

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRM(M) No. 206/2025

.....Appellant(s)/Petitioner(s)

Through: Mr. Jagpaul Singh, Advocate.

vs

UT of J&K and another

..... Respondent(s)

Through: Mr. P. D. Singh, Dy. AG.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
17.03.2024

ORAL

1. Through the medium of instant petition, the petitioner is seeking a direction to respondent No. 1 to get her statement re-recorded under Section 164 of the Code of Criminal Procedure.
2. It is the case of the petitioner that an FIR bearing No. 27/2024 for offences under Section 376 IPC stands registered against the respondent No. 2 with Police Station, Lakhanpur. It is submitted that the petitioner is the legally wedded wife of one . The petitioner was maltreated in her matrimonial home by her husband as well as by her in-laws. It is further submitted that relations between family of in-laws of the petitioner and the family of respondent No. 2 were strained due to some land dispute qua the land falling under District Kathua. It is further submitted that the husband of the petitioner and her in-laws, out of ill will and with an ulterior motive to settle the score with the family of the respondent No. 2, forced the

petitioner to implicate the respondent No. 2, in a criminal case under Section 376 IPC by levelling false and frivolous allegations against him. It is further submitted that when the petitioner declined to level false and frivolous allegations against the respondent No. 2, she was beaten up by her husband and brother-in-law and was threatened that she would be turned out of her matrimonial home along with her minor children. Thus, the petitioner was forced to lodge false and frivolous case against the respondent No. 2 and was forced to get her statement recorded under Section 164 Cr. P.C. before the learned Munsiff, Kathua.

3. According to the petitioner, the aforesaid statement is not out of her free will and volition and the same does not reflect the true facts and now she wants to make a fresh statement before the Magistrate so as to narrate the correct facts, In this backdrop, the petitioner has sought a direction upon respondent No. 1 for getting her fresh statement recorded under Section 164 Cr. P. C.
4. The question whether statement of a witness under Section 164 Cr. P.C. can be recorded more than once, has been dealt with by this Court in the case of **Showkat Ali v. State and ors.** (561-A No. 259/2014 decided on 04.09.2014). Para 11 of the judgment is relevant to the context and the Same is reproduced as under:

"11. The Code does not contemplate any bar against recording statement of a witness under Section 161 of the Code and correspondingly under section 164-A more than once, Such a bar as a matter of fact cannot be imposed because cases may not be rare where necessity of recording such statement more than once arises and even contradictory statements are made. However, if statement is recorded more than once, the I.O. will have to arrive at a

conclusion having regard to other evidence and material collected by him.”

5. From the afore-quoted enunciation of law on the subject, it is clear that there is no bar to recording statement of a witness under Section 164 Cr. P, C more than once.
6. In the instant case it has been narrated by the petitioner that there was a dispute between her in-laws and family of the respondent No. 2 and she was forced by her husband and other family members to lodge a false and frivolous case against the respondent No. 2. She has further stated that the earlier statement which she has made before the learned Magistrate was made by her under coercion and that the same is not voluntary in nature. In view of this, recording of her statement afresh appears to be desirable.
7. In the aforesaid backdrop of the facts and circumstances of the case, this petition is disposed of with a direction to the respondent No. 1 to consider the desirability of re-recording of statement of the petitioner under Section 164 Cr. P. C and to take an informed decision in this regard at the earliest. The respondent No. 1 shall ensure proper safety and security of the petitioner at the time when she is produced before the concerned Magistrate for recording of her statement.
8. **Disposed of.**

(SANJAY DHAR)
JUDGE

Jammu
17.03.2024
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.