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# A COMPREHENSIVE ANALYSIS ON RECORDING OF CONFESSION AND STATEMENTS UNDER SECTION 164 OF CODE OF CRIMINAL PROCEDURE 1973

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Aditi Ashok Joshi, B.A.(psychology), B.S.L.LLB (Pursuing)

## ABSTRACT

The word Confession denotes admission made by a person charged (accused) with reference to charges against him. Confession given to police officer is inadmissible in evidence therefore it is to be recorded by court in the due procedure given in section 163. In the case of **Sarwan Singh v. State of Punjab**<sup>1</sup> that procedure given in section 164 should be followed. According to article 20(3), no person accused of any offence shall be compelled to be witness against himself i.e., Rule against self incrimination. but if the person giving confession gives it voluntarily and recorded with due procedure it is admissible and not against the principle of natural justice. In Case of **pakala Narayana Swami v. Emperor**<sup>2</sup> Hon'ble supreme court explained that 'All the statements related to confession must relate to the exculpatory matter. Sec 164 not only gives provision about recording of confession but also about provisions relating to recording of statement of witness, accused (statements other than confession) and statement of victim in offence punishable under section 354, 354-A, 354-B, 354-C, 354-D, 376A, 376AB, 376B, 376C, 376D, 376 DA, 376DB. Criminal manual also gives procedure and form of recording confession. The evidentiary value of confession may be substantial but statement may be only used for corroboration and contradiction. This Paper gives scope and significance and comprehensive analysis about provisions of section 164 of code of criminal procedure 1973.

**Keywords:** self-incrimination, confession, statement.

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<sup>1</sup> AIR 1957 SC 637

<sup>2</sup> (1939) 41 BOMLR 428.

## 1. INTRODUCTION

A “Confession” is an admission made at any time by a person charged with an offence, stating or suggesting the inference that he has committed the offence.<sup>3</sup> Generally when accused is in police custody and he state his intension of giving confession, police gives application to magistrate about confession recording. The chief judicial magistrate decides that which magistrate will record confession. Confession is recorded by magistrate other than trial court magistrate for a case. Then accused is produced before court magistrate shall ask some questions such as why he is making confession from which his voluntariness shall be reflected. Magistrate should give some more time for confirmation. At this time accused should not be placed in police custody but in magistrate custody. If magistrate satisfies that the confession is voluntarily given he shall record it in writing.

## 2. SCOPE AND OBJECT

The purpose behind the section 164 can be explained in two points

1. After complying the provisions of section 157 if police officer thinks that arrest is necessary as per section 41, police makes arrest then if accused wants to give confession it is necessary to comply the provision of section 164 Because the confession made to police officer is inadmissible in evidence as per section 25 and 26 of Indian Evidence Act (except section 27).
2. The statement given during investigation to police are inadmissible as per section 162. Because there is high probability of change in statement by inducement, threat or promise. Therefore to deter witnesses from changing his versions subsequently the statement recorded under section 163 are important.

## 3. PROCEDURE OF RECORDING

### Who can record?

As per section 164(1)Any metropolitan magistrate or judicial magistrate may record the statement and confession whether he has jurisdiction or not. The word ‘may’ in sub clause (1) denotes that it is not binding on magistrate to record confession made to him if, for example, it were that of a self accusing madman , or for any other reason magistrate thought it to be

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<sup>3</sup> Stephen’s Digest on the Law of Evidence.

incredible or useless for the purpose of justice. He has to use his own discretion for either to record it or not. But if he decide to record it shall be according to procedure laid down in section 164. If any other magistrate or executive magistrate who has not empowered for the purpose, records confession, that record cannot be put in evidence, and further no oral evidence of magistrate to prove the confession in such case can be admissible. Because, when a statute confers a power on certain judicial officers, that power can be exercised only by those officers.<sup>4</sup>

### **Who can not record?**

The police officer on whom the power of magistrate has been conferred has no power to record confession under section 164.

### **What is the stage of recording?**

In the course on investigation or at any time afterwards investigation but before the commencement of inquiry or trial. The accused can himself appear before a magistrate instead of being produced by police and pray for recording his confession. But if magistrate has reason to believe that the person praying for is concerned in case whose investigation is began he may record it. Otherwise he should inform police about it so that the police may take steps required.<sup>5</sup>

### **Warning to the accused**

After appearance of accused before magistrate before recording any such confession he shall inquiry about any ill-treatment by police. He shall explain that he is magistrate and no concern with police. He shall further explain to person making it that he is not bound to make confession and that if he does so, it may be used as evidence against him. 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. Where the magistrate did not explained the accused the requisite condition for making confession then such confession cannot be taken into consideration. Oath shall not be administered. The magistrate under duty to see the above mentioned warning is brought hone to mind of person making the confession. In the case of **Babubhai Udesinh parmar v. State of Gujarat** <sup>6</sup>Hon'ble supreme court explained that in recording judicial confession the safeguards provided for the benefit of accused in section 164 have to be

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<sup>4</sup> State of U.P. v. Singhara singh, AIR 1964 SC 358.

<sup>5</sup> Mahabir Singh v. State of Haryana, AIR 2001 SC 2503.

<sup>6</sup> AIR 2007 SC 420.

complied in better spirit and not in routine and mechanical manner And taking of statement of accused on path is prohibited.

#### 4. PROVISIONS IN CRIMINAL MANNUAL

- Every question asked and every answer given should be recorded in full in the language of court.
- The signature or mark of accused person must be affixed to confession.
- The magistrate must make the declaration at the foot of record of confession required by section 164(3) of and clause XIII of criminal manual.
- The accused should be informed that he is no longer in police custody and is asked whether he has to make any complaints of ill-treatment against the police or others responsible for his arrest and custody.
- For satisfying his voluntariness magistrate may ask following questions such as
  1. I am magistrate and I have no concern with the police. Have you understood ?
  2. You are now no longer in police custody, have you understood ?
  3. Have you any complaints of ill treatment ?
  4. Do you desire to examine your person ?
  5. Do you wish to make any statement?
  6. Why you are making condition ?

#### Manner of recording

Any such confession should be recorded in the manner as per sec 281 i.e., record of examination of accused as same as statement of accused under section 313. Metropolitan magistrate shall record the memorandum of substance as part of record. Magistrate and sessions court shall record it in question answer form in the language of accused. This record shall be shown or read to accused or interpreted to him. He has liberty to answer any questions or add it's answer. It shall be signed by person making the confession. This procedure shall not applicable to Summary trail. Hon'ble Supreme court explained in the case **Dhananjay Reddy v. State of Karnataka**<sup>7</sup>, if there is no sign of person making confession it is not admissible. The magistrate shall make a memorandum at the foot of such record to the effect. It may also be recorded by audio video means in presence of advocate of accused.

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<sup>7</sup> SC criminal appeal no 1000 (1999).

### **Recording of statement (not confession)**

Any statement other than confession made under sub section (1) shall be recorded in manner provided for recording of evidence. Before filing case application for statement shall be made but examination in chief made after filing case. Magistrate has power to administer oath. Then it is send to trial court. The statement recorded under section 164 are weak piece of evidence and will have to be called in trail court for cross and chief examination. The copy of this statement is not available to the witnesses of accused but it can be made available to state's witnesses.

### **Post recording compliance**

The magistrate recording a confession or statement under this section shall forward it to magistrate by whom the case is to be inquired into or tried. Procedure to be followed-

- Endorsement on the warrant
- Police custody can't be granted
- Keeping the confession in safe custody
- Police can take copies of confession but it shall not given to accused till filing of final report.

### **5. AMENDMENT 2013 – SECTION 164(5A)**

This is the amendment made after **Nirbhaya case**<sup>8</sup> in 2013. The statement of victim under sections 354, 354A, 354B, 354C, 354D, 376(1),(2), 376A, 376B, 376AB, 376C,376D, 376DA, 376DB, 376E, 506 of Indian penal code 1860 shall be recorded in the manner as section 165(5). As soon as commission of offence is brought to the notice of police he shall make application to chief judicial magistrate to pass order to any magistrate to record such statement. If the person making statement is temporarily or permanently, mentally or physically disabled the magistrate can take help of the interpreter while recording such statement and it shall be videographed.

### **6. EVIDENTIAL VALUE AND MODE OF PROOF**

Confession may be judicial or non-judicial. When confession in made to other than magistrate

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<sup>8</sup> (2017) 6 SCC 1.

it is called non-judicial confession. It does not depend upon its communication to another. It can be made before himself, before god, before anybody. But its evidential value is less as compared to judicial confession. It is not a substantial piece of evidence. Confession made under section 164 can become substantive evidence if it is undoubted and due procedure is followed to record it. According to section 80 of Indian Evidence Act, a document produced as a record of evidence is presumed to be genuine. Confession under section 164 is presumed to be genuine and the accused need not appear before the trial court. But the statement of witnesses under section 164(5) is not genuine. The person giving the statement must appear before the trial court to prove the statement. It can be used only for the purpose of corroboration and contradiction. The statements of a victim under section 164(5A) are treated as examination in chief. The person making the statement need not come before court for chief but he must come for cross-examination. The statements of witnesses recorded by a magistrate under this section become a part of public record which does not require any formal proof. Hence the summoning of a magistrate by a sessions court to prove the recording was held to be improper.<sup>9</sup> The statement of an accused person recorded under this section was not treated as evidence against another accused person charged with the same crime, particularly when it was a self-exculpatory statement.

## **7. EFFECT OF NON COMPLIANCE WITH PROVISIONS OF SECTION 164 OR SECTION 281**

If the provisions of this section are not complied with, they can be applied to appeal, reference and revision. Section 164 does not override section 29 of the Evidence Act. Mere absence of warnings would not make the confession inadmissible, provided the court is satisfied that the accused knew that he was not bound to make a confession and if he does so it would be used as evidence against him.<sup>10</sup> Where a magistrate while recording a confession did not specifically tell the accused that he was a magistrate, it was held that such a confession is invalid as not in compliance with the provision of the section.<sup>11</sup>

The Bombay High Court has laid down: (1) A confession is not to be regarded as involuntary merely because it is retracted.

(2) As against the maker of the confession, the retracted confession may form the basis of

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<sup>9</sup> *Guruvindapalli v. State of A.P.*, 2003 Cr LJ 3253 (AP).

<sup>10</sup> *Jotish Roy v. State*, 1982 Cri LJ 269 at p. 271 (Ori HC).

<sup>11</sup> *Sanatan Bachat*, (1952) Cut 620.

conviction if it is believed to be true and voluntarily made.

(3) A retracted confession can be used against the co-accused only if it is corroborated in material particulars. The corroboration should not only confirm the general story, but must also connect the co-accused with it.<sup>12</sup>

## **8. CONCLUSION**

The section 164 gives duty on the court to record confession, statement of witnesses and accused which helps in reduces subsequent changes in the statement and ensures justice. It gives opportunity to the accused at the stage on investigation to confess his guilt. It also saves the rights of accused. In the case of **State of Assam v. Rabindra Nath Guha**<sup>13</sup> held that free legal aid must be provided to the accused produced for recording a statement. Recording of confession without providing the indigent accused with legal aid was held to be violative of article 21 of Indian constitution. If any power given to police to record confessions or statements it is apprehended that it may be misused. Therefore the purpose of special procedure is primarily to ensure that the confessions or statements are made voluntarily and freely, and not under any threat, promise, pressure or influence.

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<sup>12</sup> Bhagwandas Bhawsar, (1940) 42 Bom LR 938.

<sup>13</sup> 1982 Cr LJ 216 ( Gau).