Confession meaning and recording

A confession in its true sense will have to be taken as the voluntary statement made by an accused or any other person against whom an accusation of an offence is made out, which either must admit in terms, the offence or substantially all the facts constituting the offence.

2. Section 24 to 30 of Evidence Act dealing with confessions specifically make it very clear that confessions made, though voluntarily to a police officer or even while in the custody of the police officer are irrelevant and cannot be proved against the accused subject to the just exception to the proviso of Section 27 in respect of the fact discovered.

3. This brings us to the power conferred on the Magistrates in respect of recording of confession and statements vide Section 164 Cr.P.C. This section is also to be read with Section 163, 281 and 463 of the Criminal Procedure Code. Section 164 also lays down certain precautions that the Magistrate is required to observe while recording the confession or statement. A Magistrate is the person in authority and hence it is obligatory on the Magistrate to explain to the accused that he is not bound to make a confession and that if he does so, it may be used as evidence against him and also subject to a just and reasonable satisfaction that the confession or statement is being made voluntarily. Besides if the person appearing before the Magistrate makes a statement that he does not want to confess Magistrate must not authorise the detention of such person in police custody.

4. The guidelines for recording confession are prescribed in rule 18 of Chapter I of the Criminal Manual. These are specifically oriented to see that the confession is recorded when the accused is free from the influence and inducement of the police and any other person interested in having his confession recorded. These guidelines have been prescribed

by the Hon'ble Supreme Court in the case of **Kartar Singh Versus State of Pubjab, reported in (1994) 3 SCC 569**.

1. **Statement and confession**

The word "statement" means the statement of witness and does not mean the statement of an accused person. This section does not provide for recording any statement of an accused person other than a confession. The reason is that the section relates to a stage of police investigation at which statement of the accused which are other than voluntarily confession and which are to be elicited by his examination, are not intended to be obtained from him. A confession, in criminal law, means an admission of certain facts, which constitute an offence made by a person charged with the offence, which is the subject matter of the statement. In the case of *Narayanaswami V/s. State, reported in A.I.R. 1939 PC 47*. The Privy Council observed that, the word "Confession" as used in the Evidence Act couldn't be construed as meaning a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms the offence, are at any rate substantially all the facts, which constitute the offence. This section provides for the recording of two classes of things i.e. (1) the statement of a person who appears before the Magistrate as a witness, and (2) the confession of a person accused of an offence.

2. **Who can record confession or statement?**

The object of Section 164 of Criminal Procedure Code is to provide a method of securing a reliable record of statements or confessions made during the course of police investigation. Under section 164 of the Criminal Procedure Code, any Metropolitan Magistrate or Judicial Magistrate only can record confessions and statements. The police officer on which any power of the Magistrate has been conferred under any law for the time being in force cannot record confession or statement under

this section. A Magistrate who directs the police investigation is not incompetent to record a statement or confession under this section. On the other hand, it is the duty of the Magistrate, who directs a police investigation or holds a preliminary inquiry under this Code, to record statement under section 164. A Magistrate who afterwards conducts the preliminary inquiry or trial may record a confession or statement. A confession made to a Magistrate and recorded under this section is not inadmissible if the Magistrate thought proper, or if it so happened that he was the only Magistrate, to take the case and commit it to the Sessions Court. In the case of *Bhansaheb V/s. State of Maharashtra, reported in 1997 Cri.L.J. 467 (Bombay)*. It has been held that, recording of confession by Special Judicial Magistrate is illegal. Thus, the Special Judicial Magistrate is incompetent to record the confession.

4. **Historical Background.**

Even when there was no Article 21, Article 20 (3) and Article 14 of the Constitution, any confession to the police officer was inadmissible. It has been the established procedure for more than a century and an essential part of Criminal Jurisprudence. A law, which entitles a police officer to record confession and makes it admissible, is thus violative of both Articles 20 (3) and 21 of the Constitution. No one would contest the fact that the Evidence Act 1872, which bars custodial confession, was in effect much before the Constitution (1950) But, that by itself cannot be sufficient reason for it being just and reasonable. Moreover, after the enactment of constitution all the existing laws have to be judged on the touchstone of the Constitution and not *vice-versa*. The Constitution itself does not speak on the issue of custodial confessions. Article 20 (3) of the Constitution of India declares that, "No person accused of any offence shall be compelled to be a witness against himself". This would mean that the constitutional embargo is only against "compelled confessions". It has nothing against custodial confession if made voluntarily.

4. Section 25 of the Indian Evidence Act currently provides that no confession made to a police officer shall be admissible in the court of law. The section is broadly worded and it absolutely excludes from evidence against the accused, a confession made by him to the police officer under any circumstances, while in custody or not. The reason for such exclusion it to avoid giving the police any benefit from resorting to threat and use of violence to extract a confession from the accused. The legislature had in view the malpractice of police officers in extorting confessions from accused persons in order to gain credit by securing convictions and those malpractices went to the length of positive torture. In the case of *Rajkumar Karwal V. Union of India reported in A.I.R. 1991 SC 45*, it has been observed that, as Section 25, Evidence Act, engrafts a wholesome protection it must not be construed in a narrow and technical sense but must be understood in a broad and popular sense. But at the same time it cannot be construed in so wide a sense as to include persons on whom only some of the powers exercised by the police are conferred within the category of police officers.

5. While discussing the scope of confession and right to silence of accused in the case of S*mt. Nandini Satpathy V/s. P.L.Dani, reported in A.I.R. 1978, SC 1025,* Honorable Justice V. R. Krishna Iyer has observed that, the prohibitive sweep of Article 20 (3) of the Constitution goes back to the stage of police interrogation – not commencing the Court only. Both the provisions substantially covered the same area, so far as police investigations are concerned. The ban on self accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regards to other offences pending are imminent, which may deter him from voluntary discloser of criminatory matter. The phrase "compelled testimony" must be read as evidence produced not merely by physical threats or violence but by psychic

torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, over bearing and intimidating methods and the like -not legal penalty for violation. So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as a compulsion within the meaning of Article 20 (3). The prospect of prosecution may lead to legal tension in the exercise of constitutional right, but then, stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect but sufficiently substantial, applied by police man for obtaining information from an accused strongly suggestive of guilt, it becomes "compelled testimony" violate Article 20 (3).

6. In this case, it is also observed that a police officer is clearly a person in authority. Insistence on answering is a form of pressure especially in the atmosphere of the police station unless certain safeguards erasing duress are adhered to. Frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Article 20 (3). The legal penalty means itself not amount to duress but the manner of mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering mere compulsion.

7. However, under Section 15 of TADA Act, the above position is changed up to some extent. Under this Section of TADA Act, a confession made by person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks out of which sounds or images shall be admissible in the trial. But, in the case of *Kartarsing V/s. State of Punjab, reported in 1994 Cr.L.J. 3139,* the Honorable Supreme Court laid down certain guidelines to insure that confessions were in conformity with fundamental fairness. Some of those guidelines have been incorporated in Section 32 of POTA as "safeguards".

In short, the compelled confession is always condemned under the Constitution and under the Indian Evidence Act.

3. EVIDENTIARY VALUE OF THE STATEMENTS RECORDED UNDER SECTION 164 OF THE CRIMINAL PROCEDURE CODE.

Our topic is already covered in most of the topics allotted to other officers, therefore, we are restricting our paper to the extent of discussion of the various judgments of Hon'ble Supreme Court laying down principles regarding evidentiary value of the statements under section 164 of Cr.P.C.

1} *Dagdu Vs. State of Maharashtra reportedin A.I.R. 1977 Supreme Court 1579.*

In the above case, Sub Divisional Magistrate recorded eight confessions without complying with the mandatory provisions of section 164 of Cr.P.C. He made no effort to ascertain from any of the accused whether he or she was making the confession voluntarily. He did not even ask any of the accused whether the police had offered or promised any incentive for making the confessional statement. He also did not try to ascertain for how long the confessing accused were in jail custody prior to their production for recording the confession. There was no record to show whether the accused were sent after they were given time for reflection. In none of these confessional statement there was a memorandum as required by section 164 of Cr.P.C. that the Magistrate believed "that the confession was voluntarily made". Therefore, the Hon'ble Supreme Court observed that, the failure to observe the safeguards prescribed therein are in practice calculated to impair the evidentiary value of the confessional statements. Considering the circumstances leading to the professional recording of eight confessions and the object disregard of the provisions of section 164 of Cr.P.C., the

Hon'ble Supreme Court has held that no reliance can be placed on any of the confession.

2} *Keharsingh Vs. State reported inAIR* 1988 *Supreme Court* 1883.

In the above case {the murder trial of late Prime Minister Indira Gandhi}, during trial the confession of accused Satwant Singh was challenged on the ground that the mandatory requirement of explaining to the accused as provided under section 164[3] of Cr.P.C. was not observed before recording the confession. But the Hon'ble Supreme Court has held that the compliance of section 164[2] of Cr.P.C. is mandatory and imperative and non-compliance of it renders the confession inadmissible in evidence. But section 463 of Cr.P.C. provides that where the questions and answers regarding the confession have not been recorded, evidence can be adduced to prove that in fact the requirements of sub section 2 of section 164 r/w section 281 of Cr.P.C. have been complied with. In the said case the Magistrate who recorded confession of Satwant Singh was examined, who deposed that he warned the accused that he was not bound to make any confessional statement and in case he does so it may be used against him during trial. On his evidence, the Hon'ble Supreme Court has held that the defect in recording the statement in the form prescribed is cured by section 463 of Cr.P.C., and therefore, relied upon the said confessional statement.

Similarly, the Hon'ble Supreme Court has also relied on the said confession in order to hold the co-accused guilty as found duly corroborated by other evidence.

3} *Preetam Vs. State of M.P. reported in AIR* 1997 *Supreme Court* 445.

In the above case, the Magistrate recorded the confession of accused after explaining the accused that he was not bound to make a confession and if he did so it might be used against him. But the

Magistrate did not ask any question whatsoever to ascertain whether the accused was making the confession voluntary. Therefore, the Hon'ble Supreme Court has held that the confession is inadmissible as non-compliance of mandatory requirement of section 164[2] of Cr.P.C.

4} *Ammine Vs. State of Kerala reported in AIR* 1999 *Supreme Court* 260.

In the above case, the confession of accused was challenged on the ground that no separate reasons were recorded by the Magistrate for believing that confession was made voluntarily, though the satisfaction recorded. The Hon'ble Supreme Court has held that there is no requirement in section 164 of Cr.P.C. for recording separate reasons for believing that the confession was made voluntarily, the satisfaction recorded in memorandum is sufficient.

5} *State of Maharashtra Vs. Damu Shinde reported in AIR* 2000 *Supreme Court* 1691.

In this case four accused alleged to have conspired together to commit offence of abduction and murders of children. On arrest Magistrate recorded confession of on of the accused. On trial the Sessions Court convicted the accused persons. But in appeal the Hon'ble High Court acquitted all the accused by giving them benefit of doubt with observation that the confession of accused cannot be relied upon as there was reasonable doubt to hold that accused made the confession voluntarily for following reasons -

[i] Accused was detained in police custody for a considerable long period;

[ii] Sub Jail [where the accused was detained] was adjacent to the police station;

[iii] There was no explanation why a Magistrate belonging to a distant place was asked to record the confession in preference to a Magistrate at a near place.

The Hon'ble Supreme Court while reversing finding of the High Court observed that the geographical distance between sub jail and the police station should not have been a consideration to decide the possibility of police exerting control over a detenue. It is also observed that there would have variety of reasons for the Chief Judicial Magistrate for choosing a particular Magistrate to record the confession, and therefore, the High Court would not have used that ground for holding that voluntariness of confession was vitiated.

6} *Rajendra Singh Vs. State of Bihar reported in AIR* 2000 *Supreme Court* 1779.

In this case, the evidence of star witness of the prosecution sought to be contradicted by the accused with the former statement of the witness to be recorded by Magistrate. But the Hon'ble Supreme Court while rejecting the contention observed that the former statement of the witness was not legally proved because it does not bear seal or signature of the Magistrate who recorded the said statement or the Chief Judicial Magistrate to whom it was sent. The Magistrate in his evidence also does not state as to who identified the witness before recording the statement. The Hon'ble Supreme Court has further observed that the witness has not been confronted with that part of his alleged former statement, which the defence wants him to be contradicted, and therefore, there was no compliance of section 145 of Evidence Act.

7} *Sunil Kumar Vs. State of M.P. Reported in AIR* 1997 *Supreme Court* 940.

In the above case the Hon'ble Supreme Court has observed that the statement of witness of the prosecution recorded as a dying

declaration, which consequent upon his survival has to be treated only as a statement recorded under section 164 of Cr.P.C. and can be used for corroboration or contradiction.

4. First information report and section 145 of the Indian Evidence Act.

1} the word "first information report" has a legal import. The expression "first information" or "first information report" is not defined in the Code. But, these words are always understood to mean information recorded under Sec.154. The condition as to the record of information under Sec.154 is, first, it must be information relating to the commission of cognizable offence. Secondly, it must be given to an officer in-charge of police station. Thirdly, it must be put into writing. If already written it is to be signed by the person giving it; if it is oral, it must be taken down in writing and read over to the formant. Fourthly, the substance of the information shall be entered in a book. The first information is that information, which is given to the police, first in point of time and not that which the police may select and record as first information. Information to have the status of first information under Sec.154 must be information relating to the commission of cognizable offence and must not be vague but definite enough to enable the police to start investigation. But, whether a particular piece of information should be treated as first information or not depends upon the facts and circumstances of each case.

2} Under Sec.154 of Cr.P.C. Sub-section (1), the substance of the first information report has to be entered into in book in such form as the Provincial Government prescribes. At every police station, a General Diary is maintained; the substance of the information is entered in it. When the police officer has failed to reduce information to writing and got the signature of informant, he has no business to enter in the General Diary. The General Diary need not give the names of all accused when they are recorded in first information report.

3} At any rate, mere delay by itself is not enough to reject the prosecution case unless there are clear indications of fabrication. When there is direct evidence of the eyewitness, the motive or aspect of the prosecution story pales into insignificance, delay in filing first information report would not be fatal. On the ground of delay, it is not permissible to quash the first information report unless the delay is intentional and can be assigned to the prosecution. The delay in communicating first information report to the Magistrate does not minimize the importance of F.I.R. The delay in writing F.I.R. diminishes the importance of F.I.R. To a considerable extent. Where there was delay in filing the F.I.R., the prosecution failed to successfully establish against appellant beyond reasonable doubt, the appellant is entitled to the benefit of doubt and acquittal. Unexplained delay in lodging F.I.R. Looses its corroborative value e.g. the offence was committed u.s.306 and 498A of I.P.Code. There was delay in lodging the F.I.R., which could not be explained. Held, there being possibility of false implication and allegations in F.I.R., it is not safe to rely on evidence of brother of deceased. Therefore, conviction is set aside. (Khemraj Hiralal Agarwal v. State of Maharashtra, 1995 Cr.L.J. 2271).

4} In sexual offences, delay in lodging F.I.R. can be due to variety of reasons particularly the reluctance of prosecutrix or family members to go to police station and complain about the incident which concern reputation of prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. (State of Punjab v. Gurmit Singh, 1996 Cr.L.J. 1734 (SC)). On the other hand a prompt filing of report is not an unmistakable guarantee of truthfulness of the version of the prosecution. (Ram Jag v. State of U.P., AIR 1974 SC 606, 1974 Cr.L.J.479).

5} When the F.I.R. has been prepared by an expert police officer that had personal knowledge of the fact, no shelter can be taken of

confusion or forgeting. Under this section 154 sub-section (2), a police officer register report of an cognizable case i.e. F.I.R. has to supply at once a copy of the information recorded by him free of cost to the informant and as per sub-section (3) if the police officer in-charge of the police station refuses to record information of the cognizable offence, the person aggrieved may send the substance of the information in writing by post to the Superintendent of Police of the District. If the Superintendent is satisfied that the report sent disclose commission of the cognizable offence, he may himself investigate the case or he may order the investigation by some other police officer sub-ordinate to him.

6} Under Sec.154 of the Cr.P.C. as soon as the F.I.R. is recorded, the correspondent entry has to be made in the daily diary wherein the substance of F.I.R. is required to be incorporated and the substance of the F.I.R. would mean that not only the name of person on whose statement, the F.I.R. is recorded but also names of eye-witnesses, the names of the accused had to be recorded. Great importance is attached to lodging of the prompt F.I.R. because it diminishes great chances of false implication of accused persons as well that of informant being tutored.

7} Section 145 of the Indian Evidence Act, 1872 provides that a witness may be cross-examined as to previous statement 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.

8} Section 145 cannot apply to a case where a party has made no subsequent statement. It empowers the Court in its discretion to permit the person who calls a witness to put any question to him might be put in the cross-examination by the adverse party.

9} First limb of Section 145 does not impeaching the credit of witness, but it merely enables the opposite party to cross-examine the witness with reference to the previous statement made by him. He may at the stage succeed in initiating materials to his benefit through such cross-examination even without resorting to the procedure laid down in the second limb. But, if the witness disowns having made any statement, which is inconsistent with his present stand, his testimony in Court on that score could not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the Second limb of Section 145. (Binni Kumar Singh v. State of Bihar, AIR 1997 SC 322: 1997 Cr.L.J. 362: 1997 (1) SCC 283.)

10} It is right of a party in trial to use the previous statement of a witness either for the purpose of establishing a contradiction in his evidence or for the purpose of impeaching the credit of the witness. This right given to a party in a trial under Sec.145 of the Evidence Act is a somewhat control in criminal trials.

(State of Kerala v. Babu, AIR 1999 S.C. 2161: 1999 (4) SCC 621: 1999 (3) Crimes 27 (SC): 1999 SCC (Cr) 611: 1999 Cr.L.J.3491).

11} There is no prescribed mode of recording the previous statement to be used under this Section. The only mode is that the statement must be in writing. Such writing may be letters, account, books, deed, written statement, deposition, admissions, affidavits etc. (Surya Rao v. Janakamma, AIR 1964 A.P.198)

Evidentiary value of contradictions

Criminal trial is not a fairy tale or outcome of any one's imagination, but it is a voyage of discovering the truth and the primary object of it is to be fair to the accused, so also to the prosecution. That is why the makers of law have inserted the provision of Section 145 of the Indian Evidence Act. The ultimate object of the trial is quest for truth.

2. The provision of Section 145 of the Indian Evidence Act relates to the cross examination of the witness as to his previous statement made by him. First part of section 145 pertains to the cross examination of the witness as to the previous statement made by him, without such writing being shown to him. The second part provides that if it is intended to contradict him, then the statement in writing needs to be shown to such witness i.e., the attention of the witness must be invited to that part of the writing, which is to be used for the purpose of contracting, before the writing can be proved.

3. The dictionary meaning of " contradict " is to say the opposite to. Contradictory statement means showing opposite meaning. In simple language contradiction means two statements which cannot exist together i.e. Setting up one statement against the. Hence for contradiction there must be two statements.

When two statements, which cannot stand together, then that, amounts to contradiction.

4. The Evidence Act recognizes right to attack on trustworthiness of the witness by cross-examining him in view of his previous inconsistent statement. It gives an opportunity to cross examiner to impeach the credit of the witness. The subject matter of the statement in which the witness is cross-examined under section 145 of the Evidence Act must be relevant to the matter in issue. The method of contradicting the statement of the witness is more effective and direct method because it is self-operative method and it has double force. It is proved that the witness made prior contradictory statement then either the witness is then proved to have twice erred or twice falsified once in self-contradiction and once in denying that he uttered it. If such contradiction comes on record in the evidence of such a witness then those always help the accused.

5. The theory of contradiction should start from the statement given by the witness before the Court to statement given before the police and not vice versa.

6. So far as the recording of contradiction is concerned everybody has to read land mark case which is known as Tahsildar Singh's case i.e. **Tahsildar Singh and another V/s. State of Uttar Pradesh, reported in AIR-1959 Supreme Court 1012.** The Honourable Apex Court had laid down the procedure, in this case, how to record the contradiction. But for that, purpose one has to go through section 1435 of the Indian Evidence Act and at the

Same time section 162 of the Criminal P.C. Statement under section 162 of Criminal Procedure Code shall not be used for any purpose except in the manner prescribed under the proviso of section 162. Similarly, section 145 of the Evidence Act indicates the manner in which contradiction is to be brought on record. The cross-examining Counsel shall put the part or parts of the statement, which affirms the contrary to what is stated in evidence. This indicates that there is something in writing, which can be set against another statement made in evidence. If the statement before the Police Officer and the statement in the evidence before the Court are so inconsistent or irreconcilable with each other that both of them can not exist, it may be said that one contradicts the others.

7. The Honourable Apex Court has given the illustration in Tahsildar Singh's case how the contradictions are to be brought record. The illustration is as under, a say in the witness box that B stabbed C. In his police statement he had stated that D stabbed C. His attention can be drawn to that part of his police statement, which contradicts his statement in the witness box. If witness admits his previous statement, no further proof is necessary. If he does not admit his previous statement, the practice generally followed is to admit it subject to proof

by the Police Officer i.e., the said part needs to be proved through the mouth of Police Officer.

8. If the contradiction is proved in above manner then certainly the evidence of such witness comes under the shadow of doubt. Hence such contradiction become helpful to the accused and those create reasonable doubt about the trustworthiness of the witness and consequently about the prosecution case.

9. But suppose in case the prosecution, with the permission of the Court, puts such portion mark to the witness stated by him in his police statement and which he fails to state in his examination in chief and if this witness denies said portion marks in his statement, then certainly, the evidentiary value of such evidence adduced by the witness become less.

10. Section 145 of the Indian Evidence Act makes it clear that confrontation to the previous statement made by witness is imperative and if it is intended to contradict the witness by his statement in writing, his attention must be drawn to that part of the writing, before the writing can be proved, by which it is intended to contradict him. Attention of the witness needs to be invited with a view that the witness may have an opportunity to deny having made his statement or to explain the contradiction or the attempts having made. Unless such opportunity is given to the witness it cannot be placed on record or proved and the cross examiner is also not entitled to take benefit of the same if in any other connection same has come on record. The Court should not pass any verdict of perjury on the ground of making of such contradictory statement by witness.

11. Section 145 of the Indian Evidence Act nowhere makes any difference in between literate and illiterate person. What is necessary is that the statement must be made by same person. The rule as to

contradiction applies to the statement reduced into writing. However, as stated earlier the witness should have an opportunity of explaining the inconsistency. There is no presumption as to genuineness of the statement contained in police diary or recorded by police during investigation. Such statement recorded by police needs to be used only for contradiction purpose and not for any other purpose.

12. In a case of **Sheikh Subhani Vs. State of Andhra Pradesh, reported in 2000 Cr.L.J. Page-321,** it has been held that merely putting suggestions to the witness and denial of those by the witness would not amount to putting of contradiction to witness. The contradictions have to be put to the witness as contemplated under section 145 of the Evidence Act.

Thus to sum up, for contradiction there must be two statements of the witness, which cannot exist together. Putting of contradiction should start from statement given before the Court to statement recorded by police. Attention of the witness should be invited towards contrary police statement of the witness and opportunity should be given to him to explain it. If the contradictions is/are duly proved then the evidentiary value of the witness becomes weak, of which benefit goes to accused.

6. Statements other than confessions recorded by Magistrate and its use under Section 145 of the Indian Evidence Act.

1. The topic assigned to our group consists two sub subjects, the first is statement other than confession to be recorded by Magistrate and second its use under Section 145 of the Indian Evidence Act. Hence, in this paper our approach is to deal with the nicety of the subject envisaging various legal provisions and to describe the broad features of the subject.

2. Statement other than confession recorded by the Magistrate is covered under Section 164 of the Cr.P.C. Section 164 of the Code of Criminal Procedure * (Hereinafter Cr.P.C.) includes statement as well as confession to be recorded by the Magistrate. Sub-section 1 to 4 of Section 164 deals with the confession to be recorded, while sub section 5 of 164 deals with the statement other than confession under Section 1. Hence, I feel it necessary to reproduce the sub-section 5 of 164 hereinafter: -

"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."

3. On plain reading of sub-section 5 it can be easily inferred that the Magistrate recording statement other than a confession shall record the statement in a manner provided in the Code. For recording of the evidence the Magistrate has the power to administer oath upon the person of whose statement is recorded. At the inception I would like to deal with the exact meaning of what exactly statement other than confession means. As per the oxford dictionary the meaning of statement is an 'account', 'affirmation', 'announcement', 'annunciation', or 'assertion'. The distinction in between of confession and statement has to be borne in mind. It is well settled that all confessions are statements, but all statements are not confessions. Hence, it can be inferred that the statement other than a confession is not a confession of the accused. The statement can be done before Magistrate by any person having locus standi to apply to record his statement as it was held in **Jogendra Nahak v. State of Orissa, AIR 1999 SC 2565** that: -

"A person who is neither an accused person nor sponsored by the investigating agency has been held to have no locus stand to apply to the Magistrate to record his statement under the section."

Recording of a statement: -

4. A magistrate, who has empowered to record the statement, has power to administer oath and detail provisions regarding the recording of statement are provided in Cr.P.C. under recording of evidence in Chapter 23 Section 272 to 283. The general principles regarding language of Court, evidence to be recorded in presence of accused, record in summons cases and inquires, record in warrant cases, record in trial before Court of Sessions, language of record of evidence, procedure in regard to such evidence when completed, interpretation of evidence to accused or his pleader, remarks respecting demeanor of witness, record of examination of accused, interpreter to be bound to interpret truthfully, record in High Court, are all applicable while recording the statement other than confession of witness or accused. The relevant provisions in the criminal manual regarding recording of confession given in paragraph 17 to 23 can also be invoked, if the statements are confessional statements.

5. As it is held by Hon'ble Supreme Court in Harnath Sing, AIR 1970 SC 1619: -

"If while conducting identification proceedings, the Magistrate transgresses the limits and records other statements which may have a bearing in establishing the guilt of the accused, this must be done by him strictly conforming to the provisions of this section."

6. This clause authorizes the Magistrate to record the statement of a person or his confession, no matter whether he possesses jurisdiction in the case. If he does not possess such jurisdiction sub-s (6) will apply.

7. As per Section 164(6) Magistrate recording a confession or statement under these sections shall forward it to the Magistrate by whom the case is to be inquired into or tried.

8. Use under Section 145 of the Indian Evidence Act evidentiary value of the statement other than confession is subject other several provisions of law especially of the Indian Evidence Act. The Privy Council has ruled that a statement made under this Section 164 can never be used as substantive evidence of the facts stated, but it can be used to support or challenge the evidence given in Court by the person, who made the statement. The statement made by an approver under this section does not amount corroboration in material particulars, which the Court requires in relation to the evidence of an accomplice. The statement mad under this section, which does not amount to confession, can be used against the maker of admission within the purview of Section 18 to 21 of the Indian Evidence Act. Hon'ble Supreme Court in the case of Ram Charan (1968) 2 SCR 354, has approved the following observations of the Nagpur High Court in Parmanand V. Emperor as lying down the law correctly: -

"If a statement of a witness is previously recorded under S. 164, it leads to an inference that there was a time when the police thought the witness may change but if the witness sticks to the statement made by him throughout, the mere fact that his statement was previously recorded under s. 164 will not be sufficient to discard it."

9. Hence, to conclude with the evidentiary value it can be held as it is held in Sunil Kumar v. State of M.P., AIR 1997 SC 940, that: -

"That statement statements recorded under this Section are not substantive evidence and cannot be made use of except to corroborate or contradict the witness."

S.P.Naik-Nimbalkar Civil Judge, J.D. & J.M.F.C., Igatpuri.

7. **Confessional statement recorded by Magistrate Us.164 Cr.P.C.& its use U/Sec.145 of the Evidence Act.**

This topic is immense importance because we are dealing with the same daily while conducting the Criminal trials.

Statement – Meaning of: -The term statement finds no definition anywhere in the law. The Dictionary meaning of word statement is "the act of stating or declaring something stated or Declaration or a formal pleading."

As per Oxford thesaurus of English, statement means, "a definite or clear expression of something in speech or writing-a formal account of facts, affirmation, assertion, announcement, utterance, communication, revelation, disclosure or events, especially one given to the police or in the Court."

Section 164 of the Code of Criminal Procedure deals with recording of confession and statements made to Judicial Magistrate First Class or the Metropolitan Magistrate, whether or not having jurisdiction in the course of any investigation under Chapter VII of the Cr.P.C. Thus, only Judicial Magistrates or Metropolitan Magistrates may record statements or confessions under this section.

Object of the Provision U/s. 164 of the Cr.P.C.

The reason for getting the statements of a witness recorded under section 164 of the Cr.P.Code is that they may state on oath so that chances of changing their version at the trial may be minimized for the fear of being involved in perjury. In case of **Kartar Sing Vs. State of Punjab** reported in **1994(3) S.C.C.569,** nature and object of the provisions of section 164 of Cr.P.C. i.e. precautions to be taken by Magistrate has been explained by the Hon'ble Apex Court. At the same time it has been observed that the conviction can be based on voluntary confession or even on retracted confession, if it receives general corroboration.

The recording of statement (other than a confession) under section 164 of the Code of Criminal Procedure by the Magistrate will be in the form of recording of evidence. This is an enabling provision by virtue of which the Magistrate is empowered to administer the oath. Whenever the Magistrate having no jurisdiction to try the case records a statement in this section, he will have to send such a statement to the Magistrate who has jurisdiction to try the case. Some times question arises whether after commencement of investigation, any person can approach to the Magistrate and can ask to record his statement under Section 164 of the Code, claiming himself to be witness of the incident. In such a situation, the Humble Apex Court in a case of **Jogendra Nahak and others Vs. State of Orissa and others,** reported in **AIR 1999 Supreme Court 2565**, has observed that -

"The fact that there may be instances when the Investigating Officer would be disinclined to record statements of willing witnesses and therefore, such witnesses must have a remedy to have their version regarding a case put on record, is no answer to the question whether any intending witness can straightway approach a Magistrate for recording his statement under Section 164 of the Code. Even for such witnesses provisions are available in law, i.e., the accused can cite them as defence witnesses during trial or the Court can be requested to summon them under Section 311 of the Code. When such remedies are available to witnesses (Who may be sidelined by the Investigating Officer), there is no special reason why the Magistrate should be burdened with the additional task of recording the statements of all and sundry that may knock at the door of the Court with a request to record their statement U/s. 164 of the Code. On the other hand, if door is opened to such persons to get in and if the Magistrate are put under the obligation to record their statements, then too many persons sponsored by culprits might throng before the portals of

the Magistrate Courts for the purpose of creating record in advance for the purpose of helping the culprits."

Thus, the Humble Court has ruled that the provisions of section 164 of the Code does not empower/compel a Magistrate to record a statement on the request of any person unsponsored by Investigating Agency.

The scope of section 164 of the Code of Criminal Procedure is not exhaustive. The following requirements should be satisfied while recording the confession or the statement: -

i. A confession shall not be made to a police officer.

ii. It must be made in the presence of a Magistrate.

iii. A Magistrate shall not record it unless he is, upon enquiry From the person making it, satisfied that it is voluntary.

iv. He shall record it in the manner laid down in Section 164 r/w Section 281 of Cr.P.C.

v. Only when so recorded, it becomes relevant and Admissible in evidence.

The act of recording confessions under section 164 is a very solemn act and in discharging his duty, the Magistrate must take care to see that the requirements of Section 164(2) are fully satisfied. The object of putting questions to accused person, who offers to confess, is to obtain an assurance of the fact that the confession is not caused by any inducement, threat or promise. The Magistrate recording confession has to enquire with the accused as to (a) how he was treated in police custody (b) why he want making confession and © he would not be remanded to police custody even if he did not confess. It is the duty of the Magistrate to satisfy him that the confession is made voluntarily, true and trustworthy. Where the confessional statement does not show

that due caution was given nor does it show that sufficient time was given to have a cool reflection, in that case, confessional statement cannot be relied upon. Generally, time for reflection of mind should not be less than 24 hours. However, merely because less time is given to the accused for reflection, cannot be a ground to reject the confession if they are otherwise acceptable (Henry **West Muller Roberts Vs. State of Assam** reported in **1985(1) Crimes 877).** The object of giving time for reflecting to accused is to ensure that he is completely release from police influence. **(Shankaria Vs. State of Rajasthan** reported in **AIR 1978 Supreme Court 1248).**

The statement of the person shall, as his examination proceeds, be taken down in writing, either;

a) By the Magistrate himself; or

b) Where Magistrate is unable to do so, owing to a physical

Or other incapacity, then in that case, under his direction

And superintendence, by an officer of the Court appointed

By him in this behalf.

Where the Magistrate ceases the statement to be taken down, he shall record a certificate that the statement could not be taken down by him for reasons as above. If the statement is taken in the language other than the language of the Court, then if it is practicable to do so, a true translation of the statement of the witness in the language of the Court shall be prepared, as the examination of the said witness proceeds. The Magistrate shall also sign such a translation. The confession should bear the signature of the accused and when the confessional statement does not bears signature of the accused, it cannot be acted upon nor such omission can be cured by Section 463 of the Cr.P.Code. **(Kehar Singh and others Vs. The State (Delhi Admn.)** reported in **AIR 1988 (SC) 1883.** However, it is held by the Hon'ble Apex Court in case **Dhananjay**

Reddi Vs. Ken, reported in **(2001)4 SCC-9,** that mere failure to get the signature of the person making the confession may not be very material if the making of such statement is not disputed by the accused, but when making of statement itself is in controversy, the omission to get the signature is fatal. The statement made under this section cannot be used as substantive piece of evidence. It can be used to cross-examine the person, who made it to show that the evidence of the witness is false but that does not establish that what he stated out of Court under this section, is true. Thus, it can be used to corroborate or contradict its maker **(State of Rajsthan Vs. Kartar Singh AIR 1970 SC 1305).**

There are two tests as regards evidenciary value i.e. whether the confession is voluntary one and second is, whether the same is trustworthy. Needless to say that it should not run counter to the prosecution evidence. In case of **Shrawan Singh Vs. State of Punjab** reported in **1957 S.C. 737**, it has been observed that

"***In law it would be open to the Court to convict him on his confession itself, though he has retracted his confession at later stage. Nevertheless, the usual course requires some corroboration to the confessional statement before convicting an accused person on such statement. What amounts to corroboration would always be a question of fact, which is to be determined in the light of the circumstances of each case".***

In case the confession is not retracted, question of corroboration does not arise. However, in case confession is retracted, then rule of prudence requires that it should be corroborated. The circumstances, which the Court has to consider before placing reliance on the confession, have been explained in the case of **Shivappa Vs. State of Karnataka**, reported in **1995 S.C.C.76.**

Thus to sum up it may be said that the provisions U/s 164 Cr.P.C. are undoubtedly solitary one. However, statement recorded under section 164 is not substantive evidence. It can only be used either for contradiction or for corroboration of the witness who made it.

Use of confessional statement under section 145 of the Evidence Act.

This section 145 of the Evidence Act is based on best evidence rule. It relates to cross-examination only and not to examination in chief. It is in two parts. The first part enable the opponent to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him, and the second part deals with a situation where cross-examination assumes the shape of contradiction. Resort to section 145 would only be necessary if the witness denies having made the former statement. In that event, it would be necessary to prove that he did and if the former statement was reduced to writing then section 145 requires that his attention must be drawn to those parts which are to be used for contradiction before the writing can be proved. Their Lordships of the Hon'ble Apex Court in case of **"Mohan Rai Vs. State of Bihar"** reported in **AIR 1968 S.C. 1281**, held that, " if a person is not examined as a witness in a case, his previous statement cannot be used to contradict the other evidence."

Therefore the proper procedure would be to ask a witness whether he made such and such statement previously. If witness gives answer in the affirmative the previous statement in writing need not be proved, and the cross-examiner may if he so chooses leave it to the party who examined the witness, to have the discrepancy, if any, explained in Re-examination. If on the other hand, the witness denies to have made the previous statement attributed to him or states that he does not remember to have made any such statement, the cross-examiner must read out to the witness the relevant portion or portions of the record

which are alleged to be contradictory to his statement in Court and give him an opportunity to reconcile the same if he can. If the witness does not admit having made the statement, it can be proved later by calling the person before whom the statement was made. The whole statement is not to be exhibited. The only particular portion, which contradicts the evidence given in Court, should be exhibited.

The object of the provision is to give the person a chance of explaining the discrepancy or inconsistency and clear up the particular point or ambiguity or dispute. In **Tahsildar Singh's Case,** reported in **AIR 1959, Supreme Court 1012**, the Hon'ble Supreme Court has laid down the procedure as to how the contradictions are to be proved under section 145 of the Evidence Act.

The credit of a witness can be impeached by proof of any statement, which is inconsistent with any part of his evidence in Court. This principle is delineated in Sec.155 (3) of the Evidence Act and it must be borne in mind while reading section 145, which consists of two limbs. It is provided in the first limb of Section 145 that a witness may be cross-examined as to the previous statement made by him without such writing being shown to him. But the second limb provides that 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. There is thus a distinction between the two vivid limbs. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross-examine the witnesses with reference to the previous statements made by him. He may at that stage succeed in eliciting materials to his benefit through such cross-examination even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement, which is inconsistent with his present stand, his testimony in Court on that score would not be vitiated until the cross-

examiner proceeds to comply with the procedure prescribed in the second limb of Section 145.

3/- **Requirements of valid confession:**

Confession to become an admissible, the Magistrate has to comply followings requirements under Sections 164 and 281 of Cr.P.C. And the guidelines of Hon'ble Bombay High Court in this regard mentioned in the Criminal Manual Para 17 of Chapter I. They are as follows:

A) The confession shall be ordinarily be recorded in an open Court and during Court hours in the absence of exceptional circumstances.

B) It should be impressed upon the accused that he is no longer in police custody.

C) Whenever the accused is examined by the Magistrate other than the Metropolitan Magistrate or by the Court of Sessions, the whole of such examination including question put to him and every answer given by him shall be recorded in full by the Magistrate or under his direction.

D) The record shall if practicable be in the language in which the accused is examined or in the language of Court.

E) The Magistrate shall give warning to the person making confession that he is not bound to make the confession and it may be used as evidence against him.

F) The Magistrate shall satisfy himself that the confession is voluntary.

G) He shall give time for reflection to accused of at least 24 hours.

H) He shall record memorandum at the foot of the confession.

I) He shall take the signature of the accused on the confession.

4/- If these requirements are followed, then such a confession is a valid confession and is admissible in evidence. If these requirements are not followed then such a confession is hit by irregularities or omissions.

5/- **IRREGULARITY OR OMISSION:**

Irregularity or omission in respect of confession means non-compliance of provisions under Section 164 of Cr.P.C. and Hon'ble High Court guidelines contained in Criminal Manual. While recording the confession. Section 463 provides a provision for non-compliance of Section 164 or Section 281 of Cr.P.C., while recording confession. It states if any Court before which a confession or other statement of the accused is recorded or purporting to be recorded under Section 164 or 281 of Cr.P.C., is tendered or has been received in the evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may take evidence in regard to such non compliance and may, if satisfied that such non compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

B) It means every irregularity committed by Magistrate while recording the confession could not be cured under this Section where it is alleged that irregularity has been committed in recording the confession, the Court will have to consider the nature of the irregularity and to decide whether the same can be cured by taking the evidence of the Magistrate. In short only formal defects can be cured and not the defects of substance.

i) In **Dhananjaya Reddy V. State of Karnataka, AIR 2001, SC,** Page 1512, the Hon'ble Supreme Court has held that procedure for recording confession under Section 164(4) of Cr.P.C. is mandatory in nature. Omission to get signature of the person making the confessional

statement is fatal. More so, when making have the statement itself is in controversy.

So it is mandatory on the part of Magistrate to obtain the signature of the person making the confession, the omission in that examining the Magistrate under Section 463 of Cr.P.C could not cure behalf.

ii) In **Pralhad Dyanoba V. State,** reported in **1997 Bom. C.R. (Cri) Page 388,** in case of alleged murder, where highly decomposed body was found after 14/16 days of the offence. This case was mainly based on the confessional statement of the accused. But Magistrate did not ask accused; preliminary questions and investigation officer produced him directly. It was also not clear whether he was kept in Jail or was under the surveillance of the police, the Magistrate gave him only 15 to 20 minutes time for reflection. It was held that since very short time for reflection was given to accused and preliminary questions were not asked nor it was on record, such a confessional statement couldn't be accepted as voluntary, hence not admissible in evidence.

6/- **Not informing accused that recording officer was a Magistrate:**

A) In **Paramhansa Jadab V. State, AIR 1964, Ori. 144**, it is held that where record shows that Magistrate observed requisite formalities, the mere fact, that the record does not show that he told the accused that he was a Magistrate is immaterial, such a confession is admissible in evidence.

7/- **Recording the confession in a different language:**

A) In **Ambaji Majhi V. State,** reported in **1966 Cr.L.J. 851,** it is held that when a confession is made in one language and recorded in another language, such an irregularity can be cured u/s.463 of Cr.P.C.

8/- **Omission to take signature of accused:**

In **Dhananjaya Reddy V. State of Karnataka**, reported in **AIR 2001 SC 1512,** the Hon'ble Supreme Court has held that omission to take signature of accused making the confessional statement is fatal and such an omission cannot be cured by examining the Magistrate under Section 463 Cr.P.C.

9/- **Want of Certificate under Section 164 of Cr.P.C.:**

In **Udai Singh V. State of Rajasthan,** reported in **1978 Cr.L.R. (Raj) page 624,** it is held that mere failure to append the certificate will not vitiate the validity of the confessional statement.

10/- **Failure of Magistrate to warn and to ask the accused if he had made the statement voluntarily:**

In **State of Orissa V. Chhaganlal,** reported in **1977 Cri.L.J. 319**, where from the record of the case, the Magistrate is satisfied that the statement was voluntary, mere omission of Magistrate to tell the accused that he was the Magistrate has no effect and the statement may be admitted in evidence.

11/- **Confession recorded in Chamber of Magistrate:**

In **Ali Jamadar V. State** reported in **1988 Cri.L.J. 354**, it is held that the confession cannot be rejected on the ground that it was recorded not in the open Court Hall. But in the chamber of the Magistrate, it also cannot be rejected on the ground that the accused was not told of his right to consult and to be defended by a legal practitioner of his choice.