGPs/Commissioners of Police incorporating the directions issued by us and recorded hereinbefore.

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