

CHAPTER 12

Police Diaries and Statements before the Police.

The Police diaries called for under section 172 of the Code of Criminal Procedure should not be shown to accused persons, or to their agents, or pleaders, except under the circumstances stated in the second clause of section 172 of the Code, that is, when they are used by a Police officer who made them to refresh his memory; or if the Court uses them for the purpose of contradicting such Police Officer, Sessions Judges and Districts Magistrates should issue such orders as are necessary to guard against, the Police diaries being inspected by persons not entitled to see them. The right of an accused person to be furnished with a copy of a statement of a person whom the prosecution purposes to examine as its witness, whether this statement has been recorded in a police diary or otherwise, is dealt with in sections 162 and 173 of the Code.

When accused is entitled to see Police diaries or state of a witness recorded by Police.

Note—These restrictions do not apply to a person duly authorized to conduct the prosecution in any case.

2. ¹[In submitting the records of criminal cases to the High Court, the Police diaries should be separated from the records and placed in a sealed cover which should then be placed with the record. The practice of translation of the Police diaries is dispensed with.]

Instructions regarding despatch of Police diaries to the High Court.

3. As to the manner in which Police diaries may be used by Courts, the following remarks should be borne in mind :—

Use of Police diary by Court.

The Provision of section 172, that any Criminal Court may send for the Police diaries, not as evidence in the case but to aid it in an inquiry or trial empowers the Court to use the diary not only for the purpose of enabling the Police

officer who compiled it to refresh his memory, or for the purpose of contradicting him, but for the purpose of tracing the investigation through its various stages the intervals which may have elapsed in it, and the steps by which a confession may have been elicited; or other important evidence may have been obtained. The Court may use the special diary, not as evidence of any date, fact or statement referred to in it, but as containing indications of sources and lines of inquiry and as suggesting the names of persons whose evidence may be material for the purpose of doing justice between the State and the accused.

Should the Court consider that any date, fact or statement referred to in the Police diary is, or may be, material, it cannot accept the diary as evidence, in any sense, of such date, fact or statement, and must before allowing any date, fact or statement referred to in the diary to influence its mind, establish such date, fact or statement by evidence.

Criminal Courts should avail themselves of the assistance of Police diaries for the purpose of discovering sources and lines of inquiry and the names of persons who may be in a position to give material evidence and should call for diaries for this purpose.

Use of statement of witness made before Police when accused may get its copies.

4. As regards the proper use of statement made by witnesses before the Police during the course of an investigation, the provision of section 162 of the Code as amended in 1955, should be carefully studied. It would appear from the provisions of this section that no statement made by a witness to a Police Officer during the course of any investigation under Chapter XIV of the Code can be proved at all for any purpose during the trial, if the statement has not been reduced into writing. If such statement has been reduced into writing under sub-section (3) of Section 161 whether in a police diary or otherwise, a copy thereof along with other papers mentioned in sub-section (4) of section 173 of the Code, has to be furnished to the accused, free of cost, before the commencement of the

inquiry to trial unless the whole or any part of the

the statement has been excluded under sub-section (5) of the said section. Even so the use of this statement for any purpose whatever is prohibited except (a) when the person making the statement is called as a witness or the prosecution and (b) the accused or with the permission of the court the prosecution desire to use it in the manner provided by section 145 of the Indian Evidence Act, 1872 to confront the witness and thus to impeach his credit. The original written record of the statement or any portion of it which is relied upon must be put to the witness, duly proved, as required by section 145 *ibid* and then the statement can be used for impeaching the credit of the witness as stated above, (*vide* I.L.R. 7Lahore 264).

5. The procedure contemplated by section 145 of the Indian Evidence Act should be carefully followed. When a witness is found to make statements conflicting with previous statements made by him in writing or reduce into writing and it is intended to contradict him with the previous statements, the relevant portions of the previous statements should be read out to him and his attention should be called to the discrepancies and he should then be asked to offer his explanation (if any), with reference to the same. The record of the Magistrate or Judge should show clearly that this procedure has been followed. The best way of doing this would be to put direct questions reciting the relevant portions of the two statements and asking for an explanation as to the discrepancies between the same and to record fully such questions and the answers given by the witness.

Method of contradicting a witness with his previous statement.

6. It will thus appear that as a result of the provisions of section 162, Code of Criminal Procedure, a statement, made by a witness before the Police, cannot be used to corroborate his testimony in spite of the provisions of section 157 of the Indian Evidence Act (of I.L.R. : 6 Lah: 171). The first information report recorded under section 157 of the Code, however, does not fall within the scope of section 162 as it is not a statement made in the course of an investigation and

Use of First Information Report for purposes of corroboration of statement.

hence it can be used to corroborate the testimony of the person making the report if he

appears as a witness. It frequently happens, however, that the person making the first information report has no personal knowledge at all of the facts stated in the report and in such cases the report has no value except in so far as it discloses the manner in which the Police obtained the first information about the offence.

Confession made by accused to Police is admissible in evidence if it has led to discovery of any fact.

7. It has been held in *Ranun v. Crown* (I.L.R. 7 Lah, 84), that section 162 of the Code of the Criminal Procedure applies to the statements of persons examined as witnesses by the Police and not to the statement of an accused person, and that it does not modify or override the provisions of section 27 of the Indian Evidence Act in any way. Consequently a confession by an accused person to the Police, whether it has been reduced into writing or not, is admissible in evidence under section 27 of the Indian Evidence Act—if any fact is discovered as having been discovered in consequence of such a confession. As regards the extent to which such a confession can be proved. A.I.R. 1947 Privy Council 67, 1952, Supreme Court Reports 839 and AIR., 1954, Punjab 97 (F.B.) should be consulted,

Dying declaration excluded from operation of section 162, Cr.P.C.

8. It should be noted that dying declarations falling under section 32(1) of the Indian Evidence Act are excluded from the scope of section 162, Criminal Procedure Code.

Instructions for recording confession.

5. The following instructions are issued for the guidance of the Magistrates for recording confessions and statements under section 164 of the Code of Criminal Procedure. It is not intended to fetter any discretion given by the law to Magistrates as such, but it is only desired to indicate the directions under which such discretion may be exercised

- (a) Unless for exceptional reasons to be recorded in writing confessions should ordinarily be recorded in open court and during court hours.

(b) The examination of an accused person, immediately after the police brings him into court, is not desirable. Ordinarily; the

Magistrates should remand the accused to a sub-jail for a period of at least 24 hours before his statement is recorded.

Note.—Judicial lock-ups at out-lying Tehsil headquarters are hardly different from Police lock-ups and consequently remand should be to the nearest sub-Jail. It may be more convenient if in such a case confession is recorded by a Magistrate at the place where sub-jail is situate.

- (c) Before recording a confession the Magistrate should explain to the person making it that he is not bound to make a confession and that if he does so, it will be taken down and may thereafter be used as evidence against him. It should further be made clear to him that whether he makes or does not make a confession, he will not be sent back to the police custody, but will be sent to sub-jail, where the police or the investigating officer shall have no control over him. The fact that this has been done, should be recorded.
- (d) The Magistrate should invariably satisfy himself, by questioning the accused and by all means in his power, that the confession is voluntary. The Magistrate, may unless the accused objects, examine his body to ensure that no physical violence has been used. If there appear grounds for suspecting violence, he should have the accused examined. In the case of female accused and other suitable cases, a medical examination of the accused may be directed.
- (e) The provisions of Sections 163 and 164 of the Code of Criminal Procedure should be care fully complied with Sub-section (1) of section 163 of the Code of Criminal Procedure read with section 24 of the

Indian Evidence Act, provides that if a confession is caused by any such inducement, threat or promise,

offered or made, or caused to be offered or made by a police officer or person in authority in reference to the charge against the accused person, (then if in the opinion of the court the inducement, or threat or promise was) as is sufficient to give the accused person grounds which would appear to him reasonable for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him, then unless in the opinion of the Court the impression caused by any such inducement, threat or promise has been fully removed, such confession is irrelevant, that is, it cannot be used as evidence in any criminal proceedings.

- (f) Under sub-section (2) of section 163 of the Code of Criminal Procedure for a confession of an accused person made in the course of a police investigation to have any value, it must be one which the accused person was disposed to make of his own free will. Before recording any such confession the Magistrate is bound to question the accused person to that effect and unless upon such Questioning he has reason to believe that the confession is voluntary, he should not make the memorandum required under section 164 at the foot of the record. He cannot say "I believe that this confession was voluntarily made" unless he has questioned the accused person and from that questioning, has formed the belief-not a doubtful attitude of mind. but a positive belief that the confession is a statement which the accused person was disposed to make of his own free will.
- (g) It is not desirable that any police officer should be present when a confession is being recorded under section 164, except such as may be necessary to secure the safe

custody of the accused person who, in the Magistrate's opinion, cannot safely be left to other attendants. In any case, it is undesirable that the police officer making the investigation should be present.

- (h) The Magistrate should invariably question the accused person as to the length of time during which he has been in the custody of the police. It is not sufficient to note the date and hour recited in the police papers, at which the accused person is said to have been formally arrested.

The Magistrate may usefully put the following questions to the accused :—

- (1) When did the police first question you?
- (2) How often were you questioned by the police?
- (3) Were you detained anywhere by the police before you were taken formally into custody, and if so, in what circumstances?
- (4) When were you taken into custody by the police and where were you detained till you were produced before me?
- (5) Were you urged or advised by the police to make a confessional statement?
- (6) Did the police or anyone else suggest to you that you will be taken as an approver?
- (7) Has the statement you offer to make been induced by any ill-treatment and, if so, by whom?
- (8) Do you fully realize that your statement is being recorded by a Magistrate and the statement which you are about to make may be used against you at your trial?
- (9) Why do you want to make a confessional statement?
- (10) The Magistrate should question the accused with a view to ascertain the exact circumstances in which his confession was made and the connection of the police with it.

It should be the endeavour of the court to record the confession inasmuch detail as possible, with a view to elicit information from which it could be judged whether it is freely made or is the outcome of some suggestion. Anything like a cross-examination of the accused is to be deprecated, but it is important that without any attempt at heckling or endeavour to entrap the accused, the Magistrate should record his statement with as much detail as possible. The more detailed a confession is the greater are the chances of correctly estimating its value, and it is also useful to know precisely how it came to be made, to what extent the police had anything to do with the accused prior to it. In the confession itself, fullest possible particulars of the incidents involved should be mentioned and so far as possible every question and every answer should be recorded in full.

(j) The Magistrate should add to the memorandum required by section 164, of the Code of Criminal Procedure, a statement, in his own hand of the grounds on which he believes that the confession is voluntary the precautions which he took to remove the accused from influence of the police and the time, in any, given to him for resection