

**Scope and Relevance of Statements Recorded
Under Section 161 and 164 of Cr.P.C.**

**Presented by
Smt. B. Sobha Kumari,
Senior Civil Judge, Rajam.**

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Introduction

Statement in its dictionary meaning is the act of stating or reciting. The term statement is not defined anywhere in the Act. However, it has got whole connotations. Generally, statements are recorded in criminal procedure code in section 161 and 162. under section 164 of Crpc the confession statements of accused will be recorded.

Section 161 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.')

Section 161 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') titled "Examination of witnesses by police" provides for oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 Cr.P.C can be used at any trial are indicated in Section 162 Cr.P.C.

As per section 164(1) of Crpc, Judicial Magistrate or Metropolitan Magistrate whether or not having jurisdiction in the case can record any statement or confession made to him in the course of investigation. Section 164(5) of code empowers judicial magistrate to record statement (other than confession statement) which is in the opinion of Magistrate a best titled to the circumstances of the case.

2. Scope and relevance of statements under section 161 of CR.P.C.

Object and purpose of section 161 is to collect evidence regarding commission of an offence by examining and recording the statements of the witnesses material in respect of commission of the offence. signing of statement under section 161 is prohibited under section 162., it is prerogative of police officer to record the statement of a witness examined.

3. Examination of witnesses by police

1. Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
2. Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
3. The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means.

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of The Indian Penal Code is alleged to have been committed or attempted, shall be recorded, by a woman police officer or any woman officer.

'Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable.' (*Ref: Appabhai Vs. State of Gujrat AIR 1988 SC 696*). This observation was made by the Hon'ble Apex Court when prosecution could not produce independent witnesses in that case. In the process of investigation, under Section 161 of Cr.P.C, any Police officer making an investigation is accredited and empowered to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to records statement of witnesses. These statements are predominantly called

as section 161 Cr.P.C statements. This task is to gather evidence against accused. After filing charge sheet, these statements will also be perused by the Court to take cognizance of an offence. Such a statement can only be utilized for contradicting the witness in the manner provided by Section 145 of the Evidence.

The statements of witnesses recorded by police under section 162 Crpc during investigation cannot be used for seeking corroboration or assurance for the testimony of a witness in court. It may be made clear that if the statements recorded by the police used by the party it could be used only for contradicting the prosecution witnesses and for no other purpose. Such statements cannot be used for seeking corroboration or assurance for the testimony of the witnesses in court.

4. Section 162 - Statements to police not to be signed: Use of statements in evidence

No statement made by any person to a police officer during an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of

explaining any matter referred to in his cross-examination.

Nothing in this section shall be deemed to apply to any statement falling within the provisions of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

Explanation - An omission to state a fact or circumstance in the statement referred to in Sub-Section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

5. Section 163 - No inducement to be offered

No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872 (1 of 1872).

But no police officer or other person shall prevent, by any caution or otherwise, any person from making during any investigation under this Chapter any statement which he may be disposed to make of his own free will: Provided that nothing in this Sub-Section shall affect the provisions of section 164.

6. What is a contradiction?

In case of a witness testifies before the court that a certain fact is existed without stating same before police; it is a case of conflict between the testimony before the court and statement made before the police. This is a contradiction. Therefore, statement before the police can be used to contradict his testimony before the court. In **Appabhai .Vs. State of Gujrat AIR 1988 S.C. 694 [1988 Cri.L.J. 848]**, The Hon'ble Apex Court has observed as

under: "The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded.

7.What is an Omission?

An omission is either skip or slip, it means 'exclusion' or 'leaving out'. If a certain fact is testified by a witness in his Examination-in-Chief, such fact, which is testified in Court, had been omitted to state before police, it is called an 'Omission'. Now, it is to be tested by the Court whether it is a material omission or not. If it is a material omission, it amounts material contradiction. The Hon'ble Apex Court opines that relevant and material omissions amount to vital contradictions, which can be established by cross- examination and confronting the witness with his previous statement. (*Ref; Tahsildar Singh .Vrs..State of U.P., 1959 SCR Supl. (2) 875; AIR 1959 1012 (1026)*). However, as was held in **Ponnuswamy Chetty v. Emperor (A.I.R. 1957 All. 239)**, 'a bare omission cannot be a contradiction'.

The rules of evidence laid down in Sections 145, 154 and 157 are of paramount importance to practitioners. Contradictions in the previous statements in writing of a witness is a very powerful weapon in the hands of the adverse party. A contradiction may be such as to demolish the case made out in the examination-in-chief. In a criminal trial, statements of witnesses are recorded by the Police under Section 161 of the Cr. P. Code, copies of which are supplied to the accused. These statements can be used by the accused for proving contradictions as laid down in Sec. 162 Cr.P.C. The expression, "Contradiction" was a subject of great legal controversy.

During the investigation police record statements of witness by examining him, which are called 161 statements or case diary statements. Purpose of recording statement is to

gather evidence and preserve it unless until it was put to trail. While police file charge sheet they supply copies of documents to accused along with copies of 161 statements as required under section 207 of Cr.P.C. On filling of charge sheet court after considering the contents of charge sheet and 161 statements only take cognizance against accused. After accused put in trial on framing of charges where in defence can use those 161 statements to test truthfulness of statements as it provided under section 145 of Indian Evidence Act.

8. How to record contradictions in evidence

The portion of statement which is about to use for contradiction first brought to the notice of witness, and should be questioned about it. If the witness admits that he made said statements before police then no further proof is needed. But if witness denies that he made confronting statements that he did not make before police then, comes the role of contradiction, court is bound to note the said statements and give exhibit number. By that process contradiction merely brought on record but those are subject to proof. It is said to be proved if investigating officer who recorded statement is confronted with the said statement asking whether witness stated about passage before him or not. If he gives affirmative answer, then the said contradiction said to be proved.

In a case reported in **AIR 1958 Bom 225, Syyed Husan Vs State**, their lordship held that the correct way and the proper way of proving a contradiction or omission is to ask the investigating officer (SI) about it in his evidence, as to whether a certain statement was made before him by a witness. If such a procedure is not adopted, it cannot be said that there was proof that in fact the statement concerned was not made by the witness. It is for the trial judge to decide in each case, after comparing the part or parts of the statement recorded by the police with that made in the witness box, to give a ruling having regard to the aforesaid principles whether the recital intended to be used for contradiction satisfies the requirements of law.

9.Rule 29 of Chapter VI of Criminal Manual

states about proof and statements under section 161 of the code of Criminal Procedure, 1973 as under:-

29 (1) When a statement recorded under section 161 of the Code of Criminal Procedure, 1973 is used in the manner indicated in section 162 of the Code, the passage which has been specifically put to the witness in order to contradict him should first be marked for identification and exhibited after it is proved.

(2) The method of proving such a statement is to question the Police Officer, who had recorded the statement whether the passage marked is a true extract from the statement recorded by him.

(3) When a statement recorded under section 161 of the Code is used to contradict a witness, the specific statement put to the witness should be set out accurately in the record of the deposition of the witness.

(4) Omissions in the statements recorded under section 161 should, if denied by the witness, be proved by questioning the Police Officer whether the witness had made the statement which he says he had. On the point of appreciation of evidence the Hon'ble Supreme Court has observed in **Ganesh K. Gulve etc. v/s. State of Maharashtra (decided on 21.08.2002 in appeal (Cri) 501 of 1999** as under:- " In order to appreciate the evidence, the Court is required to bear in mind the set up and environment in which the crime is committed. The level of understanding of the witnesses. The over jealousy of some of near relations to ensure that everyone even remotely connected with the crime be also convicted. Everyone's different way of narration of same facts. These are only illustrative instances. Bearing in mind these broad principles, the evidence is required to be appreciated to find out what part out of the evidence represents the true and correct state of affairs. It is for the courts to separate the grain from the chaff" The law laid down by the Apex court as indicated above, in respect of recording contradiction has now been settled,

the trial courts are required to carefully read the provisions as prescribed in section 162 of crpc and the relevant provisions of Section 145,155 and 157 of Indian Evidence Act.

10. Evidential value of contradictions and omissions

The statements of witnesses recorded by police officer during investigation cannot be used as substantial evidence. It cannot be used except for the purpose of contradictions under section 145 of Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in examination for the limited purpose of explaining any matter referred to in cross examination. The only other exception to this embargo is when the statement comes under the preview of section 32(1) or section 27 of Indian Evidence Act. The bar created by section 162 has no application in the proceedings under Article 32 and 227 of the Constitution or in civil proceedings and a statement made before police officer during investigation can be used as evidence in such proceedings provided it is otherwise relevant under the Evidence Act. But it has been held down in **Punya Pd. Sankola Vs Balvadra (1985 cri.L.J. 159)** that the expression investigation under this chapter in section 162 means chapter 14 of the Cr.P.C., where in section 162 occurs.

The language of section 162 Cr.P.C., is plain and explicit and it admits of no doubt as to its meaning. Section 162 criminal Procedure Code lays down the restricted use of such statements prohibiting the court from using them as corroborative of the statements in court. The reasons for the prohibition of the use of the statement made before police during the course of the investigation for the purpose of corroboration is that the police cannot be trusted for recording the statement correctly and as they are often taken down in a undetermined manner in the midst of confusion.

To bring the statements with in ambit of section 162 of Cr.P.C., it must not merely be made during the period of investigation but must be made in course of investigation. The words during imply that the statement must be made as a step in a pending investigating.

The two things that the period of investigation and course of investigation are not synonymous. The statement must be an ascribable to the enquiry conducted by the investigating officer or to any other officer and not one which is de hors. So the other statement though made during the time of investigation were going on, is not hit by the prohibitory rule of section 162 of Cr.P.C. therefore such a statement can be used for corroborating or contradicting purposes according to normal rules of evidence contained in section 157 and 145 of Evidence Act.

In **Baleshwar Rai Vs State of Bihar** it was held that “section 162 of the Criminal Procedure Code only bars proof of statements made to an investigating officer during the course of investigation. section 162 of CR.PC does not say that every statement made during the period of investigation is barred from being proved in evidence. For a statement to come within the purview of section 162 it must not merely be made during the period of investigation but also during investigation. The two things, that is, "the period of investigation" and "'course of investigation' are not synonymous. Section 162 is aimed at statements recorded by a police officer while investigating into an offence. This is clear from the opening words section 162. They speak only of statements made to a police officer during the course of investigation. This implies that the statement sought to be excluded from evidence must be ascribable to the enquiry conducted by the investigating officer and not one which is de hors the enquiry. A communication like Ext. 6 will not fall within the ambit of such statements. In this view we hold that the document in question is not hit by section 162 of the Criminal Procedure Code and the High Court was right in admitting it in evidence. ”

In **Raghu Nandan Vs State of AP(1974 Cri.L.J. 453)** it was further made clear by the Apex court that the bar imposed by section 162 Cr.P.C., , though wide is not explicit or specific enough to extend the prohibition to the use of the wide and special power of the court to question a witness, expressly and explicitly given by section 165 of Evidence Act.

Therefore, it must be held that section 162 Cr.P.C., does not impair the special powers of the court under section 165 of Indian Evidence Act.

Coming to appreciation of evidence merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt section 155 of Evidence Act provides scope for impeaching the credit of a witness by proof of inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction.

In **Appabhai Vs State of Gujarath (AIR 1988 S.C. 694)** the Hon'ble Apex court has observed that the court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded.

The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter to demolish the entire prosecution story. The witnesses these days go on adding embellishment to their version perhaps for the fear of their testimony being rejected by the Court. The Courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy."

In case of – **Arjun and others .Vs.. State of Rajsthan, AIR 1994 SC 2507**, The Hon'ble Court has held that - A little bit of discrepancies or improvement do not necessarily

demolish the testimony. Trivial discrepancy, as is well known, should be ignored. Under circumstantial variety the usual character of human testimony is substantially true. Similarly, innocuous omission is inconsequential

11. Evidentiary value of 161 statement if signed by witness.

Basically, the signature of witness on section 161 of Cr.P.C., statement is not necessary. The practice of getting signatures of the witnesses on 161 statements is expressly prohibited under section 162 of Cr.P.C. violation of this provision may sometimes diminish the value of the testimony of the witnesses when they come to court. However, it is not the law that whenever the signature of the person is obtained in his statement recorded during an investigation that statement should be ignored. But in such situation the court must be cautious in appreciating the evidence that the witness who gave the signed statement may give in court.

In decisions **State of U.P Vs MK Anthony (1985 SCC (Cri) 105)** and **State of Rajasthan Vs Teja Ram and others (AIR 1999 SC 1776)** , the apex court observed that section 162 of Cr.P.C., does not provide that, evidence of a witness given in the court becomes inadmissible, if is found that the statement of witnesses recorded in the course of investigation was signed of the witness at the instance of the investigating officer. It merely puts court on caution and may necessitate in depth scrutiny of the evidence.

12. Delay in recording 161 statements and its effects

Delay in recording of statement of witnesses - Does not necessarily discredit their testimony, if they are cogent and credible and delay is explained to the satisfaction of Court
- The effect of delay in recording statements of witnesses under section 161 of the Code of Criminal Procedure was examined by the Hon'ble Supreme court in the case of **Harbeer singh vs sheeshpal** , where in honourable apex court observed that delay in recording of

statements of the prosecution witnesses under Section 161 Cr.P.C., although those witnesses were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter would cast a doubt about prosecution case.

It is settled law that every delay in examining witness not fatal subject to explanation given by investigating officer to the satisfaction of court. In case **Ganesh Bhagvan Vs state of Maharashtra 2005 DMC 445** the honourable court observed that though it is a well-settled law that delay in recording the statement of the witnesses does not necessarily discredit their testimony, but if those witnesses were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter, and even then, the delay has occurred, it would cast a doubt upon the prosecution's case.

13.Scope and relevance of statements under section 164 of CR.P.C.

Confession means a formal statement admitting that one is guilty of a crime. Confession is not defined in the Evidence Act. Confession includes admission, but an admission is not confession. A confession either admit in terms of the offence or at any rate substantially all the facts which constitute the offence. If a statement falls short of such a plenary acknowledgment of guilt, it would not be a confession even though the statement is of some incriminating fact which taken along with other evidence tends to prove the guilt of the accused. Such a statement is only an admission but not a confession. The person making it states something against himself, therefore, it should be made in surroundings, which are free from suspicion. Otherwise it violates the constitutional guarantee under Article 20(3) so that person accused of an offence shall be compelled to be a witness against himself. A direct acknowledgement of guilt should be regarded as confession.

In case of **Pakala Narayana Swami Vs emperor AIR 1939 P.C. 47** the question before the court was whether statements from which the guilt of an accused can be inferred

amounts to a confession or not.

it was held that "A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not in itself a confession, for example, an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused death with no explanation of any other man's possession"

14. Types of confessions

Inculpatory and Exculpatory confessions: the confession to something wrong or which involves the accused of the guilt is inculpatory confession. And, the confession which absolves the accused of any guilt is exculpatory confession.

Form of confession: a confession may occur in any form it may be made to the court itself, when it will be known as judicial confession or to anybody outside the court, in which case it is called an extra judicial confession. It may even consist of confession to oneself, which may be produced in evidence if overheard by another. In *Pakala Narayan Swami v. Emperor*, where the accused admitted his guilt before the police and, later on, refused to identify himself before Magistrate and during trial, the court held that it won't amount to confession as there was no direct admission of guilt by him

In case **Sahoo Vs state of UP AIR 1966 SC 40** the accused who was charged with the murder of his daughter in law with whom he was always quarrelling was seen on the day of murder going out of the home, saying words to the effect "I have finished her and with her the daily quarrels." the statements were held to be a confession relevant in evidence, for it is not necessary for the relevancy of a confession that it should be communicated to some other person.

15. Who can record confession statements

Section 164 of the code gives power to the Metropolitan Magistrate or judicial magistrate to record confession and statements during the course of investigation under chapter 12 or under any law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial. The magistrate may record confession or statement made to him. But before doing so he is enjoined by sub section(2) thereto to explain to the person making it that he is not bound to make confession and that, if he does so it may be used as evidence against him.

In case Kartar Singh Vs state of Punjab, 1994 Cr.L.J. 3139 it was observed what section 164(2) of the code requires as amplified by rule 32 of Criminal Rules of Practice, is that as soon as the accused intending to make confession is produced and before he is told he would be allowed time for reflection, the magistrate should explain him that it is not intended to make him an approver and that, he is not bound to make confession and warn him that, if he does so, anything said by him will be taken down and thereafter be used as evidence against him as evidence in relation to his complicity in the offence at the trial, that is to follow. Compliance of sub- section (2) being mandatory and imperative, its non-compliance renders the confession inadmissible in evidence. Such defect cannot be cured under section 463 of the Cr.P.C. (see also **Shivappa Vs State of Karnataka (AIR 1995 SC 980)** , **Kehar Singh Vs State of Delhi Administration (AIR 1988 SC 1883)**)

16. Object of recording 164 statements

A question may arise as to why there is need to record the statement under section 164 of the code in addition to statement recorded under section 162 of the Code. The object of recording of statements of witnesses under section 164 of the Code is twofold; (1) to deter witnesses from changing their versions subsequently and (2) to get over the immunity from the prosecution in regard to information given by the witnesses under section 162 of the code. The other reason of recording statement of witnesses under section 164 of

the code is to minimize the chances of changing the versions by the witnesses at the trial under the fear of being involved in perjury.

The object behind it that when during the course of investigation police records the statements under section 162 of the Code they cannot administer oath to the person making statement and cannot obtain his signature, but under section 164 of the Code, a magistrate recording statement of a person can administer oath to him and obtain his signature over the statement. Certainly if a person makes and signs a statement then naturally he comes under moral obligation and chances of his turning hostile will be reduced. . But the evidence of witness whose statement is recorded under section 164 of the Code must be approached with caution.

17.Procedural safeguards

the magistrate shall record the confession in the manner provided in section 281 for recording the examination of the accused persons. It shall not only be signed by Magistrate, but also by the accused himself. The magistrate shall also append a memorandum at the foot of the record as laid down in the sub section (4). if he has no jurisdiction to inquire or try the offence he shall forward the confession so recorded to the magistrate by whom the case is to be inquired into or tried. The provisions of the section 164 of the criminal Procedural Code and rules and guidelines framed by the Honourable High Court in this behalf providing for procedural safeguards etc, must be complied with not only in form, but also in essence. When a confession is not recorded by the magistrate in the manner prescribed by the section 164 of Criminal Procedure Code, then it is not admissible in evidence.

18. Evidentiary value of 164 statements

Evidentiary value of statement recorded under section 164 Cr.P.C, is that, the statement cannot be treated as substantive evidence when the maker does not depose of such facts on oath during trial. before acting on a confession made before a judicial magistrate in terms of section 164, the court must be satisfied first that the procedural requirements laid down in sub section (2) to (4) are complied with. These are salutary safeguards to ensure that the confession is made voluntarily by the accused after being apprised of the implications of making such confession. The endeavour of court should be to apply its mind to the question whether the accused was free from threat duress or inducement at the time of making confession. **Parmananda Vs state of Assam (2004(2) ALD Cri 657**

The confession would not be ordinarily considered the basic for conviction. However, it is admissible, and conviction may also be based upon it if it is found truthful and voluntary and in a given case some corroboration is necessary. Confession which is not retracted even at the stage of trial and even accepted by the accused in the statement under section 313 Cr.P.C. can be fully relied upon. So, the conviction based thereon together with other circumstantial evidence is sustainable. The accused in his statement under section 313 Cr.P.C. or during cross-examination never suggested that his statement under section 164 Cr.P.C. is false. Allegation of presence of police officers at the time of recording the confession was without any material. Requirement of section 164(2) Cr.P.C. have been complied with. Such a confession statement was fit to be accepted.

19. Important Case Laws

1) **A.I.R. 1953 Orissa 308:-** Statement before committing Magistrate is, no doubt, substantive evidence, but weight which should be attached to such evidence is a matter which is to be decided by the Court according to the facts and circumstances appearing in the case. If the Sessions Judge for his sufficient reason as to why he should accept the evidence taken before committing Magistrate in reference to that taken by himself, he should base his judgment upon such statement even if evidence is not corroborated by any other independent evidence.

2) **Bisipati Padhan v/s. State in A.I.R. 1969 Orissa 289: Ram Kishan –vs- Harmit A.I.R. 1972 SC 468, State v/s. Shriram Lohiya A.I.R. 1960 SC 490:-** A statement of a witness u/s 164 of the Code is not substantive evidence, but it is a former statement made before an authority legally competent to investigate the fact. Such a statement can be used either for corroboration of the testimony of a witness u/s 157 of the Act or for contradiction thereof u/s 145 of the Act.

3) **Mohanlalv/s State of Mah. In A.I.R. 1982 SC 839:-** Section 145 of the act applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of a proceeding.

4) **Bharatsingh v/s. Bhagrathi A.I.R. 1966 SC 405 :** - If admission is duly proved, it can be used as substantive evidence whether or not witness was confronted with such admission or not when that witness came to witness box.

5) **Sita Ram Patil v/s. Ramchandra Patil in A.I.R. 1977 SC 1712 :-** even if written admission is proved, it can be used as substantive evidence if the witness is so confronted with his previous admission in writing as per section 145 of the act.

6) **Balak Ram v/s. State of U.P. A.I.R. 1974 SC 2165, and Ram Charan v/s. State of U.P. A.I.R. 1968 SC 1270:-** evidence of witness cannot be discarded merely because there statements were recorded under section 164 of the Code. All that is required as a matter of

caution is a careful analysis of the evidence.

- 7) **Tapan Dass v/s. Sosti Dass A.I.R. 1986 390**: Rule of section 145 of the Act.
- 8) **Binay Kumar v/s.State of Bihar A.I.R. 1997 SC 322**: 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 part of section 145 of the act.
- 9) **Thumallapally –State of A.P. 1993 (2) Crimes 179**: There is no rule of law that an earlier statement should be treated as correct and the subsequent contrary statement shall be discarded.
- 10) **State v/s. Kartar in A.I.R. 1970 SC 1305 :1970 Cr.L.J. 144**: Statements under Section 164 of the Code are not substantive evidence. But it can be used to corroborate or contradict the maker under section 145 and 157 of the Act.
- 11) **A.I.R. 1980 SC 628 : 1980 Cr.L.J. 439, A.I.R. 1974 SC 2165. : 1974 Cr.L.J. 1486, A.I.R. 1968 SC 1270, 1985 Cr.L.J. 367 (Cal), 1987 Cr.L.J. 242 (Allahabad)** :- The evidence of a witness in a court whose statement has been previously recorded by a magistrate under section 164 of the code is always suspect, cannot be accepted as universally true and without any reservation.
- 12) **I.B.B.Rao v/s. State – 1985 Cr.L.J. 32** :- When it is disclosed that a witness whose statement has been recorded under section 164 was kept in police custody for several days and his whereabouts are not disclosed to the relatives, the evidence tendered by that witness in Court should not be relied upon.
- 13) **Ramchander v/s State A.I.R. 1981 SC 1036 : 1981 Cr.L.J. 609**: - When a witness whose statement under section 164 of the Code was recorded was not sticking to his statement so recorded, the Court should not rebuke him nor threaten him that he should be prosecuted of perjury.
- 14) **Ram v/s. State – A.I.R. 1968 SC 1270 : 1968 Cr.L.J. 1473** :- Unless witnesses

resile from their statements recorded under section 164, those statements cannot be deemed doubtful.

15) **1981 Cr.L.J. NOC 138** :- the statement of a witness recorded under section 164 of the code that the accused made before him extra-judicial confession of having killed the deceased constitutes substantial piece of evidence.

16) **Haladhar v/s State 1979 Cr.L.J. NOC 128** :- Recording of statement under section 164 of the Code sometimes becomes very much necessary in the interest of a case if the police seeks to weaken or demolish a case or refusing to take steps for recording the statement of the witness at the earliest opportunity, the magistrate may record the statement of the witness and de facto complainant under section 164 (5) of the Code.

17) **T.S. John v/s. state – 1984 Cr.L.J. 753** :- Statement of deceased person recorded under section 164 is not admissible under section 32 (3) of Evidence Act.

18) **State of U.P. V/s. Veer singh 2004 Cr.L.J. 3835 (SC), Shrawan v/s. State of Maharashtra 2003 Cr.L.J. 398 –A (SC), Sunil Kumar v/s. State of M.P. 1997 Cr.L.J. 1183** :- Dying declaration recorded with belief that there was no chance of survival of its maker and the victim survived surprisely then such dying declaration forms the part of statement and would be best statement under section 164 of the Code.

19) **2004 Cr.L.J. NOC 266 (Jharkhand) : Statement of Informant** – Magistrate can not refuse to record the statement of informant under section 164 of the Code on the ground that the case is under investigation.

20) **Audumbar v/s. State 1999 Cr.L.J. 1936** :- if a witness turns hostile his statement u/s 164 of the code even if proved by examining a magistrate cannot be used as a substantive evidence.

21) **Kanwar Pal v/s. State of Hariyana 1994 Cr.L.J. 1392, Ramesh –vs- State A.P. 2005 Cr.L.J. 3354 (SC)** :- the evidence of a witness whose statement is recorded u/s 164 of the code be viewed with some initial distrust but it is not a rule of law and such evidence

cannot be discarded in all cases.

22) **1972 (3) SCC 280 : 1972 Cr.L.J.266** :- Statement u/s 164 of the Code even if proved cannot be used as substantive evidence.

23) **Choudhari Ramji v/s. State of Gujrat 2004 Cr.L.J. 280 (SC)** :- witness can only be contradicted u/s. 145 of the code of his own previous statement and not with statement of any other witness.

24) **Phool chand V/s. State of U.P. 2004 Cr.L.J. 1904, Mohd. Ansari – of Bihar 2005 Cr.L.J. 1771** :- statements recorded u/s 164 of the code cannot be relied on for purpose of conviction.

20.Role of section 145 of Indian Evidence Act in examining witness basing on 161 and 164 statements

the object of this section is to give the witness a chance of explaining the discrepancies. So when previous statement is to be proved as an admission, the statement as such should be put to the witness and if the witness denied having given such a statement, it does not amount to any admission and if it is proved that he has given such statements, the Attention of witness to be drawn on that statement.

Section 145 of the Act states that – 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. The Section 145 of the Act does not speak about as to which statement recorded under section 162 of the code or 164 of the Code is to be considered as a previous statement in writing. Thus, both the statements recorded under section 162 and 164 of the Code are the previous statements to invoke section 145

of the Act.

Section 145 of the Act is consisting of two parts– The first part enables 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; The second part gave restriction on the opponent. If the opponent 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. It will be needless to mention that while dealing with section 145 of the Act, the case of **Tahsildarsingh V/s.State of Uttar Pradesh reported in A.I.R. 1959 S.C. 1012** has been a milestone of judicial business. Without touching the ratio laid down in Tahsildarsing case no criminal case can accelerates.

There can be no hard and fast rules as regards compliance with the requirement of section 145. all that is required is that the witness must be treated fairly and be afforded a reasonable opportunity of explaining contradictions, after attention drawn to him in fair and reasonable manner. When prosecution examines a witness and asks him, if he made certain statements before the police or before magistrate under section 164 of Cr.P.C., and witness denies, it is duty of prosecution to confront him with statements and get them marked as exhibits. So that witness might be afforded an opportunity, either to explain contradiction and deny them. If the statement of the witness is too long and only one or two statements in it are to be used for contradiction, mere reading the whole lengthy statement may confuse the witness and it would not be a fair method of drawing attention of witness. So it would be proper to put fact by fact in such statement so as to give a fair opportunity to the witness explain.

Conclusion

Recording of statements under section 161 and 164 of Cr.P.C., plays a pivotal role in criminal trial. The purpose of contradiction between evidence of a witness before the court and the statement recorded under section 161 and 164 of Cr.P.C is primarily to shake credit of the witness, it is only to put the court on guard, to scrutinise the evidence with great care. Thereby it is duty of all judicial officers to pay special attention to the provisions of section 161, 164 of Code with reference to Section 145 of Evidence Act, so as to enable them to have clear notions about all relevant provisions in this regard.

Submitted by:
Smt. B. Sobha Kumari,
Senior Civil Judge,
Rajam.