

POWER OF JUDICIAL MAGISTRATE TO RECORD CONFESSION

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ABSTRACT

Law provisions concerning power of Judicial magistrate to record confessions and statements under section 164 of the Code of criminal procedure, 1973. Any confession made to a police officer is absolutely inadmissible proof because the police, through and big, is not as yet considered honest. It is apprehended that any energy given to the police to report confessing or statements is more likely to be misused and that the overzealous police officers would possibly, in the obvious workout of such strength, extort or fabricate confessions and manipulate statements. Consequently, the Code of criminal procedure gives by means of section 164 a special system for the recording of confessions and statements made throughout the route of research via equipped judicial magistrates.

OBJECTIVES

1. To understand about confession under Indian Evidence Act
2. To find out types of confession
3. To know about power judicial magistrate to record confession.
4. To analysis the section 164 of Crpc
5. To know about the case law regarding the confession

HYPOTHESIS

Whether the power of judicial magistrate in recording the confession is admissible under Indian Evidence Act and comparing the difference between judicial confession and Police confession and its admissibility .

LIMITATIONS:

The researcher is not able to do field study due to lack of time

The researcher is not able to access the archives.

METHODOLOGY:

The methodology used in this study is doctrinal. It is based on the information and the analytical study from secondary sources. They include publication research, surveys, journals, historical information of both past and present. When a research is concerned with legal problems, issue or question, it is referred to as doctrinal theoretical or pure legal research. Doctrinal research is a theoretical study where mostly secondary sources of data are used to seek to answer one or two legal proposition or questions or doctrines. Its scope is very narrow and there is no such need of field work.

INTRODUCTION

confession is an admission made any time by means of someone charged with an offence or suggesting the inference that he has deviated the offence. with a view to constitute a confession it need to either admit in terms of the offence or at any fee substantially all the information which represent the offence. A declaration that includes self exculpatory depend cannot quantity to a confession. section 164, Crpc. empowers a metropolitan magistrate or judicial Justice of the Peace, whether or no longer he has jurisdiction within the case to file any confession or assertion made to him within the path of an research or at any time afterwards earlier than the commencement of the inquiry or trial. supplied that any confession or statement made under this sub-phase can also be recorded by using audio-video electronic way inside the presence of the endorse of the person accused of an offence. The aim of this study is to find out the power of judicial magistrate to record confession, evidentiary value of judicial confession along with conditions of police confession and Admissibility of judicial confession under Indian Evidence Act.

REFERENCE

1. E-BOOKS
2. E-SOURCES

KEYWORDS

Confession-judicial confession-admissibility-video recordings-co accused

CHAPTER - 1 KINDS OF CONFESSION

There are four types of confession as follows

1. Judicial confession
2. Extra- judicial confession
3. Retracted confession
4. Confession by co-accused

1. JUDICIAL CONFESSION

A Judicial Confession is that that is made before Justice of the Peace or in a courtroom due direction of judicial intending. Judicial Confession is applicable and is used as an evidence in opposition to the maker furnished it is recorded according with provisions of section 164 of Crpc The Justice of the Peace who data a confession below section 164, criminal procedure Code, need to, consequently, warn the accused who is about to confess that he can also or may not be taken as an approval. After caution the accused he need to deliver time to assume over the problem and then most effective file the confession. this sort of confession is referred to as judicial confession.

2. EXTRA JUDICIAL CONFESSION

Extra-Judicial Confession is made now not earlier than a Justice of the Peace or any court in due path of judicial proceeding but is made either to police all through the investigation or into police custody or made in any other case than to the police. Extra-Judicial confession isn't applicable.

3. RETRACTED CONFESSION

The Accused character who confessed in advance and later denied such confession does now not smash the evidentiary price of the confession as in the beginning recorded. The superb court has stated that a Retracted confession may also form the premise of a conviction if it gets a few preferred corroboration from other independent proof. however if the court docket reveals that the confession in the beginning recorded changed into voluntary, it should be acted upon.

4. CONFESSION BY CO ACCUSED

Section 30, attention of proved confession affecting individual making it and others together below trial for the same offense. when greater individuals than one are being attempted mutually for the equal offense, and a confession made through certainly one of such folks affecting himself and some other of such persons is proved, the court docket may additionally think about such confession as in opposition to such different character in addition to against the person that makes such confession

CHAPTER- 2 POWER OF JUDICIAL MAGISTRATE TO RECORD CONFESSION

Legal provisions regarding energy of Judicial magistrate to record confessions and statements underneath section 164 of the Code of criminal procedure, 1973. Any confession made to a police officer is totally inadmissible evidence due to the fact the police, by way of and massive, is not as but considered straightforward. it is apprehended that any electricity given to the police to file confessing or statements is much more likely to be misused and that

the overzealous cops may, in the plain workout of such energy, extort or fabricate confessions and manipulate statements. consequently, the Code of criminal procedure presents by section 164 a special process for the recording of confessions and statements made at some point of the direction of investigation via competent judicial magistrates. section 164 of the Code affords that;

(1) Any Metropolitan magistrate or judicial Justice of the Peace may, whether or now not he has jurisdiction within the case, document any confession or announcement made to him inside the route of an research underneath this bankruptcy or beneath some other law in the meantime in force, or at any time afterwards earlier than the commencement of the inquiry or trial. but, no confession will be recorded by a police officer on whom any electricity of a Justice of the Peace has been conferred underneath any law for the time being in force.

(2) The Justice of the Peace shall, before recording this sort of confession, explain to the man or woman making it that he isn't certain to make a confession and that, if he does so, it could be used as evidence in opposition to him, and the magistrate shall no longer file any such confession except, upon wondering the individual making it, he has cause to accept as true with that it's miles being made voluntarily.

(3) If at any time before the confession is recorded, the character appearing earlier than the Justice of the Peace states that he isn't always willing to make the confession, the Justice of the Peace shall now not authorize the detention of such man or woman in police custody

(4) the sort of confession will be recorded inside the manner provided in section 281 of the Code for procedure the exam of an accused individual and will be signed by way of the man or woman making the confession; and the magistrate shall make a memorandum.

CHAPTER - 3- EVIDENTIARY VALUE OF CONFESSION NOT MADE BEFORE MAGISTRATE

Confession no longer made before magistrate – section 26 of the Indian Evidence Act, 1872: below S. 26, no confession made with the aid of any person even as he is in custody of a police-officer, may be proved as against such character, until this kind of confession is made in the instant presence of a magistrate.

This section also pursuits at remedying the equal mischief as is contemplated inside the preceding section. S. 25 makes inadmissible a confession made by means of an accused to the police. This section (S. 26) goes a step similarly to offer that a confession made with the

aid of a person even as in a police custody to a third individual (i.e., aside from a police-officer) is also no longer admissible, until it's far made within the on the spot presence of a magistrate. The presence of a magistrate is, via a legal fiction, appeared as equal to removal of police influence, and the statement is, consequently, now not rendered inadmissible.

CUSTODY

The mere temporary absence of a police-guy from the room wherein the confession is recorded does no longer terminate his custody of the accused, if he has taken powerful steps to prevent his get away, whether by means of locking the door of the room or by waiting outside, or via leaving him within the custody of every other character. where a village policeman, who had arrested the accused, left him in rate of positive villagers, and went to look the scene of prevalence, and at some stage in that c language, the accused confessed his guilt to the ones villagers, it became held that, notwithstanding the transient absence of the policemen, the accused being still below the police custody, the greater judicial confession made before the villagers became now not admissible in proof.

THE IMMEDIATE PRESENCE OF MAGISTRATE

The confession made by means of a person in the custody of a police-officer can not be admitted in proof except it's miles in the immediate presence of a Justice of the Peace. The technique for recording the confession is prescribed with the aid of the crook technique Code, which lays down sure situations for the recording of the confession for the duration of research. The strength to file confessions has been given simplest to sure lessons of Magistrates.

CHAPTER -4 EVIDENTIARY VALUE OF CONFESSION TO POLICE UNDER INDIAN EVIDENCE ACT

The item of this section 25 and S. 26 is to save you the practice of oppression or torture with the aid of the police for the cause of extracting confessions from accused men and women. Linder this phase, no confession made to a police-officer is admissible towards the accused. Any incriminating assertion made by means of an accused to a police-officer is inadmissible in proof. underneath the next segment, a confession made to a personal man or woman inside the custody of the police and not made inside the immediate presence of a magistrate, is also inadmissible in proof. it is to be cited that S. 25 may be very widely worded, and it sincerely excludes from proof in opposition to the accused a confession made via him to a police-officer underneath any situations by any means. whether such character is

in police custody or now not is inappropriate. The concept is that, by using rendering such confessions inadmissible, the temptation to export confessions is taken away.

Emp. v. Haji, [(1921) 23 Bom. L.R. 214]

An accused became charged with the offence of belonging to a gang of individuals related for the purpose of habitually committing dacoity. at some point of the police enquiry, he had made a announcement to an Inspector of Police that a package of ammunition produced with the aid of him turned into given to him by way of two other accused who were charged with him as being contributors of the gang. It became held that even though that statement turned into self-exculpatory, it become inadmissible in evidence underneath this segment, because it amounted to an admission of an incriminating condition.

SECTION 25 OF INDIAN EVIDENCE ACT

No confession made to a police officer, will be proved as against a person accused of any offence. section 25 lays down that a confession made with the aid of someone to the police officer is inadmissible and cannot be proved. The basic object of this phase and section 26 is to prevent practices of torture via the law enforcement officials for the reason of extracting confessions from the accused folks. even though both sections seek to attain equal reason they operate in unique fields. it is well known that the police officer to at ease confession uses quick reduce techniques even by means of setting the arrested individual into third degree so that the arrested individual confesses. "The principle upon which the rejection of confession made through an accused to a police-officer or while inside the custody of such officer (section 26) is based that a confession for that reason made or received is untrustworthy." this is the motives for which no confession made to a police officer will be proved underneath section 25 as in opposition to character accused of an offence. The policy behind section 25 is to exclude all confessional statements made by means of the accused to the police officer beneath in situations at the same time as he's in custody of the police except as is supplied in section 27. section 25 became enacted to place a forestall to the extortion of confession. It changed into, consequently, enacted to sub-serve a excessive motive. Alike section 25 the section 162 of the Code of criminal procedure, 1973 provides that no statement made to a police officer investigating a case shall, if taken down in writing, be signed with the aid of the individual making it, nor shall such writing be used as evidence. assertion made to police officer at some point of research does not come to be admissible simply because he's lifeless.

SECTION 26 OF INDIAN EVIDENCE ACT

No confession made by using any character at the same time as he is in the custody of a police officer, except it's made within the immediate presence of a Justice of the Peace, shall be proved as in opposition to such man or woman. Section 26 is the extension of the precept laid down in section 25. at the same time as section 25 applies to all confessions made to a few cops, this phase consists of confession made to "any individual" aside from police officer, even as in police custody. beneath this segment, it is furnished that no confession made by using an accused to any person while in custody of a police officer will be proved towards him until it's far made in the on the spot presence of a magistrate . thus, the section is supposed to prevent of coercive method of extorting confession.

CASE LAWS

1. **Pakala Narayan swami vs Emperor (AIR 1939 DC .47)** In this case, LORD ATKIN observed that: "A confession should both admit in terms the offence, or at any rate extensively all of the statistics which represent the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, isn't in itself a confession, for instance, an admission that the accused is the proprietor of and turned into in current ownership of the knife or revolver which triggered loss of life without a explanation of any other man's possessions
2. **Sahoo v. State of U.P. [AIR 1966 S.C. 40]** The accused who was charged with the murder of his daughter-in-regulation with whom he became continually quarrelling become visible at the day of the murder going out of the home, saying words to the impact: "i have completed her and together with her the each day quarrels."

The statement turned into held to be a confession relevant in proof, for it isn't essential for the relevancy of a confession that it should be communicated to a few other individual.

3. **RABINDRA KUMAR PAL alias DARA SINGH v. REPUBLIC OF INDIA [2011] 2 SCC 490** Graham Stuart Staines, a Christian Missionary from Australia, turned into working most of the tribal humans specially lepers of the nation of Orissa. His minor sons, namely, Philip Staines and Timothy Staines were burnt to death along with their father inside the midnight of 22.01.1999/23.01.1999. The deceased-Graham Staines was engaged in propagating and preaching Christianity within the tribal area of indoors Orissa. inside the mid-night time of 22.01.1999, a mob of 60-70 human beings got here to the spot and set hearth to the automobile wherein Graham

Staines became snoozing alongside together with his minor sons. The mob averted the deceased to get themselves out of the automobile due to which all the three folks were given burnt in the vehicle.

4. **STATE OF MAHARASHTRA v. MOHD. AJMAL MOHD. AMIR KASAB [Confirmation Case No. 2 of 2010]** Retracted Judicial confession – Reliability of – The court docket held that reliance may be located even on retracted confession if it is adequately hooked up that the confession is proper and voluntary and corroborated on all cloth particulars – it's far open for the courtroom to reject exculpatory data and think about inculpatory statistics out of the same. [Paras 123 and 127] concepts as regards evidentiary price of confessional assertion: [Para 126]
5. **STATE v. RAM AUTAR CHAUDHRY [AIR 1955 All 138]** In this case the confession become recorded after the preliminary inquiry in opposition to the accused had began, and it changed into in this context that the Bench which include Raghubar Dayal and James, JJ. held that: “we are consequently of opinion that a magistrate couldn't have recorded the confession of Budhoo purporting to exercise the powers conferred on him under section 164 Cr. P. C. and that a confession so recorded by way of him could not be taken in proof.”
6. **BACHCHAN LAL v. STATE [AIR 1957 All 184]** In this situation also the confession was recorded at some stage in the initial enquiry, and, in reality, after the Committing Justice of the Peace had recorded the statements of positive witnesses. Purporting to rely on their earlier decision in kingdom v. Ram Autar Chaudhry, [AIR 1955 All 138], Raghubar Dayal and James, JJ. held that: “.....this confession can't be taken in proof as a magistrate can document a confession below section 164 criminal procedure Code in the course of the investigation of the crime by using the police and not subsequent to the closing of the research and submission of the fee-sheet.”

SUGGESTIONS

It is well settled that a confession, if voluntary and surely made, is an efficacious evidence of guilt. there's no rule that a confession made and subsequently retracted by means of an accused cannot be frequent as evidence of his guilt without impartial corroborative evidence. A retracted confession must carry almost no weight as in opposition to a person aside from its maker.

CONCLUSION

Confessions are made by way of someone who is accused of an offence or no longer. No statement that carries self-exculpatory matter can quantity to a confession if the

exculpatory assertion is of identical truth which, if real, would negative the offence purported to be confessed. A confession ought to either admit in terms of the offence or at any price substantially all the statistics which represent the offence. A declaration made with out animus confitenti (intention to confess) is not a confession.

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