

FORM No. (M) 84

Form of Recording confessions or statements under section 164 of the Code of Criminal Procedure.

(RULES)

23. Magistrates should clearly understand the great importance of giving their closest attention to the procedure to be followed, from first to last, in the recording of confessions. This procedure should be followed without haste, with care and deliberation, it being understood that this duty is not a distasteful and minor, appendage or addition to their normal functions, but one which is of consequence to the confessing accused, his co-accused and Courts responsible for the administration of criminal justice. A confession which is recorded perfunctorily and hastily is a source of embarrassment to the trial Court, the prosecution and the defence. The provisions of sections 24 to 28 of the Indian Evidence Act and of Section 164 of the Code of Criminal Procedure should be carefully studied and the following safeguards, among other shall be adopted :-

(1) Confessions are to be recorded during the Court hours and in the Magistrate's Court or other room in a building ordinarily used as a Court house, unless the Magistrate, for reasons recorded by him on the Form No. (M) 84, certifies that compliance with these conditions is impracticable or that he is satisfied that the ends of justice would be liable to be defeated thereby. It must be clearly understood that the recording of a confession at a Magistrate's private residence, or at any place other than the Magistrate's Court shall be the exception and not the rule and that on Sundays and holidays when it is necessary to record a confession the Magistrate shall proceed to his Court for the purpose after making all arrangements for the production of the accused before him in that Court, if the confession is recorded in a room that is ordinarily open to the public, the Magistrate may, if he thinks fit, order that the public generally or any particular person shall not have access to or be or remain in the room used for the purpose.

Magistrate of _____

Before _____

the first class _____

the second class specially empowered in this behalf _____

in Subdivision _____ of _____ District

1. The accused _____ is brought by _____

(Sub) Inspector _____
Police _____
(Head) Constable _____

_____ before me at my _____

Court _____ on the (b) _____

Camp _____

House _____ at (a) _____

at (c) _____ a. m. _____ confession recorded.

_____ p. m. _____ to have his _____ statement

_____ letter _____ from the (d) _____

_____ memo. _____ given to me, dated _____

_____ is attached to the record. (1) _____

I have ascertained that the offence was committed at (a) _____

_____ on (b) _____ at (c) _____

a. m. _____
p. m. _____

(a) Here insert name of place.
(b) Here insert date.

(2) When the accused is produced the Magistrate should ascertain, when and where the alleged offence was committed, and, by questioning the accused, should further ascertain when and where the accused was first placed under police observation, control or arrest.

2. The accused is asked details as to the length of time during which and the places where he has been under the control of the Police.

first placed under observation

I was detained at (e) a. m.
arrested p. m.

on _____ in village of _____
_____ town _____
_____ city

I was taken to (f) _____ at _____ on _____

I was sent to you from (e) _____ on _____

(3) Magistrate shall not, except under circumstance which render delay impossible, record the confession of an accused person immediately the police bring him into Court. He shall be given at least three hours for reflection, during which period he shall not be in contact with any police officer and shall not be permitted to hold converse with any person.

3. Having talked with accused explaining to him each of the matters mentioned in paragraph 5 hereunder and cautioned him that he ought to reflect carefully before making any statement I have placed him in charge of

Peon
Armed Police Constable

and directed the accused to wait in order that he may have time to reflect before making any statement.

(4) During the examination of the accused and the record of his statement, a co-accused and, unless in the opinion of the Magistrate the safe custody of the prisoner cannot otherwise be secured, police officers should not be present in particular the police officers concerned in the investigation of the case or in the arrest or production of the accused shall be excluded.

4. I have satisfied myself that there is no police officer in the Court in any place whencé the proceedings can be seen or heard, except the above named

_____ who have/has not been concerned in the investigation of the crime or in the arrest or production of the accused.

(5) The Magistrate should give the explanations required by section 164 Cr. P. C. and the other explanations mentioned in the Form in a careful and patient manner, not perfunctorily but so as to ensure that they are fully understood.

5. I now carefully explain afresh to the accused :-

- (1) that I am not an officer of Police but a Magistrate ;
- (2) that he is not bound to make a confession ;
- (3) that if he does make a confession it may be used in evidence against him ;
- (4) that he should not say anything because others have told him to say it but is at liberty to say whatever he really desires to say ;
- (5) that he should say nothing which is untrue ;

and I sign my name hereunder in token that these matters have been fully explained and that he appears to me to understand them.

(Signature of Magistrate.)

(6) (a) The Magistrate should not proceed to record the statement of the accused unless and until he has reason, upon questioning him and observing his demeanour to believe that accused is speaking and is about to speak voluntarily.

(b) While it is not in general necessary or desirable to invite complaints of ill-treatment by the police, cognizance of such complaints when made should be promptly taken, and any indications of the use of improper pressure should be at once investigated. If any injuries are noticed on the body of the accused or are referred to by him he should be asked how he came by them, and if necessary, in order to enable the Magistrate to be satisfied that the accused is about to speak voluntarily, the accused should be medically examined before his statement is taken.

(c) It must be clearly understood that the questioning of an accused person in order to discover if the making of a confession is voluntary, is not a mere formality. The Magistrate must apply his mind judicially and endeavour to base his finding upon definite premises and grounds.

(7) While carefully avoiding anything in the nature of cross-examination, the Magistrate should endeavour to record his statement in the fullest detail, and to this end may properly put such questions, not being leading questions, as may be necessary to enable the prisoner to state all that he desires to state and to enable the Magistrate clearly to understand his meaning.

6. In order to ascertain whether the accused is prepared to make a statement of his own free will, he is next examined as follows :-

Questions.

Answers and any further statement made by the Accused.

7. Record of statement made--

The statement of
years, made in the

My name is

My father's name is

I am by caste

My home is at Mauza

District

aged about
language.

and by occupation

, Police-station

, I reside at

Statement

[Note- This should be taken down as nearly as possible in the words of the accused and whenever a question is put to him the question should be recorded together with the answer. If the statement is long, foolscap sheets serially numbered may be inserted here for the purpose, provided the statement begins and also ends and is signed on the

(Signature mark of the accused.)

(Signature of Magistrate.)

I have studied carefully the provisions of Rule 23 of the High Court's General Rules and Circular Orders Chapter I, Volume I (Criminal), and have observed strictly the directions therein. I have also applied strictly the provisions of section 164 of the Criminal Procedure Code.

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.

(Signature of Magistrate.)

8. Brief statement of Magistrate's reason for believing that the statement was voluntarily made.

[Note.— Any complaints of ill-treatment or injuries noticed on the accused or referred to by the accused should appear under paragraphs 6 and 7 but should be specifically noticed here and the action taken by the Magistrate thereon should be mentioned. When the confession is recorded otherwise than in the Court building and during Court hours the Magistrate's reasons are likewise to be recorded here.]

24. Magistrates should also carefully follow the provisions of section 167 of the Code of Criminal Procedure and bear in mind the importance of exercising a sound judicial discretion in the matter of granting or refusing remands thereunder.

(1) Orders under the sections, it is to be observed, should be made in the presence of the prisoner and after hearing any objection he may have to make to the proposed order.

(2) When further detention is considered necessary, the remand should be for the shortest possible period.

(3) Applications for remands to police custody should be carefully scrutinised and in general should be granted only when it is shown that the presence of the accused with the police is necessary for the identification of person, the discovery or identification of property, or the like special reason.

(4) Applications, if ever made, for the remand to police custody of a prisoner who has failed to make an expected confession or statement should not be granted.

9. If at any stage it shall appear to the Magistrate that the statement made or about to be made by the accused is not voluntary, the Magistrate shall forthwith record an order hereunder discontinuing the proceeding under section 164, Criminal Procedure Code, and stating reasons therefor.

10. The accused is forwarded to _____ at _____

(Signature of Magistrate.)

[Note.— The Form to be used by Magistrates recording confessions is the one which contains the appropriate Rules in margin.]