

## CHAPTER 13

## Confessions and Statements of Accused Persons.

The provisions of sections 164, 342 and 364 of the Criminal Procedure Code with regard to the confessions and statements of accused persons should be carefully studied. Section 164 deals with the recording of statements and confessions at any stage before the commencement of an enquiry or trial. Section 342 deals with the examination of accused persons during the course of the enquiry or trial. Section 342-A now, enables the accused to appear as a defence witness during the trial and to give evidence on oath in disproof of the charges made against him or a co-accused. Section 364 prescribes the manner in which the examination of an accused person is to be recorded.

Statement of accused at various stages explained.

2. The object of section 164. Criminal Procedure Code, is to provide a method of securing a reliable record of statements or confessions made during the course of the Police investigation, which could be used, if necessary, during the enquiry or trial. Under section 25 of the Indian Evidence Act, a confession to a Police officer is inadmissible in evidence, and hence when an accused person confesses during the Police investigation the Police frequently get it recorded by a Magistrate under section 164 Criminal Procedure Code, and it can then be used to the extent to which it may be admissible under the Indian Evidence Act.

Use of confession of accused during Police recorded by Magistrate

3. Under section 80 of the Indian Evidence Act, a Court is bound to presume that a statement or confession of an accused person, taken in accordance with law and purporting to be signed by any Judge or Magistrate, is genuine, and that the certificate or note as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such statement or confession was duly taken. The words "taken in accordance with law" occurring in this section are very important and it is essential that in recording a statement or confession under section 164; the provisions of that section

Presumption attached to confessions recorded by Magistrate and its evidential value. Safeguards provided in law to obtain a voluntary and precisely recorded confession.

should be strictly followed. The evidential value of a confession depends upon its voluntary character and the precision with which it is reproduced and hence the section provides safeguards to secure this end. These safeguards are of great importance, as confessions are often retracted at a later stage and it becomes necessary for the Court to ascertain whether the alleged confession was actually and voluntarily made. The mere fact that a confession is retracted does not render it inadmissible in evidence, but the Court has to scrutinize any such confession with the utmost care and accept it with the greatest caution. It is a settled rule of evidence that unless a retracted confession is corroborated in material particulars it is not prudent to base a conviction in a criminal case on its strength alone,—(Vide A.I.R. 1953 Supreme Court 459) unless from the peculiar circumstances under which it was made or judging from the reasons alleged or apparent, of retraction, there remains a high degree of certainty that the confession; notwithstanding its having been retracted, is genuine. (Vide 30 P.R. 1914 (cr.) and A.I.R. 1954 Supreme Court 4).

Important features  
of section 164,  
Criminal Procedure  
Code

4. Some important features of section 164 are:—

- (a) Statements or confessions made in the course of an investigation can be recorded only by a Magistrate of the first class or a Magistrate of the second class who has been specially empowered by the State Government.
- (b) Confessions must be recorded and signed in the manner provided in section 364.
- (c) Before recording any such confession the Magistrate shall 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 in evidence against him.
- (d) No Magistrate shall record any such confession unless upon questioning the person making it he has reason to believe that it was made voluntarily, failure to question

has been held to vitiate the confession. (I.L.R. 2 Lahore 325)

- (e) The memorandum set forth in section 164(3) must be appended at the foot of the record of the confession.
- (f) It is not necessary that the Magistrate receiving or recording a confession or statement should be a Magistrate having jurisdiction in the case.

Note.\_ In districts in which the experiment of separation of Judiciary from the Executive is being tried the work relating to recording of confession and statements under section 164 of the Code and dying declarations should be done by Judicial Magistrate. (Punjab Government letter No. 16848-G-55/11327, dated the 16th February, 1956, to all Deputy Commissioners in Punjab).

[8] “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 the nearest sub-jail. It may be more convenient if in such a case confession is recorded by a Magistrate at the place where the 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 by a Medical Officer, if possible. In 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 carefully 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 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.

- (g) 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 use fully 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?
  - i. (i) 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 who record the confession in as much 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 as far as possible, every question and 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, if any, given to him for reflection.”}

<sup>[9]</sup>6. The confession should be recorded in the following forms : —

Form of recording confession made by an accused person before

Magistrate of the	Class.
Taluka _____ /Sub-Division	District
(i) The accused _____ is brought by _____	
(Sub) Inspector	Court
Police _____ before me at my _____ at (here	
Head Constable	Camp
<u>A.M.</u>	
enter the time) _____ to have his confession recorded, a letter _____ P.M.	
_____ from (here give the officer's designation)	

Memo.

given to me is dated \_\_\_\_\_ and is attached to the

Here } record. I have ascertained that the  
 enter the } offence was, committed at \_\_\_\_\_ on  
 name of } \_\_\_\_\_ at \_\_\_\_\_ A.M.  
 place,  
 day and

peon

(ii) The accused is placed in custody of my \_\_\_\_\_ and  
armed police Constable

(Sub) Inspector

the Police \_\_\_\_\_ is directed to leave the premises.

Head Constable

I have satisfied myself that there is no policeman in the Court or in any place whence the proceedings could be seen or heard except such armed police constables not concerned in the investigation of the crime as are necessary to guard the accused.

(iii) The accused is asked if he is disposed to make confession of his own free will.

He replies as follows:—

(iv) The body of the accused is examined without his objection. The result of the examination is as follows, namely:—

(v) The accused is asked to give details as to the length of time during which and the places where he has been in the custody of the police. He replies as follows : —

\*State, time in  
accused's own  
language }

"I was arrested \* \_\_\_\_\_ \*A.M.  
P.m.

on \_\_\_\_\_ in the village I was  
Town of  
City

Give place,  
time and day. }

taken to \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_

Insert time in  
accused's own  
language also }

I was sent to you from \_\_\_\_\_ at \_\_\_\_\_  
on \_\_\_\_\_."

(vi) Herein give the question specified in clause (h) of the preceding paragraph as well as the answer given to each question by the accused.

Q. \_\_\_\_\_

A. \_\_\_\_\_

Q. \_\_\_\_\_

A. \_\_\_\_\_

Statement of accused.

\_\_\_\_\_  
\_\_\_\_\_

(Sd.) . . . ,  
Magistrate.}

I have explained to \_\_\_\_\_ 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 his confession was voluntarily made. It was taken in my presence and hearing and was read over 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.

Dated.

(Sd.). .

. .

Magistrate.

The accused has been forwarded to Sub-jail \_\_\_\_\_

Magistrate.

7. An accused person who has made confession before a Magistrate should be sent to the judicial lock up and not made over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required, and an order obtained from the Magistrate for his delivery to them for the specific purposes named in the application. If an accused person, who has been produced before a Magistrate for the purposes of making a confession, has declined to make a confession or has made a statement which is unsatisfactory from the point of view of the prosecution he should not be remanded to Police custody.

Accused who has made a confession should not be kept in Police Custody, but, should be kept in Judicial lock-up separate from other prisoners.

\*Note:- In districts in which the experiment of separation of judiciary from the executive is being tried, the confession should be recorded by a Judicial Magistrate. (Punjab Government letter No. 16848-G-55/11327, dated the 16th February, 1956.).

8. When remanding to the lock-up an accused person who has made a confession, the Magistrate shall record an order for him to be kept separate from other prisoners as far as may be practicable.



Accused can be examined to explain the prosecution evidence against him and not to fill up gaps in that evidence

9. Section 342 of the Code empowers the Court to put questions to the accused at any stage of enquiry or trial to enable him to explain any circumstances appearing in evidence against him. The questions put under this section must be confined to the points brought out in the evidence and should not be in the nature of cross-examination of the accused person, Nor should the power given by the section be used to elicit information from the accused to fill up gaps in the prosecution evidence (Vide. I.L.R, 4 Lah, 55), For, the conviction of an accused person can only be based on the evidence produced by the prosecution. No oath can be administered to the accused when he is examined under section 342 and the answers given by him can only be taken into consideration in explanation of the prosecution evidence.

Accused can be questioned generally on the case only after prosecution evidence has been finished.

10. The Magistrate is allowed by section 342 of the the Code of Criminal Procedure to examine the accused at an early stage of the case for the Purpose of enabling him to explain any circumstances appearing in the evidence against him. This provision is intended for the benefit of the accused, and must not be used to elicit his defence before the prosecution evidence is complete. Magistrates sometimes question the accused generally on the case as soon as *a prima facie* case has been made out, but before the prosecution evidence is complete. This is incorrect. According to the second part of clause (1) of section 342, it is only after the completion of the prosecution evidence that the accused can be questioned generally on the case. The necessity for postponing such examination is not avoided by framing a charge at an early stage.

Failure to examine accused at the close of prosecution evidence vitiates the trial.

Even when a charge has been framed, the Magistrate should wait until the prosecution evidence is concluded before making a general examination of the accused.

11. Section 342 makes it obligatory for a Court to examine the accused generally on the case after the witnesses for the prosecution have been examined and before the accused is called for his defence. Even

when an accused person has been examined at an earlier stage the court must examine the accused generally after the close of the prosecution case and before the accused is called upon to produce his defence, so as to give him an opportunity to explain any points, which were not included in the questions put to him at earlier stages. Failure to examine the accused at the close of the prosecution evidence has been held to be an illegality which vitiates the trial (*vide* 7 I.L.R. Lahore 564).

12. The mandatory provisions of section 342 of the Code of Criminal Procedure apply as much to Sessions Judges as to Magistrates. Even when the Committing Magistrate has complied with the requirements of this section, it is not sufficient for the Sessions Court to refer to the statement of the accused as recorded by the Committing Magistrate and the Sessions Judge must make independent enquiry from the accused in the manner provided in the section.

*Vide*, 1951 Supreme Court Reports 729.

13. Under sections 251A (8) and 256 of the Code, if the accused person puts in a written statement, it should be filed with the record. But a written statement of this kind does not relieve the Court of the duty of examining the accused in Court after the close of the prosecution evidence as laid down in section 342.

Written statement  
of accused.

There should be no reading out of written statements by accused persons, but in Sessions and Jury trials so much of the statements as shall appear to the Sessions Judge to be relevant, shall be read to the jury.

14. Section 364 provides the mode in which the examination of an accused person is recorded. The questions put to the accused and the answers given by him should be distinctly and accurately recorded but the accused must confine himself to relevant answers to the questions asked by the Court. Section 364 does not prevent a Court from refusing to record irrelevant answers to questions put by it to the accused

Mode of recording  
examination of  
accused

under section 342. If necessary, the Court may even prevent the accused making lengthy irrelevant answers. The examination of the accused should be recorded in the language in which he is examined, and if that is not practicable in the language of the Court or in English. In cases in which examination is not recorded by the Magistrate or Judge himself he must record a memo. Thereof in the language of the Court or in English if he is sufficiently acquainted with the latter language. The examination must be read over to the accused and made conformable to what he declares to be the truth. The Magistrate or Judge must then certify under his own hand that the examination was taken down in his presence and hearing, and that the record contains a full and true account of what was stated.

When evidence may be led to prove that accused duly made the confession or statement.

15. Under section 533 of the Code, if any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is intended to be 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 must take evidence that such person duly made the statement recorded and such a statement may then become admissible in evidence notwithstanding the provisions of section 91 of the Indian Evidence Act, provided the error has not prejudiced the accused as to his defence on merits.

Instructions about recording confessions.

16. (i) The following instructions have been issued by the Punjab Government for the guidance of Magistrates recording confessions (Punjab Government *circular letter No, 6091-J -36/39829 (H.—Judl), dated the 19th December, 1936, to all District Magistrates in the Punjab*):—

Confession recorded should not be handed over to the Police.

[10]\* (a) The Magistrate who records a confession under section 164, Criminal Procedure should not hand over the document after ever completion to the Police officer incharge of the prisoner, but should forward it as required by sub-section (2) of that section direct to the Magistrate by whom the case is to be enquired into or tried.

Copy of recorded confession may be given to any Police.

\* (b) These instructions do not prohibit a Magistrate who has recorded a confession or statement from allowing the Police to take a copy of it before it is forwarded to the trial Magistrate, and Magistrates should always permit the Police to take a

copy if they express a desire to do so. When permission is so given the Police copy should be written out by a Police officer or clerk from the dictation of an officer of the court, in the actual presence of the Magistrate who recorded the confession.

Time and labour can be saved if the Magistrate recording a confession makes a carbon copy which can subsequently be made available for Police purposes, or alternatively dictates a copy to an official of the court at the same time as he himself writes the original.

17. Section 342A, inserted in the Code by Act No. 26 of 1955, provides that an accused person shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial. This, however, is subject to the exception that the accused shall not be so examined except on his own request in writing. Moreover the court or any of the parties cannot make the failure of the accused to put himself in the witness box a subject of any comment or presumption against the accused or any person charged with him at the same trial.