

ORDER

The IO submitted requisition for recording statement of witness by name Laxminarayan U/Sec.164 of P.C. in Mulagund PS Cri.No.21/2022 which is registered for the offence punishable U/Sec.498(a), 506 IPC and Sec. 3 and 4 of DP Act before the II Addl. Civil Judge & JMFC, Gadag but same is forwarded to this Court.

After receiving requisition Crl. Misc. is registered. As per the say of IO, in the present case the IO has recorded the statement of witness. Now IO is requesting the statement of witness under sec. 164 of CrPC. From the facts stated in the requisition, it is noticed that no reason has been given by the IO why statement of witness has to be recorded U/Sec.164 of Cr.PC. Because the witness is neither victim of the alleged offence nor the alleged offence appearing in the list offence mentioned under sec.164(3) CrPC.

In view of above fact, now the short question that arises for consideration is, whether the Magistrate has to record statement of witnesses which are not covered U/Sec.164(5-A) of Cr.P.C.

To answer the above question, it is just and proper to see what Sec.164 of Cr.P.C. says and its objects.

Sec.164 deals about recording of confessions and statements.

Section 164(1) says that, any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of

an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial.

Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence;

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

Sec.164(5) says that, 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.

Sec.164(5A) says that;

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

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement;

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video graphed.

(b) A statement recorded under clause(a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1972 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

After having gone through the above said provisions, it appears that, the object of recording statements of a witness or Victim under section 164 of the code is of two-fold:

(1) to deter witness from changing their versions subsequently: and

(2) to get over the immunity from the prosecution in regard to information given by the witness under Section 162 of the code. Another reason for recording statement of witnesses under Section 164 of the code is to minimize the chance of changing the versions by the witness at the time of trial under the fear of being involved in perjury.

After having gone through the above said provisions and its objects. It is noticed that, Sub-section(1) of section 164(5) gives discretionary power to the Magistrate. But sub section 164(5A) of sec. 164 is a mandatory in nature.

Sec. 164(5) says where the Magistrate forms an opinion holding that, it is best fitted to the circumstances of the case, then only statement of such witness can be recorded on oath not otherwise. In the present case the IO submits that, yet he has not recorded the statement of victim. Further, he has not stated any reasons why the statement of witness as to be recorded. Therefore, considering the facts and circumstances of the case, this court is of the opinion that, it is not fit case or expedient to record statement of witness. Hence, I proceed to pass the following;

ORDER

The requisition filed by the IO is hereby rejected and petition is disposed off.

Issue intimation to concerned IO.

(Sd-03.11.2022)

Prl.Civil Judge and JMFC., Gadag
C/c.Civil Judge and JMFC., Mundargi.