

HIGH COURT OF SIKKIM
GANGTOK

No.01/JUDL./HCS

Date :09.04.2021

C I R C U L A R

It has come to the notice of Hon'ble the Chief Justice that there is undue delay in recording of statement of the victim(s) under Section 164, Code of Criminal Procedure, 1973 by Magistrates without assigning any reason. It was noticed that upon receipt of application from the concerned Investigating Officer for recording of such statement(s), the Magistrates are fixing dates after a week or two, which is against the mandate of law and is to be discouraged.

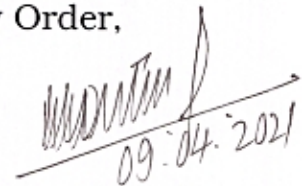
It has further come to the notice of Hon'ble the Chief Justice that the Magistrates who have recorded such statements of the victim(s) are being routinely summoned by the Court of Sessions and Special Courts to prove the contents of the statement so recorded. This practice is also improper as it entails unnecessary wastage of time and resources. It is reiterated that the Hon'ble High Court of Sikkim in the case of *State of Sikkim v. Rakesh Rai alias Vishal Rail alias Purna Rai and Anr, 2012 CrI. L.J. 2737 (Sikkim High Court)* has observed that there is no justification in calling the Magistrate as a witness. Further in *Gurwindapalli Anna Rao v. State of Andhra Pradesh, 2003 CrI. L.J. 3253 (High Court of Andhra Pradesh)*, it has been observed that if any Magistrate records the statement of a witness under Section 164, Cr.P.C, it is not necessary for the Sessions Judge to summon the

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Magistrate to prove the contents of the statement recorded by him. When a Magistrate, discharging his official functions as such, records the statement of any witness under Section 164, Cr.P.C, such statement is a 'public document' and it does not require any proof.

In view of the above, it is directed that hereinafter the Magistrates shall record the statement of victim(s)/witnesses on the same day when such applications are received. In the event if it is not possible to record such statement on the same day, it shall be recorded on the immediate next day. Further, the Sessions Judges/Special Judges may not summon the Magistrates in a routine manner to prove the contents of such statement.

By Order,

A handwritten signature in black ink, followed by the date "09.04.2021" written below it. A horizontal line is drawn across the signature and date.

REGISTRAR GENERAL