

A.F.R.

**Judgment reserved on 01.12.2022**  
**Judgment delivered on 22.12.2022**

**Court No. - 84**

**Case :- APPLICATION U/S 482 No. - 23696 of 2022**

**Applicant :- Faisal Ashraf**

**Opposite Party :- State Of U.P. And 2 Others**

**Counsel for Applicant :- Sanjay Tiwari,Devi Prasad Tripathi**

**Counsel for Opposite Party :- G.A.,Mohit Singh**

**Hon'ble Saurabh Shyam Shamsbery,J.**

1. Sri G.S. Chaturvedi, learned Senior Advocate assisted by Sri Man Singh for applicant while pressing prayer to quash cognizance order dated 09.06.2020 in Criminal Case No. 9281 of 2020 whereby Court of Chief Judicial Magistrate, Gautam Buddh Nagar took cognizance of offence under Sections 504 and 506 I.P.C. on charge sheet dated 14.02.2020 submitted in Case Crime No. 551 of 2018 (State vs. Faisal Ashraf) Police Station- Noida Sector-20, District- Gautam Buddh Nagar, as well as impugned summoning order dated 20.06.2022 whereby Sessions Judge, Gautam Budh Nagar has dismissed criminal revision no. 108 of 2022 (Faizal Ashraf vs. State of U.P. and another) mentioned only on a ground that charge sheet was submitted only on basis of written statements of witnesses which cannot be considered to be a statement recorded under Section 161 Cr.P.C. which mandatory requires that investigating officer will examine oral in person supposed to be acquainted with facts and circumstances of the case and police officers will adduce in writing any statement made to him in course of examination which may also include statement recorded by audio and video electronic means, therefore, entire

investigation is contrary to procedure prescribed in Code of Criminal Procedure and as such charge sheet becomes illegal.

2. Learned Senior Advocate has placed reliance on **State of U.P. vs. Singhara Singh and others, AIR 1964 SC 358** of which relevant paragraphs no. 7 and 8 are quoted hereinafter -:

“7. In *Nazir Ahmed case* [LR 63 IA 372] the Judicial Committee observed that the principle applied in *Taylor v. Taylor* [(1875) 1 Ch D 426, 431] to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that “it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves”.

8. The rule adopted in *Taylor v. Taylor* [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on

Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him.”

3. He also placed reliance upon a paragraph of judgment passed by Supreme Court in **Noor Mohammad vs. Khurram Pasha, (2022) 9 SCC 23** which reiterates that *“It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119.”*

4. The above submissions have been opposed by Sri Mohit Singh, learned counsel for opposite party No.2 that witness has given his written statement before I.O., however, she was further examined by I.O. by way of asking relevant questions also as well as that there is no specific bar that examination under Section 161 Cr.P.C. has to be oral only and not in written form. Sri Deepak Kapoor, learned A.G.A. has also supported argument advanced by learned counsel for opposite party No. 2.

5. Heard learned counsel for parties and perused record.

6. Before advertng to rival submissions, it will be relevant to quote relevant Section 161 Cr.P.C.

**“161. Examination of witnesses by police -:**

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.”

7. In present case, I.O. has visited place of witnesses Smt. Manju Rani and Talat Zameer who handed over their written statements which were transcribed by I.O. in case diary in their presence as well as original statements were made part of case diary also. I.O. asked few questions to witnesses and answers thereof were also reduced into writing in case diary, therefore, only lacuna, if exists, was that witnesses have not mentioned their statements orally i.e. stated in their own voice.

8. The purpose of statements made under Section 161 Cr.P.C. is to investigate an occurrence to find out culprits. So far as evidentiary value of these statements is concerned, it would only for purpose of contradiction, if any, committed by said witness during his testimony in trial. Other than it, it has no evidentiary value.

9. Word “orally” also includes a statement recorded by audio video also. Purpose of ‘to examine orally’ is to ensure that I.O. may record whatever is said by witness to him or relevant part of it and which has to be reduced into writing by him to avoid any kind of coercion, misrepresentation or mischief. A written statement send by post or deliver by another person may not fall under ‘to examine orally’ but a written statement submitted by witness himself to I.O. and I.O. has assured its genuineness and same, if reduced in writing, shall be a statement duly recorded under Section 161 Cr.P.C.

10. The word ‘may’ used in Section 161 Cr.P.C. gives discretion to police officers to examine orally any person as well as may reduce into writing any statement made to him, therefore, he has discretion not to reduce into writing the entire statement made to him or he may reduce into writing only gist of statement. Sole object of statement under Section 161 Cr.P.C. is to investigate allegations and to prepare case diary for purpose of consideration by Court at stage of cognizance and summon as well as use to show contradictions during trial.

11. In view of above discussion, there is no illegality in taking a written statement of a witness under Section 161 Cr.P.C., when it was reduced in recording in case diary in presence of witnesses as well as I.O. has made questions also which are also reduced in writing along with answers. The I.O. has taken sufficient precautions to ensure it to be a written statement of witnesses only.

12. The judgments relied upon by learned Senior Counsel for applicant has no bearing as Singhara Singh (supra) was related to statement recorded under Section 164 Cr.P.C. and Noor Mohammed (supra) states that procedure prescribed must be followed and as discussed above in present, procedure has been substantially followed in present case.

13. Accordingly, application has no merit, hence, **rejected**.

**Order Date -: December 22, 2022**

Nirmal Sinha

**[Saurabh Shyam Shamsbery, J.]**