



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

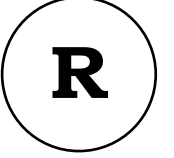
DATED THIS THE 3RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 7053 OF 2024 (GM-RES)

BETWEEN:



...PETITIONER

(BY MS.SPOORTHY COTHA AND
SRI HARI OM TIWARI, ADVOCATES)

AND:

1. STATE OF KARNATAKA
BY VARTHUR PS
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU – 560 001.
2. LALGIRI
AGED ABOUT 31 YEARS
S/O INDRAGIRI
RESIDING AT 2ND CROSS





VAJAPEYINAGAR
BOMMANAHALLI
BENGALURU – 560 068.

3. WASIM PASHA
AGED ABOUT 38 YEARS
S/O MOULA ALI ATTHARA
RESIDING AT NO.30, RAM NIVAS
7TH 'A' CROSS, KALAPPA LAYOUT
BASAVANAGAR
BENGALURU – 560 037.

...RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP FOR R-1;
R3 IS SERVED AND UNREPRESENTED)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA, READ WITH SECTION 482 OF
CR.P.C., PRAYING TO CALL FOR RELEVANT RECORDS; QUASH
THE ORDER DATED 20.02.2024 PENDING ON THE FILE OF THE
ADDL.DISTRICT AND SESSION JUDGE AND SPECIAL JUDGE
FOR POCSO CASES(FTSC-II), BENGALURU RURAL, FOUND AT
ANNEXURE-G.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner - defacto complainant is before the Court calling in question an order of the Additional District and Sessions Judge and Special Judge for POCSO Cases (FTSC-II), Bengaluru Rural dated 20-02-2024, by which the concerned Court declines to summon the Magistrate for examining the veracity of the statement made by the victim under Section 164 of the Criminal Procedure Code, 1973 ('Code' for short).

2. Heard the learned counsel Ms. Spoorthi Cotha appearing for the petitioner and Smt. Rashmi Patel, learned High Court Government Pleader appearing for the 1st respondent.

3. Facts adumbrated are as follows:

On 14-07-2014, a complaint comes to be registered alleging sexual assault of the minor daughter of the defacto complainant at Vibgyor High School. A crime then comes to be registered in Crime No.155 of 2014 for offences punishable



under Section 376 of the IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short). Police conduct investigation and file a charge sheet for the afore-quoted offences under Section 376 r/w 202 of the IPC and Sections 4, 6 and 21 of the POCSO Act against respondents 2 and 3 who had allegedly committed the act of sexual assault on the minor daughter of the petitioner – defacto complainant. The concerned Court takes cognizance of the offence and the matter is pending as Spl.C.157 of 2014. What has driven the defacto complainant to this Court, at this juncture, is not the merit of the matter, but the proceedings during the trial, which has by itself taken 10 years to reach this stage. Therefore, the petitioner-complainant is before the Court calling in question the statement recorded of the child victim under Section 164 of the Code and seeks speedy disposal of the proceedings in Spl.C.157 of 2014. The co-ordinate Bench of this Court grants an interim order of stay of further proceedings before the concerned Court, by order dated 07-03-2024 and the stay is still operating in the case at hand. The case now is 12 years old.



4. The learned counsel appearing for the petitioner Ms. Spoorthi Cotha taking this Court through the statement and the provisions of the Code and the POCSO Act would submit that examination of the Magistrate, in the case at hand, is imperative for twin reasons, one, corroboration of the statement and two, there is no signature of the victim after recording of the statement under Section 164 of the Code. Therefore, if the statement recorded under Section 164 of the Code, is not given credence, the entire case of the prosecution would tumble down and the accused would walk away with an acquittal. It is, therefore, the learned counsel submits that the examination of the Magistrate, in the aforesaid twin circumstances, is imperative and the concerned Court has erred in not permitting the Magistrate to be examined in the case at hand.

5. *Per contra*, the learned High Court Government Pleader appearing for the 1st respondent would refute the submissions in contending that the Magistrate who recorded the statement under Section 164 of the Code, cannot be summoned for examination in a routine manner. The learned High Court Government Pleader further, taking this Court through the



records would submit that the Magistrate has already recorded that the victim's signature and the Magistrate's signature was missing. Therefore in those circumstances, the petitioner is before this Court on the ground that the Magistrate who recorded the statement and did not affix his signature or the signature of the victim is necessary to be brought in for the evidence to be proved.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts, at this stage, lie within a narrow compass. **The gravamen of the grievance that has propelled the *de facto* complainant to the doors of this Court is the refusal of the learned Special Court to summon the learned Magistrate for the purpose of recording evidence. The edifice of the grievance rests upon two perceived infirmities in the statement recorded under Section 164 of the Code. First, it is urged that the statement does not bear the signature of the victim**



child. Secondly, it is contended that the learned Magistrate who recorded the statement has also not appended his signature thereto.

STATUTORY PROCEDURE:

8. The recording of the statement of a child victim or a witness is not left to the ordinary procedural regime of criminal law, but is also governed by the special protective architecture of the POCSO Act. Sections 24, 25 and 26 of the POCSO Act constitute a self-contained code, meticulously designed to preserve the dignity and security of the child though the recording is under Section 164 of the Code.

SECTION 164 OF THE CR.P.C.:

9. Section 164 of the Code which deals with the procedure for recording of confessions and witness statements by the Magistrate reads as follows:

**"164. Recording of confessions and statements.—
(1) Any Metropolitan Magistrate or Judicial Magistrate 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 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 281 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 Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(5-A)(a) In cases punishable under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, sub-section (1) or sub-section (2) of Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB, Section 376-E or Section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided 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 further 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 videographed.

(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 137 of the Indian Evidence Act, 1872 (1 of 1872) 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.



(6) 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."

In terms of Section 164(1) of the Code a Judicial Magistrate is empowered to record a confession or statement made during the course of investigation or at any time prior to the commencement of the inquiry or trial. Section 164(5) mandates that every statement, other than a confession, shall be recorded in the manner prescribed for recording evidence, as the Magistrate considers best suited to the circumstances of the case. Such magistrates would also have the power to administer oath to the maker of the statement. Section 164(5-A) which was introduced subsequently, to afford greater protection to victims of sexual offences, obligates the Judicial Magistrate to record the statement of the victim at the earliest upon the offence being brought to the notice of the police. The statements of victims under Section 164(5-A) is to be recorded following the procedure provided under Section 165(5).



RECORDING OF STATEMENT OF THE CHILD:

10. Chapter VI of the POCSO Act deals with the procedure for recording statements of child victims/witnesses. Sections 24, 25 and 26 of Chapter VI of the POCSO Act read as follows:

"Chapter VI PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

24. Recording of statement of a child.—(1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

25. Recording of statement of a child by Magistrate.—(1) If the statement of the child is being recorded under Section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:



Provided that the provisions contained in the first proviso to sub-section (1) of Section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under Section 207 of the Code, upon the final report being filed by the police under Section 173 of that Code.

26. Additional provisions regarding statement to be recorded.—(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means."

A careful and meaningful reading of the aforesaid provisions leaves little room for doubt. The POCSO Act, despite its elaborate procedural safeguards, nowhere



HC-KAR

NC: 2026:KHC:33285
WP No. 7053 of 2024

mandates that a child whose statement is recorded under Section 164 of the Code must append his or her signature to such statement. This legislative omission is neither inadvertent nor accidental. It is a conscious recognition of the peculiar vulnerability of child victims. The POCSO Act extends its protective mantle to every child below eighteen years of age. A victim could be a toddler scarcely capable of speech, a child of tender years unable to comprehend the significance of a signature, or an adolescent traumatised by the very incident that necessitates the recording of the statement. To insist upon the signature of every child, irrespective of age, maturity or mental condition, would be to import into the statute a requirement which the legislature, in its wisdom, deliberately refrained from engrafting.

SUMMONING OF THE MAGISTRATE:

11. The question now is, whether a Magistrate who records a statement under Section 164 of the Code can thereafter be summoned to depose regarding the



circumstances of such recording is no longer *res integra*. The issue received exhaustive consideration at the hands of the Division Bench of the High Court of Madras in the case of **MURUGASAMY V. STATE, REP. BY INSPECTOR OF POLICE¹**, wherein, the Division Bench observes as follows:

"....."

a. The Section 164, Cr.P.C. — Statement of victim/Witness:

6. The institution of Police preceded the formation of the Magistracy as we know it today. The Magistracy in the Madras Presidency owes its formation to Madras Regulation No. VI of 1802 A.D. - "A regulation for the guidance of Magistrates in apprehending persons charged with crimes or offences and bringing them to trial". It may be interesting to extract Articles IV & V of the above Regulation:

.....

7. A reading of the above provision in the 1882 Code shows that after recording the Statement, the Magistrate was directed to send the same to the Magistrate by whom the case is to be enquired into or tried.

8. Since 1882, in all the subsequent Codes, we have been following the same template upto the present Code, viz., the 1973 Code, of course, with some variations in individual provisions. We are emphasising this to show that after the repeal of the 1861 Code, there has been a slow and steady separation of the Police from the Magistracy and after the Constitution of India came into force, in tune with Article 50, the present 1973 Code has

¹ 2017 SCC OnLine Mad 38316



completed the separation between the functions of the Police and the Magistracy.

9. Even during the currency of the 1898 Code, the Privy Council recognised the cleavage in the functions, as could be seen from the Statement of law in *Emperor v. Khwaja Nazir Ahmad*, AIR 1945 PC 18, wherein, it has been held that the functions of the judiciary and the Police are complementary and not overlapping.

10. As described above, at one point of time, the Magistracy actively assisted the Police and slowly, its role got defined and a stage came where the Magistrates were required to aid the Police in the investigation of offences by performing the following functions, *inter alia*:

- a. **Recording the Statement of Witnesses under Section 164, Cr. P.C.**
- b. Recording the Confession of the Accused under Section 164, Cr. P.C.
- c. Recording the Dying Declaration
- d. Conducting Test Identification Parade
- e. Sending the weapons, handwritings, signatures and samples to the expert for opinion

11. The aforesaid magisterial functions are vestiges of the 1861 Code. **The *raison d'être* for the Police seeking the help of the Magistrate to have the Statement of a Witness recorded under Section 164, Cr. P.C. is not far to seek. A Statement recorded by the Police under Section 161(3) of the Code can be used only to contradict the maker in the Witness box and it cannot be used to corroborate him. The Police felt the need to have the Section 164, Cr. P.C. Statement of a Witness, whom they suspect would turn hostile during trial, recorded so that he would think twice before resiling from his earlier version and if he does not resile, his Section 164, Cr. P.C. Statement can be used for corroborating his evidence in the trial. If he resiles, he may be prosecuted for perjury.**



13. When a Magistrate records the Statement of a Witness, it has a higher sanctity than the one recorded by the Police. The oft-levelled allegation that the Police themselves have recorded facts under Section 161(3), Cr. P.C. that were not stated by the Witness thus stands mitigated when the Magistrate records the Statement.

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21. From a reading of the above, it is seen that after recording the Statement, the Magistrate is required to send the same immediately to the jurisdictional Magistrate. However, in *State of Karnataka by Nonavinakere Police v. Shivanna alias Tarkari Shivanna*, (2014) 8 SCC 913, the Supreme Court has issued certain directions in exercise of powers under Article 142 of the Constitution of India which read as under:

"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, Cr. P.C. A copy of the Statement under Sections 164, Cr. P.C. should be handed over to the investigating officer immediately with a specific direction that the contents of such Statement under Section 164, Cr.P.C. should not be disclosed to any person till Charge-sheet/report under Section 173, Cr. P.C. 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."

(emphasis supplied)

22. In fact, the Supreme Court, in Paragraph No. 20 in *Shivanna* (supra), directed that the Police throughout the country should follow the mandate strictly. Thus, the Supreme Court has, by Judicial Order, expanded the contours of Section 164(6), Cr. P.C. by mandating the Magistrate recording the Statement under Section 164, Cr. P.C. to hand over a copy to the Police immediately. **Therefore, we propose to harmonise Section 164(6), Cr. P.C. and the Supreme Court mandate in *Shivanna* (supra) by directing the Magistrate recording a Statement under Section 164 of the Code to take two photocopies of the Statement, and after certifying them, issue one to the Investigating Officer, keep the other in his custody and then send the original to the jurisdictional Court. How this method proposed by us will enure to the benefit of the Accused also can be best explained by referring to another case that was dealt with by one of us (P.N. Prakash, J.).**

.....

24. Yet another disheartening part is that **the Magistracy seems to be oblivious of the significance of the amendments that have been introduced in Section 164, Cr. P.C. by the Criminal Law (Amendment) Act (13 of 2013) with effect from 3.2.2013, after the Nirbhaya episode and the consequent Justice Verma Committee Report on Amendments to Criminal Law (23rd January 2013), which read as follows:**

"(5-A) (a) In cases punishable under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, sub-section (1) or sub-section (2) of Section 376, Section 376-A, Section 376-B, Section 376-C, Section 376-D, Section 376-E or Section 509 of the Penal Code, 1860, the Judicial Magistrate shall record the Statement of the



person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the Police:

Provided 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 further 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 videographed.

(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 137 of the Indian Evidence Act, 1872 (1 of 1872) 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."

25. Indubitably, Section 164(5-A), Cr. P.C. is of far-reaching significance in relation to trial of a rape case. Section 164(5-A), Cr. P.C. states that if the maker of the Statement is temporarily or permanently, mentally or physically disabled, the Statement made by such a person shall be considered as substantive evidence by the Trial Court and the maker need not be examined-in-chief, but, can be subjected to cross-examination on the basis of the Statement recorded under Section 164(5-A), Cr. P.C. This is to save the victim from the embarrassment of explaining to the Trial Court, repeatedly, as to how she was sexually assaulted.

26. In the case at hand, as already stated, the victims, viz., "A", "B", "C" & "D" are deaf and dumb children whose Statements were recorded by the Magistrate under Section 164, Cr. P.C. with the help of an Interpreter. Hence, it is open to the Trial Court to treat those Statements as their examination-in-chief, if they satisfy the conditions stated in Section 164(5-A)(a) & (b) and the said Witnesses can be subjected cross-examination straightaway.



27. The provisions of Section 376, I.P.C., have been telescoped into the POCSO Act and when a rape is committed on a minor girl, it is considered as an aggravated form of crime. Therefore, whatever the Supreme Court has stated in *Shivanna* (supra), would apply in all its fours for investigation under the POCSO Act as well, especially in the light of Section 25 of the POCSO Act which reads as follows:

"25. Recording of Statement of a child by Magistrate.— (1) If the Statement of the child is being recorded under Section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (herein referred to as the Code), the Magistrate recording such Statement shall, notwithstanding anything contained therein, record the Statement as spoken by the child:

Provided that the provisions contained in the First Proviso to sub-section (1) of Section 164 of the Code shall, so far it permits the presence of the advocate of the Accused shall not apply in this case.

(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under Section 207 of the Code, upon the Final Report being filed by the Police under Section 173 of mat Code."

28. At this juncture, it is pertinent to point out that one should not get confused with the demand of the Accused for Statements, because, an Accused will not be entitled to these records until the Final Report is filed, as laid down by a Full Bench of this Court in *Selvanathan @ Raghavan v. State by Inspector of Police*, 1988 LW (Cri) 503.

29. The Accused does not stand on the same footing as that of the Investigating Officer because the Investigating Officer is enjoined by Chapter XII of the Cr. P.C. to conduct investigation and recording of Statement under Section 164, Cr. P.C. is part of the investigation process and the Investigating Officer is required to complete the investigation expeditiously and file the Final Report before the jurisdictional Court.



30. We have also referred to the cumbersome procedure by which the Police are required to first make an application to the Chief Metropolitan Magistrate/Chief Judicial Magistrate, as the case may be, for nominating a Magistrate for the purpose of recording the Section 164, Cr. P.C. Statement and thereafter, taking the victim/Witness to the said Magistrate for the said purpose. This will undoubtedly take more than 24 hours and it will fall foul of the Supreme Court's direction in *Shivanna* (supra).

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40. As regards the POCSO Act, Sections 25 & 26 place certain additional safeguards while recording the Statement of a child victim under Section 164, Cr. P.C. Section 28 of the POCSO Act provides for creation of a Special Court by a process of designation. Section 33 of the POCSO Act, empowers the Special Court to take cognizance of any offence without the Accused being committed to it for trial. Thus, for all practical purposes, a Special Court that has been created in a district by designating a Court of Sessions, becomes a Court of Original jurisdiction and the Special Judge is invested with the powers of a Magistrate. That is why, when an FIR is registered under the POCSO Act, the same is sent to the jurisdictional Special Court and not to the jurisdictional Magistrate. In ***In Re : the Registrar (Judicial), High Court, Madras-600 104*** (supra), the Division Bench has held that a Special Court is empowered to pass Orders of remand under Section 167, Cr. P.C. Thus, when Section 167, Cr. P.C. has been made applicable to the Special Courts, there can be no fetters in extending the provisions of Section 164(1), Cr. P.C. to the Special Courts as well, for the purpose of recording the Statement of victims/Witnesses.

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46. A Division Bench of this Court, in *R. Murugesan v. State*, (2014) 1 LW (Cri) 339, in which, one of us (P.N. Prakash, J.) was a part, has elaborately discussed the evidentiary value of the Statement of a Witness recorded under Section 164, Cr. P.C. Despite the directions of the said Division Bench that the Magistrate recording the Statement under Section 164, Cr. P.C. need not be examined as a



HC-KAR

NC: 2026:KHC:33285
WP No. 7053 of 2024

Witness, the essence of those directions has not percolated into the Subordinate Judiciary. In the said Judgment, the Division Bench has set out the procedure as to how Public Prosecutors in the Trial Courts should deal with a Witness, *vis-a-vis*, his Statement recorded under Section 164, Cr. P.C. The Division Bench has placed reliance upon the Judgment of the Supreme Court in *State of Delhi v. Shri Ram Lohia*, AIR 1960 SC 490, and the Division Bench Judgment of the Andhra Pradesh High Court in *Bashapaka Laxmiah v. State of Andhra Pradesh*, 2001 Cri LJ 4066, to conclude that a Magistrate recording the Statement of a Witness under Section 164, Cr. P.C. need not be examined as a Witness in the trial of the case. We are extracting below the relevant passages from *Shri Ram Lohia* (supra) and *Bashapaka Laxmiah* (supra):

Shri Ram Lohia:

“Statements recorded under Section 164 of the Code are not substantive evidence in a case and cannot be made use of except to corroborate or contradict the Witness. An admission by a Witness that a Statement of his was recorded under Section 164 of the Code and that what he had stated there was true would not make the entire Statement admissible; much less could any part of it be used as substantive evidence in the case.

A Judge commits an error of law in using the Statement of a Witness under Section 164 as a substantive evidence in coming to the conclusion that he had been won over.”

Bashapaka Laxmiah:

“18. Repeatedly, we have issued Instructions that Statement under Section 164, Cr. P.C. is not a substantive piece of evidence. It is not necessary to call the Magistrate to give evidence to prove Section 164-Statement. Statements under Section 164, Cr. P.C. are available to the defence for contradiction by obtaining the certified copies. The Section 164 Statement



recorded by the Magistrate is a public document. Such practice, hereinafter, be stopped."

47. In Re:— To issue certain Guidelines regarding inadequacies and deficiencies in Criminal Trials, 2017 SCC OnLine SC 298, the Supreme Court has called for remarks from various stakeholders on the suggestions made by Justice Basant, a retired Judge of the Kerala High Court, for streamlining and putting in place good practices in the conduct of Criminal trials. One such suggestion is as under:

"11. The practice of omnibus marking of Section 164-Statement of Witness deserves to be deprecated. The relevant portion of such prior Statements of living persons used for contradiction or corroboration under Section 145/157 of the Evidence Act deserves to be marked separately and specifically."

48. In the light of the above discussion, we seek to build upon the Division Bench Judgment of this Court in *Murugesan* (supra) by holding that even in cases, where, the Witness completely denies having given a Statement under Section 164, Cr. P.C. the Magistrate need not be examined as a Witness and the factum of the Witness having given such a Statement to the Magistrate and the contradiction between his evidence and his previous Statement can be proved in the examination of the Investigating Officer, on whose sponsorship, the said Witness was produced before the Magistrate for the purpose of recording his Statement. This, in our considered opinion, will be in consonance with the observations of the Privy Council in *Nazir Ahmad v. The King Emperor*, AIR 1936 PC 253; and *Kashmira Singh v. State of Madhya Pradesh*, (1952) 1 SCC 275 : AIR 1952 SC 159, about which, we shall discuss in detail in the subsequent paragraphs.

49. A Statement recorded under Section 164, Cr. P.C. is a Public document within the meaning of Section 74(1)(iii) of the Evidence Act as held by a Full Bench of this Court in *State of Madras v. Krishnan*, AIR 1961 Mad 92. The original of



the Statement, which would form part and parcel of the Court records, is a primary evidence under Section 62 of the Evidence Act for proving the fact that the said Witness had appeared before the Magistrate on the date found thereon and had given a Statement, but, it does not prove the veracity of its contents.

50. We now give our reasons for directing the Judicial Officers to take two photocopies of the documents like Section 164, Cr. P.C.—Statement, Dying Declaration and Test Identification Parade Report. During the hearing of CrI.O.P. No. 5233 of 2010, it was brought to the notice of a learned Single Judge of this Court (S. Nagamuthu, J., as His Lordship then was) that Dying Declarations, Section 164, Cr. P.C. Statements and Test Identification Parade Reports are being sent by the recording Magistrates to the jurisdictional Courts by ordinary post, resulting in those important documents getting lost in transit. It was also brought to the notice of the said learned Judge that in a particular case, the Dying Declaration was lost in transit. Pursuant to the directions issued by the learned Single Judge, the High Court issued a Circular in P. Dis. No. 152/2010 dated 13.12.2010 by which Magistrates have been directed to send these important documents through a Special Messenger or through Registered Post with Acknowledgment Due, to the jurisdictional Court. Therefore, as a measure of abundant caution, it will be desirable to take two photocopies and after certifying them, one should be furnished to the Investigating Officer free of cost and the other should be retained by the Magistrate so that if the original is lost in transit, there will be a back-up.

51. As held by a Full Bench of this Court in *Selvanathan @ Raghavan* (supra), Dying Declaration, **164 Cr. P.C.—Statement** and Confession Statement and Test Identification Parade Report **are documents which cannot be shared with the Accused until the Final Report is filed. If the certified copies of these documents are directed to be taken for the purpose**



of issuing to the Police, there is every possibility of leakage via the Copyist Department of the Court. As discussed by us above, these documents are confidential documents till the filing of the Final Report and they are *sine qua non* for the Investigating Officer and he cannot be ping ponged for getting certified copies of these documents through the Copyist Department of the Court. Therefore, it is desirable that the photocopies are taken under the direct supervision of the Judicial Officer.

To summarise:

- **A Statement of a Witness/Victim can be recorded under Section 164, Cr. P.C. only at the instance of the Investigating Officer of the case.**
- It is not necessary for the Investigating Officer to approach the CMM/CJM with an Application for nominating a Magistrate to record the Statement of a Witness/Victim under Section 164, Cr. P.C.
- A Magistrate, whether he has got jurisdiction or not, to Inquire into or try the case, can record the Statement of a Witness/Victim under Section 164, Cr. P.C. on the request of the Investigating Officer of the case.
- The Presiding Officer of a Special Court which has been empowered to take cognizance of an offence without there being a need for committal may also record the Statement of a Witness/Victim under Section 164, Cr. P.C. on the request of the Investigating Officer of the case.
- **After recording the Statement of a Witness/Victim under Section 164, Cr. P.C. the Judge/Magistrate shall arrange to take two photocopies of such Statement, under his direct supervision and certify the same as true copies.**



- **He shall furnish one such certified photocopy of the Statement to the Investigating Officer, free of cost, immediately, with a specific direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and Final Report filed.**
- **The other Certified Photocopy of such Statement shall be kept in a sealed cover in the safe custody of the Judge/Magistrate.**
- **If the Magistrate who had recorded the Section 164, Cr. P.C.-Statement is not the jurisdictional Magistrate, he shall send the original Statement to the jurisdictional Court, either through a Special Messenger or by Registered Post with Acknowledgment Due.**
- **If the Judge/Magistrate who had recorded the Section 164, Cr. P.C.-Statement is himself the jurisdictional Magistrate, he shall keep the original of the Statement in the case records."**

The Division Bench, after traversing through the historical evolution of the Magistracy, the gradual constitutional separation between investigative and judicial functions, the object underlying Section 164 of the Code, and the evidentiary significance of statements recorded thereunder, delineated the limited circumstances in which the Magistrate who records such



a statement may be summoned as a witness.

12. **The principles enunciated therein commend complete acceptance. The Division Bench unmistakably underscores that the Magistrate is not to be summoned merely because a party entertains a speculative apprehension regarding the authenticity of the statement or seeks to cure perceived procedural irregularities. The judicial act of recording a statement under Section 164 of the Code enjoys a presumption of regularity, and the sanctity attached to such proceedings cannot be lightly diluted by routinely compelling judicial officers to enter the witness box.**

13. The afore-quoted judgment of the Division Bench of the High Court of Madras was rendered following an earlier judgment of another Division Bench of the same High Court in the case of **R. MURUGESAN v. STATE²**, wherein the Division Bench while elucidating the procedure to be followed for

² **2014 SCC OnLine Mad 273**



marking and proving witness statements recorded under Section 164 of the Code, has observed as follows:

“.... .”

10. A statement under Section 164, Cr.P.C is not substantive evidence. What is the meaning of the expression “Substantive Evidence”? The Evidence Act does not define this. It is the creature of Judiciary and its meaning is traceable to the definition of the word Evidence in Section 3 of the Evidence Act.

““Evidence” means and includes—

(1) All statements, which the Court permits or requires to be *made before it* by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) All documents including electronic records produced for the inspection of the Court;

such documents are called documentary evidence.”

11. Oral evidence means statements made by a witness in the witness stand on oath in the Court which conducts the inquiry or trial in connection with matters of fact. This is called Substantive evidence. It should not be confused with the expression Substantial evidence. Substantial evidence falls within the province of appreciation of evidence. Statements of witnesses in the Trial Court about facts they have perceived by senses is Substantive evidence.

12. A statement under Section 164, Cr.P.C., 1973 is recorded by a Magistrate during the investigation of a case under Chapter XII of the Code of Criminal Procedure. The Magistrate is not conducting an inquiry in relation to matters of fact like a Trial Court. He merely records the



HC-KAR

NC: 2026:KHC:33285
WP No. 7053 of 2024

statement of the persons on a request made by the Investigating Officer.

13. The witness, who gave the statement under Section 164, Cr.P.C., should tell the facts known to him again as evidence before the Trial Court. After narrating the facts, he should depose that he had already stated the same thing earlier before the Magistrate. Then the Trial Court Prosecutor should show him the Section 164-Statement and prove it as an exhibit through him.

14. The narration of the events by the witness in the Trial Court is Substantive evidence. Then his further statement before the Trial Court that he told the same facts earlier to the Magistrate is also a Substantive piece of evidence. To corroborate and prove that he in fact gave a statement to the Magistrate, his Section 164-Statement should be shown and marked and proved through him. Why should it be shown and marked through him? Because Section 157, Evidence Act states:

"157. Former statements of Witness may be proved to corroborate later testimony as to same fact.— In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

15. A statement recorded under Section 164, Cr.P.C., 1973 is a former statement given before an authority, namely a Magistrate, who is legally competent to record the statement by virtue of the power conferred upon him by Section 164, Cr.P.C., 1973 in order to aid the investigation conducted under Chapter XII of the Code. Section 157, Evidence Act says that the former statement must be proved. Therefore the witness, who gave the Section 164-Statement should be made to prove it while marking the



HC-KAR

NC: 2026:KHC:33285
WP No. 7053 of 2024

statement through him. If the witness admits in his evidence before the Court that he gave a former statement to the Magistrate and the statement shown to him is that, then the Section 164-Statement stands proved. In that case the Magistrate, who recorded the Section 164-Statement need not be examined.

16. If the witness completely denies that he gave a former statement before the Magistrate, then the Prosecutor should dispute it and suggestions should be put to him that he did give a statement and his signature in the statement should be marked. If he denies the signature also, then that also should be disputed and suggestions that the signature found in the Section 164-Statement is that of his should be put to him. Thereafter the Magistrate should be examined and the Section 164-Statement should be marked and proved. The Investigating Officer should also say that on his request the Magistrate recorded the statement of that witness on such and such date. Only this will complete the circle in a case where the witness denies everything. Even if this process is completed and the Section 164-Statement is proved, then also the Section 164-Statement cannot be treated as substantive evidence and the Accused be convicted based on it. The Court can only give a finding that the witness, who gave the Section 164-Statement is a liar and take action against him for giving false evidence. In *State of Delhi v. Shri Ram*, AIR 1960 SC 490, it has been held:

"Statements recorded under Section 164 of the Code are not substantive evidence in a case and cannot be made use of except to corroborate or contradict the witness. An admission by a witness that a statement of his was recorded under Section 164 of the Code and that what he had stated there was true would not make the entire statement admissible; much less could



HC-KAR

NC: 2026:KHC:33285
WP No. 7053 of 2024

any part of it be used as substantive evidence in the case.

A Judge commits an error of law in using the statement of a witness under Section 164, as a substantive evidence in coming to the conclusion that he had been won over."

17. A statement under Section 164, is a corroborative piece of evidence. It corroborates the substantive piece of evidence in the Court, namely the evidence of the witness that he told the same facts earlier to a Magistrate. A corroborative piece of evidence can only corroborate a substantive piece of evidence and not another corroborative piece of evidence. In other words the 164, statement of 'A' cannot corroborate the complaint given by 'A' to the Police that formed the basis for registering the FIR.

18. The credit of a witness can be impeached under Section 155(3) of the Evidence Act by proof of former statements which are inconsistent with any part of his evidence. The procedure to bring on record the contradictions is provided by Section 145 of the Evidence Act:

"145. Cross-examination as to previous statements in writing.— A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

19. For example, if the witness has stated in the Complaint and Section 164-Statement that 'A' gave the lethal blow on the head but in the Witness Box, if he says that 'B' gave the lethal blow on the head, then there is contradiction between the Complaint and Section 164-Statement on one hand and the substantive evidence in the witness stand on the other



hand. Many a time defence counsel remain silent in the fond hope that they can highlight the contradiction by simply reading to the Judge and comparing the former statements (Complaint and Section 164-Statement) and the deposition of the witness. This is impermissible. The corroborative evidence namely the former statement should be put to him and his attention should be drawn to the contradiction between what he stated in the former statement and the substantive evidence. In the above example he should be asked, you have stated in the Court that 'B' inflicted the lethal blow, but in your Complaint and Section 164-Statement you have stated 'A' has inflicted the lethal blow, is it not? Defence counsel will get scared to ask this question because of fear that he may explain away. For that sake mandates of Section 145, Evidence Act cannot be jettisoned. If it wants to contradict the witness with a former statement there is no escape route other than Section 145 of the Evidence Act. Only contradictions between two substantive evidences can be read out to the judge. For example, in a case, if PW1 says in his evidence that 'A' gave the lethal blow and PW2 says that 'B' gave the lethal blow, then there are two contradictory substantive pieces of evidences. Then the defence Counsel can read PW1 and PW2's evidence and show the contradictions.

20. In some Courts, the Prosecution, at the commencement of the examination itself would show the Section 164-Statement to the witness and ask him:

"Is this your statement"?;
Answer:"Yes";

Then mark it through him without anything more and argue that the prosecution has proved the facts stated in the Section 164-Statement. This procedure is incorrect because Section 164, statement is not substantive evidence. Proving the factum of having given a statement to the Magistrate is different from proving the facts contained in the statement.



HC-KAR

NC: 2026:KHC:33285
WP No. 7053 of 2024

21. Why do Police have the statement of a witness recorded under Section 164? A Full Bench of this Court in *State of Madras v. G. Krishnan*, AIR 1961 Mad 92, has succinctly answered this question in the following words:

"18.The object of recording a statement under Section 164, Cr.P.C. are : (1) to use them as confession in case the person making them is ultimately charged with an offence, and (2) to deter a witness from changing his version later by succumbing to temptations, influences, or blandishments."

In the same Judgment the Full Bench has held that a Section 164-Statement is a Public Document within the meaning of Section 74(iii) of the Evidence Act. Section 80 of the Evidence Act raises a presumption that a Statement or Confession by any prisoner or Accused person, taken in accordance with law and purporting to be signed by any Judge or Magistrate is genuine. A confession duly recorded by a Magistrate in accordance with Section 164, Cr.P.C. will come under the protective umbrella of the presumption under Section 80 of the Evidence Act. We see no reason as to why the protection of Section 80, Evidence Act be denied to a statement of a witness recorded under Section 164, Cr.P.C. The presumption under Section 80, Evidence Act can by no stretch of imagination extend to the statement of facts contained in the Section 164-Statement. Presumption under Section 80, is only for the genuineness of the document and not to its contents.

22. Judicial time of Magistrates can be saved substantially if the practise of examining them in the Trial Court to prove the recording of Section 164-Statement is given up. We hold that Trial Courts should summon the Magistrate, who recorded the Section 164-Statement only when the witness denies or disowns the statement. The Andhra Pradesh High Court in *Bashapaka Laxmiah v. State of Andhra Pradesh*, 2001 CrL LJ 4066, has lamented thus:



"18. Repeatedly, we have issued instructions that statement under Section 164, Cr.P.C. is not a substantive piece of evidence. It is not necessary to call the Magistrate to give evidence to prove Section 164-Statement. Statements under Section 164, Cr.P.C. are available to the defence for contradiction by obtaining the certified copies. The Section 164, statement recorded by the Magistrate is a public document. Such practice, hereinafter, be stopped."

Of course, we do not agree with the observation in the Judgment that the defence can obtain certified copies of it because under Section 207(iv) Cr.P.C., 1973, Court is bound to supply the Section 164-Statements to the Accused."

The Division Bench in the afore-quoted judgment observes that a statement recorded under Section 164 of the Code is not substantive evidence, the substantive evidence being the testimony of the witness before the concerned Court. To prove a statement recorded under Section 164 of the Code, it must be shown to and marked through its maker, who must then acknowledge having made the statement before the Magistrate and identify the same. Once this is done, the statement stands proved and may be used for the purpose of trial. Consequently, the Magistrate who recorded the statement should not be summoned to mark such statements and should only be



summoned when the witness disputes or denies having made such statement.

14. The circumstances obtaining in the case at hand fall far short of those exceptional situations contemplated by the Division Benches of the High Court of Madras. The solitary submission advanced before the learned Special Court was that, since the learned Magistrate had not appended his signature, he ought to be summoned for examination. Such a proposition, if accepted, would strike at the very foundation of the principles expounded by the Division Benches of the High Court of Madras and convert an extraordinary course into an ordinary procedural ritual. This Court is, with profound respect, in complete agreement with the exposition of law rendered therein, and finds no reason whatsoever to depart from the same.

15. The Division Bench in **R. MURUGESAN** *supra* categorically holds that the witness statements under Section 164 of the Code can be marked through its maker, therefore, the apprehension expressed by the learned counsel for the petitioner that the statement recorded under Section 164 of the



Code may ultimately be deprived of evidentiary value is, at present, no more than a speculative anxiety unsupported either by fact or by law. The stage for evaluating the evidentiary worth of the statement has not yet arisen. Should the victim, during the course of trial, renege from the statement, or should the accused seek to impeach its evidentiary value by relying upon the absence of the signatures of either the child or the Magistrate, appropriate questions may then arise for consideration before the trial Court. That eventuality remains entirely conjectural at this juncture.

16. Even otherwise, the statutory scheme of the POCSO Act and Section 164 of the Code, does not oblige a child victim to subscribe his or her signature to a statement recorded under Section 164 of the Code. Equally, neither do the provisions of the POCSO Act and Section 164 of the Code prescribe the affixture of the Magistrate's signature as an indispensable condition precedent, for examining the validity of such recorded statements, in the manner sought to be canvassed before this Court. The submission, therefore, neither finds support in the statutory text nor in the judicial precedents governing the field.



SPEEDY TRIAL:

17. The other submission concerns the constitutional imperative of a speedy trial. The chronology of events is not in dispute. **The crime was registered in the year 2014. What has unfolded thereafter is a tragedy that ought not to have found a place in the administration of criminal justice. For more than a decade, the proceedings have languished in the corridors of the concerned Court, meandering from one adjournment to another, until they have ultimately reached this Court on an issue wholly collateral to the merits of the prosecution. Such procrastination is not merely regrettable; it is deeply disquieting.**

18. **The case at hand is not one involving an ordinary offence. It concerns the alleged rape of a child, barely 6 years of age. Every adjournment granted without compelling justification has not merely postponed a hearing; it has prolonged the trauma of a child who entered the criminal justice system as a victim**



and has remained captive to it for over ten years. Justice delayed, in cases of this nature, does not remain a mere procedural lapse - it assumes the character of a continuing injustice.

19. The reasons for the delay may indeed be manifold. Yet, whatever be their provenance, they cannot eclipse the solemn obligation cast upon every criminal Court to zealously guard against avoidable adjournments. The learned trial Court ought to have remained vigilant against repeated and indiscriminate adjournments, particularly in a prosecution under the POCSO Act. Every adjournment, in such cases, has consequences that travel far beyond the case diary. It threatens the very search for truth.

20. Even otherwise, the mandate of the POCSO Act is that the trial should be concluded within one year. It shocks the conscience of the Court that it is pending for the last 12 years. Nothing can be more appalling than case concerning rape of a minor child, pending in the Court for 12 long years. Section 35 of the POCSO Act reads as follows:



HC-KAR

NC: 2026:KHC:33285
WP No. 7053 of 2024

"35. Period for recording of evidence of child and disposal of case.—(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence."

Section 35(2) of the POCSO Act envisages expeditious disposal of cases under the POCSO Act, by requiring the Special Court to, as far as possible, conclude the trial within a period of one year from the date of taking cognizance of the offence, it is not one year, it is not two years, it is 12 long years of pendency.

21. It becomes apposite to refer to the judgment of the Apex Court in the case of **ALAKH ALOK SRIVASTAVA v. UNION OF INDIA**³, wherein the Apex Court has issued directions for speedy disposal of cases under the POCSO Act.

The Apex Court observes as follows:

"....

25. It is submitted by Mr Srivastava that in both the States, the cases are pending at the evidence stage beyond one year. **We are absolutely conscious that Section 35(2) of the Act says "as far as possible".** Be that as it may, regard being had to the spirit of the

³ (2018) 17 SCC 291



Act, we think it appropriate to issue the following directions:

25.1. The High Courts shall ensure that the cases registered under the Pocso Act are tried and disposed of by the Special Courts and the Presiding Officers of the said courts are sensitised in the matters of child protection and psychological response.

25.2. The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under the Pocso Act.

25.3. The instructions should be issued to the Special Courts to fast track the cases by not granting unnecessary adjournments and following the procedure laid down in the Pocso Act and thus complete the trial in a time-bound manner or within a specific time-frame under the Act.

25.4. The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the Pocso Act. The High Courts where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee.

25.5. The Director General of Police or the officer of equivalent rank of the States shall constitute a Special Task Force which shall ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts.

25.6. Adequate steps shall be taken by the High Courts to provide child-friendly atmosphere in the Special Courts keeping in view the provisions of the Pocso Act so that the spirit of the Act is observed."



22. Later, the Apex Court in the case of **ALARMING RISE IN THE NUMBER OF REPORTED CHILD RAPE INCIDENTS, IN RE⁴**, while taking note of the statistics showing huge pendency of trials under the POCSO Act, issued directions to the Central and State Governments for ensuring that trials for offences under the POCSO Act are expeditiously completed, in accordance with the timelines provided under the POCSO Act. The Apex Court observes as follows:

"....

2. This report shows a shocking state of affairs. What to talk of trials, in 20% of the cases even investigation is not completed within one year. Virtually, no support persons are provided and no compensation is paid to the victims. Almost two-third of the cases are pending trial for more than one year.

3. It appears that at all stages of dealing with Pocso cases commencing with the investigation up to the stage of trial, the timelines stipulated under the Act have not been complied with. From the report of Shri Rathi, it appears that one major reason for the inability of the stakeholders to meet the deadline stipulated under the Act, is lack of awareness and lack of dedication in completing investigation, etc. within the time-frame stipulated and also inadequacy of the number of courts which has resulted in cases remaining pending beyond the period mandated for completion of trial under the Act.

⁴ (2020) 7 SCC 108



4. We hope and expect that the Central Government will play a much more proactive role **to ensure that trials of cases arising out of the Pocso Act are completed in the time-frame laid down in the Act.**

5. We direct all the State Governments as well as the Union of India to do what is required to be done to ensure that all stages of investigation as well as trial, as contemplated under the Act, are completed within the time-frame by creation of additional force for investigation. We further direct the Union of India and the State Governments to take steps for sensitisation of officials associated with the investigation and also for creation or assignment of dedicated courts to try Pocso cases on top priority so that charge-sheets are filed within the mandatory period and trials are completed within the time-frame contemplated under the Act."

23. The right to a speedy trial is not a procedural luxury that may be extended or withheld at convenience. It is an indispensable facet of Article 21 of the Constitution. While the right is ordinarily spoken of in the context of the accused, it assumes equal, if not greater significance in prosecutions involving sexual offences against children. **A child who has suffered the indignity of sexual abuse cannot be compelled to relive the trauma endlessly, because the criminal justice system has surrendered to the culture of adjournments. Every unnecessary adjournment**



compounds the original injury and converts the process itself into an instrument of oppression.

24. The Apex Court, yet again, in the case of **CENTRAL BUREAU OF INVESTIGATION v. MIR USMAN ALIAS ARA ALIAS MIR USMAN ALI⁵**, following the earlier judgment in **HUSSAINARA KHATOON v. HOME SECRETARY, STATE OF BIHAR, PATNA, (1980) 1 SCC 81**, has held as follows:

“....

20. Section 309 of the Cr.P.C. (now Section 346 of the BNSS, 2023) contains a mandatory provision that in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day basis until all the witnesses in attendance have been examined unless the Court finds the adjournment of the case beyond the following day to be necessary for reasons to be recorded. The emphasis of this Section cannot be overlooked and must not be overlooked by any Judicial Officer who tries a criminal case, much less by the higher officers, like the Sessions Judges presiding over the Sessions Court, where serious offences are being tried day in and day out.

21. It is true that the court has the discretion to defer the cross-examination. But we do not approve the practice prevailing in the trial courts across the country that the examination-in-chief of a particular witness is

⁵ 2025 SCC OnLine SC 2066



recorded in a particular month and his cross-examination would follow in particular subsequent month. The legal position is that once the examination of witnesses starts the court concerned must continue the trial from day to day until all the witnesses in attendance have been examined (except those whom the public prosecutor has given up). We are at pains to note that it is almost a common practice and regular occurrence that the trial courts flout the said mandate with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flimsy grounds. The legislature itself has frowned at granting adjournment on flimsy grounds."

22. In *Mohd. Khalid v. State of W.B.*, (2002) 7 SCC 334, a three Judge Bench of this Court did not approve the deferment of the cross-examination of the witness for a long time and, deprecating the said practice, it observed as follows:

"Unnecessary adjournments give a scope for a grievance that the accused persons get a time to get over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournments lack the spirit of Section 309 of the Code. When a witness is available and his examination in chief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking."

23. In *Akil alias Javed v. State of Delhi*, (2013) 7 SCC 125 : (2012) 11 Scale 709, this Court, after surveying the earlier pronouncements, has stressed on **the compliance of the procedure and expressed its anguish that the Trial Courts are not strictly adhering to the procedure prescribed under the provisions contained in Section 231 along with Section 309 of the Cr.P.C. respectively and further emphasised that such adherence can ensure speedy trial of cases and also rule out the possibility of any maneuvering taking place by granting undue long adjournment for mere asking.**

24. In *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*, (1980) 1 SCC 81, this Court held that an expeditious trial is an



HC-KAR

NC: 2026:KHC:33285
WP No. 7053 of 2024

integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution.

25. In *A.R. Antulay v. R. S. Nayak*, (1992) 1 SCC 225, this Court declared that **speedy trial is not only the right of the accused but is also in public interest and that the right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial.**

26. In *Sher Singh v. State of Punjab*, (1983) 2 SCC 344, this Court sounded the following note of caution against delay of criminal trials:

"16... The essence of the matter is that all procedure, no matter what the stage, must be fair, just and reasonable...Article 21 stands like a sentinel over human misery... It reverberates through all stages the trial, the sentence, the incarceration and finally, the execution of the sentence."

27. To the same effect are the decisions of this Court in *Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra*, (1985) 1 SCC 275 and *Triveni Ben v. State of Gujarat*, (1989) 1 SCC 678. Even in cases where the accused had been enlarged on bail the right to a speedy trial was held to be a part of the fundamental right under Article 21 of the Constitution. The decisions of this Court in *Biswanath Prasad Singh v. State of Bihar*, 1994 Supp (3) SCC 97 and *Mahendra Lal Das v. State of Bihar*, (2002) 1 SCC 149 may be referred to in this regard.

28. It is in the light of the settled legal position that it is no longer possible to question the legitimacy of the right to speedy trial as a part of the right to life under Article 21 of the Constitution. The essence of Article 21 of the Constitution lies not only in ensuring that no citizen is deprived of his life or personal liberty except according to procedure established by law, but also that such procedure ensures both fairness and an expeditious conclusion of the trial.



HC-KAR

NC: 2026:KHC:33285
WP No. 7053 of 2024

29. In *Lt. Col. S.J. Chaudhary v. State (Delhi Administration)*, (1984) 1 SCC 722 : AIR 1984 SC 618, it was held that **it is most expedient that the trial before the Court of Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day to day. It is necessary to realise that Sessions cases must not be tried piecemeal. Once the trial commences, except for a very pressing reason which makes an adjournment inevitable, it must proceed de die in diem until the trial is concluded.**

30. In *Gurnaib Singh* (supra) this Court observed in para 34 as under:

"We have expressed our anguish, agony and concern about the manner in which the trial has been conducted. We hope and trust that the trial courts shall keep in mind the statutory provisions and the interpretation placed by this Court and not be guided by their own thinking or should not become mute spectators when a trial is being conducted by allowing the control to the counsel for the parties. They have their roles to perform. They are required to monitor. They cannot abandon their responsibility. It should be borne in mind that the whole dispensation of criminal justice system at the ground level rests on how a trial is conducted. It needs no special emphasis to state that dispensation of criminal justice system is not only a concern of the Bench but has to be the concern of the Bar. The administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity. An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same."



HC-KAR

NC: 2026:KHC:33285
WP No. 7053 of 2024

31. The right to speedy trial is implicit in Article 21 of the Constitution of India. The first written articulation of the right to speedy trial appeared in 1215 in the Magna Carta: "We will sell to no man, we will not deny or defer to any man either justice or right." Article 21 of the Indian constitution declares that "no person shall be deprived of his life or personal liberty except according to the procedure laid by law." Justice V.R. Krishna Iyer in *Babu Singh v. State of U.P.*, (1978) 1 SCC 579 : AIR 1978 SC 527 remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to "fair trial" whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings." In the case of *Sheela Barse v. Union of India*, (1986) 3 SCC 632 : (1986) 3 SCR 562, this Court has held that **the right to speedy trial is a fundamental right. Further it was stated by this Court that the consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of fundamental right."**

The Apex Court, commencing from **HUSSAINARA KHATOON** *supra* and continuing through a long and unbroken line of precedents culminating in **MIR USMAN ALI** *supra*, **has repeatedly reminded all criminal Courts that expedition is not a matter of administrative convenience, but a constitutional command. The mandate contained in Section 309 of the Code, now Section 346 of the BNSS, is**



couched in unmistakably mandatory language. Once the examination of witnesses commences, the trial is to proceed from day to day. Adjournments should be exception; but unfortunately has become a rule. The Apex Court has repeatedly deprecated this unhealthy culture of mechanical adjournments and has warned that such acts of adjournments ultimately becomes a silent accomplice to miscarriage of justice.

25. Particularly, in prosecutions under the POCSO Act, the legislature has spoken with unmistakable clarity. The legislative intent is that trials involving child victims should receive precedence over all ordinary criminal prosecutions. The statute contemplates expeditious investigation, prompt recording of evidence and conclusion of the trial within the stipulated period, so that the child is enabled to return to a life of normalcy at the earliest. The object of the enactment is not merely to punish the offender, but equally to protect the child from the debilitating consequences of prolonged criminal litigation.



26. The facts obtaining in the case at hand portray a complete departure from that legislative mandate. A prosecution which the statute envisages should attain finality in one year has remained pending for over a decade. Such delay cannot receive judicial approbation. It is not merely contrary to the letter of the statute, but strikes at its very soul. The legislative command has, to borrow a phrase, been thrown to the winds owing to the culture of repeated adjournments, nothing can be more unfortunate than this.

27. In the aforesaid circumstances, while deprecating the culture of repeated adjournments, this Court considers it imperative to breathe life into the statutory mandate. It therefore becomes both appropriate and necessary to direct the Special Court to conclude the proceedings, uninfluenced by any observation made on the merits of the case except to the extent indicated herein.



28. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition stands **disposed**, in the light of the observations made in the course of the order.
- (ii) The concerned Court shall now endeavour to conclude the proceedings within 8 weeks from the date of receipt of the copy of this order.
- (iii) The timeline so fixed is not intended to be aspirational, but obligatory and shall be adhered to in its letter and spirit.
- (iv) It hardly needs to be observed that the parties to the *lis* shall extend their fullest cooperation to facilitate the expeditious conclusion of the trial. Should either side indulge in dilatory tactics or seek unwarranted adjournments, it shall be open to the learned Special Court to decline such requests and to adopt every measure permissible



in law to ensure faithful compliance with the statutory command and the directions issued herein.

Consequently, I.A.No.1 of 2025 also stands disposed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

bkp
List No.: 3 Sl No.: 20