

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Criminal Misc. Application No.S-59 of 2025
(*Babu Bhatti V. The State and others*)

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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- 1. For orders on office objections at flag "A".
- 2. For hearing of main case.

Applicant: Babu son of Karim Bux Bhatti
Through Mr. Nisar Ahmed G. Abro, Advocate

Respondent No.1: The StateThrough Mr. Aitbar Ali Bullo,
Deputy Prosecutor General, Sindh.

Respondents No.2-4: Abdul Karim and others
Through Mr. Ashique Hussain Kalhor, Advocate

Date of Hearing 25.04.2025

Date of Order 25.04.2025

ORDER

Nisar Ahmed Bhanbhro, J.:- Applicant Babu Bhatti through this Criminal Miscellaneous Application, has questioned the Order dated 24.10.2024, passed by the Court of Learned Civil Judge & Judicial Magistrate, Thull (Trial Court) in Criminal Case No. Nil of 2024 (*The State and Abdul Karim Bhatti and others*) and Order dated 14.12.2024, passed by the Court of Learned Additional District and Sessions Judge, Thull, (Revisional Court) (*Re-Baboo v.s The State*), in Criminal Revision Application No.32 of 2024, wherein the request of Investigation Officer for recording of statement under section 164 CrPC of Sadam Hussain, Liaqat Ali and Qurban Alialleged abductee and witnesses of Crime Report 26 of 2024 of Police Station Garhi Hassan for an offence punishable under section 365- A PPC, 6 – 7 Anti-Terrorism Act has been declined.

2. The facts in brief of the case are that complainant Babu Bhatti recorded First Information Report at Police Station Garhi Hassan alleging therein that on 31.07.2024, he alongwith his son Saddam Hussain, aged about 19 years and cousins namely Liaqat Ali and Qurban Ali were on the way to Daur City to open his shop, it was about 07:00 AM in the morning, when they reached at Unnar Shakh, one Mehran Car intercepted them. Five accused duly armed with deadly weapons alighted from car, complainant party identified one accused Abdul Karim Bhatti having pistol, while four accused were unknown and they would be identified if seen again. That on show of weapons accused personskidnapped Saddam Hussain. While kidnapping accused demanded ransom of One Crore Rupees for release of Saddam Hassan, and threatened to kill kidnappee if ransom was not paid. Complainant made efforts for recovery of his son but failed, hence he lodged FIR on 20.09.2024.

3. Investigation took its course, alleged abductee Saddam Hussain on his alleged release, appeared at police station Garhi Hassan on 03.10.2024, recorded his statement under section 161 CrPC, wherein confirmed the facts of FIR, and disclosed that he was released from captivity of kidnappers after payment of Rs 10 million. On 24.10.2024 investigation officer appeared before Trial Court and filed an application for recording statement of alleged kidnappee Saddam Hussain, witnesses Liaqat Ali and Qurban Ali under section 164 CrPC, which was declined vide orders dated 24.10.204.

4. Applicant Babu Bhatti challenged the orders of Trial Court through criminal revision application No 32 of 2024 before the Court of Learned District and Sessions Judge Jacobabad, which was assigned to the Revisional Court for disposal in accordance with law. The Revisional Court after hearing the parties, dismissed Revision Application vide order dated 14.12.204, hence this application.

5. Mr. Nisar Ahmed G. Abro Learned Counsel for applicant contends that Trial Court was under an obligation to record statement under section 164 CrPC of alleged kidnappee and witnesses, as offence of kidnapping for ransom was heinous in nature and reasoning adopted by Trial Court for rejection of application of investigation officer was not proper and beyond the scope of section 164 CrPC. He further contended that Revisional Court did not appreciate the law in its true perspective and declined revision application through a non-speaking order, the orders passed by Courts below were arbitrary, stereotyped and illegal thus not sustainable. He prayed to allow this application and to direct Trial Court to record statement of witnesses and alleged kidnappee under section 164 CrPC.

6. Mr Ashique Hussain Kalhoro Learned Counsel for Respondents No 2 to 4 contended that a false case was registered against Respondents. He contended that accused Abdul Karim nominated in the present case, was under illegal confinement of police and was released from lock up of police station Garhi Hassan after a raid was conducted by Learned Magistrate on 18.09.2024. Police in connivance with complainant recorded this false FIR two days thereafter; he contended that impugned orders did not suffer from any illegality or irregularity. He prayed for dismissal of application.

7. Learned Deputy Prosecutor General opposed the instant application and supported the impugned orders passed by both the Courts below. He contended that impugned orders were passed on proper appraisal of material available on record thus did not require interference by this Court.

8. Heard arguments of Learned Counsel for Parties and perused material available on record.

9. The issue involved in the present case pertains to recording of statement of prosecution witnesses before Magistrate in its powers conferred under section 164 CrPC. Magistrate is empowered to record statement of a witness and confession of an accused under section 164 CrPC, in the course of investigation or at any time before commencement of inquiry or trial, section 164 CrPC reads as under:

"164. Power to record statements and confessions.(1) Any Magistrate of the First Class and any Magistrate of the Second Class specially empowered in this behalf by the Provincial Government, if he is not a police-officer, record any statement or confession made to him in the

course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

(1-A) Any such statement may be recorded by such Magistrate in the presence of the accused, and the accused given an opportunity of cross-examining the witness making the statement.

(2) Such statement shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in Section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reasons to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him."

(Signed) A.B.

Magistrate.

Explanation: It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having Jurisdiction in the case.

This provision of law empowers Magistrate to record statement and confessions. Use of word "may" grants discretion to the Magistrate for recording of statement and confessions. No doubt, like all other discretionary powers, the court concerned is to exercise this discretion judiciously, not arbitrarily, while taking into consideration the facts and circumstances of the case. It is never at the sweet will of an investigation officer to bring a person before Magistrate and get his statement recorded in each and every case. The Investigation Officer has to assign reasons to convince the Magistrate to exercise such discretion in his favor, particularly when issue relates to recording of statement of witnesses. In case for recording of confessions, if an accused was brought before Magistrate, before proceeding to record confession, Magistrate would satisfy itself, that accused was confessing guilt voluntarily, of his own accord, without any inducement and threat and before recording confession accused was explained that he was not bound to make such confession and if he confessed guilt, the same would be used as evidence against him. Upon satisfaction Magistrate may proceed to record confessions.

10. The investigation is a process of collection of evidence; it requires investigation officer to collect evidence for making an opinion as to whether a case for sending report under section 173 CrPC for trial of accused is made out or evidence on record is deficient, so that accused may not be sent for trial. Recording of statement of witnesses

under section 161 CrPC is an important task to be performed by investigation officer during investigation, once the statement of a witness is recorded under section 161 CrPC and reduced into writing sanctity is attached to it. The statement under section 161 CrPC is made part of investigation record and supplied to the accused as part of documents before framing of charge. The statement of a witness or accused recorded under section 161 CrPC though not exhibited on record while recording evidence of witness or accused but its can be confronted to veracity of such statement in cross examination. The value of statement recorded under section 161 CrPC and 164 CrPC though distinct, but when a witness supports prosecution case then need may not arise to record his statement under section 164 CrPC before Magistrate. The investigation officer in compelling circumstances where he is of the opinion that witness is infirm, weak and old aged or for a reason that attendance of the witness would not be procured with ease during trial, then a request for recording statement under section 164 CrPC may be made to concerned Magistrate. Upon receiving such request, Magistrate may exercise such discretionary powers and record the statement of witness. If the offence is one which carries capital punishment or is triable by Courts of Session, Magistrate will record statement of witness after giving a due notice to the accused as required under section 265 – J CrPC, and record statement of the witness in presence of accused by affording him an opportunity of cross examination. If during trial the attendance of said witness becomes impossible by any of the reasons then such statement may be used as evidence against the accused.

11. As far as the case in hand is concerned, I have carefully examined the application dated 24.10.2024 moved by Investigation Officer before Trial Court. The application did not disclose any reasons for recording of statements of witnesses under section 164 CrPC, it merely contained the words that statement of witnesses was required to be recorded under section 164 CrPC. Trial Court declined the request of Investigation Officer through a detailed order, giving specific reasons for refusing to exercise discretion in favor of prosecution. Trial Court in its order observed that on an application filed under section 491 CrPC, premises of Police Station Garhi Hassan were visited on 18.09.2024 wherein accused Abdul Karim was found under illegal confinement. He was ordered to be released and just after two days on 20.09.2024 he was implicated in a heinous offence of kidnapping for ransom. Trial Court observed that police was keen to strengthen the prosecution case, which smacked mala fides on their part. The revisional Court also concurred with the findings of Trial Court and dismissed the application. Revisional Court in its order observed that accused nominated in FIR was found in illegal confinement at the same police station and alleged kidnappee appeared before police voluntarily on 03.10.2024 but he was not produced before the Magistrate on same day. It is also pertinent to mention that Investigation Officer did not challenge the orders of Trial Court, instead brought complainant to file a revision application, which was not maintainable under the law. Investigation Officer failed to justify his request for recording the statement of witness before Magistrate, thus the Courts below rightly declined such request.

12. Applicant has invoked jurisdiction of this Court under its inherent powers, seeking reversal of the impugned orders passed by the Court below. This Court exercises its inherent powers to give effect to the orders passed under the Code of Criminal Procedure or to prevent the abuse of the process of any Court or to secure the ends of justice. Meticulous perusal of record reveals that Trial Court and Revisional Court declined the request of Investigation Officer after proper appreciation of material on

record. By no means had the impugned orders caused adverse effects to investigation of the case, investigation officer after collection of evidence referred the accused for Trial before the Court having jurisdiction. In order to exercise the inherent powers, the applicant has to satisfy that non-recording of the statement of witnesses under section 164 CrPC resulted into the abuse of the process of Court or recording of the statement of witness under section 164 CrPC was necessary to secure the ends of justice. Heinousness of alleged offence would not in any manner be a sufficient ground for exercising inherent powers. Statement of a witness before Magistrate may not serve any purpose in most of the cases, excepting to increase the number of witnesses during trial. It is not the quantity but quality of evidence which matters to prove the guilt of any accused beyond shadow of doubt.

13. The Applicant has failed to furnish any reasonable grounds to demonstrate that recording of the statement of witnesses before Magistrate in terms of section 164 CrPC was necessary to secure the ends of justice or the impugned orders suffered from any illegality or irregularity or were perverse or contrary to law, that may call for interference by this Court under its inherent jurisdiction. This application therefore fails consequently dismissed being devoid of merits along with listed applications if any.

Judge

Manzoor