

(2017) 09 MAD CK 0042
In the Madras High Court
Case No : 12148 of 2017

Murugasamy

APPELLANT

Vs

The State rep by Inspector of Police

RESPONDENT

Date of Decision : 15-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 167](#), [Section 164](#), [Section 161 \(3\)](#), [Section 164\(5-A\)](#) - Procedure when investigation cannot be completed In tw

Citation : (2017) 09 MAD CK 0042

Hon'ble Judges : Indira Banerjee, P.N. Prakash

Bench : DIVISION BENCH

Advocate : Indira Banerjee, P.N. Prakash

Judgement

1. This specially constituted Division Bench is required to decide the following issue: "Are the police entitled to be furnished with copies of the following documents immediately" i statement of witness recorded under Section 164 Cr.P.C., 1973; ii Confession statement of the accused recorded under Section 164 Cr.P.C., 1973; iii Dying declaration recorded by the Magistrate; and iv Test Identification Parade report of the Magistrate. 2. Before venturing to answer the aforesaid issue, it may be apposite to briefly recount the circumstances which led to the constitution of this Bench, for which, it may be necessary to succinctly state the facts obtaining in the case at hand. 2.1. Accused "X", who is deaf and dumb, is the Correspondent-cum-Secretary of a school for the deaf and dumb, where, four girl children, viz., "A", "B", "C" and "D", who are also deaf and dumb, were resident-students. It was alleged by "A" that the accused "X" sexually abused her over a period of time and started blackmailing her for his carnal pleasure. She also conceived through "X" and was subjected to undergo abortion in a hospital at his instance. When "X" started sexually abusing other girl students as well, "A" decided to spill the beans, resulting in the police registering a case in Cr.No.207 of 2017 for the offences under Sections 376(2), 376(2)(d),

376(2)(n), 376(2)(i), 376-C, 313, 109 and 506(i) IPC and the said case is now under investigation by the Deputy Superintendent of Police, P.E.W., Coimbatore District. While so, "X" was arrested on 09.05.2017 and was under judicial custody. 2.2. The police, in the course of investigation, recorded the statements of the victims of "X", viz., "A", "B", "C" and "D" under Section 161 (3), Cr.P.C., 1973 and gave a requisition to the Chief Judicial Magistrate, Coimbatore, for nominating a Judicial Magistrate to record the statements of the victims under Section 164 Cr.P.C., 1973. The Chief Judicial Magistrate, Coimbatore, by order dated 11.05.2017, directed the Judicial Magistrate, Special Court for Land Grabbing Cases, Coimbatore, to record the statements of the four victims under Section 164 Cr.P.C., 1973. Accordingly, the Judicial Magistrate for Land Grabbing Cases, Coimbatore, recorded the 164 Cr.P.C. statements of "A" and "B" on 29.06.2017 and such statements of "C" and "D" on 30.06.2017. Since all the four victims were deaf and dumb, the Magistrate requisitioned the services of an Interpreter and had their 164 Cr.P.C. statements recorded. 2.3. When the bail application preferred by "X" came up for hearing before one of us (P.N. Prakash, J.) on 03.07.2017, the Deputy Superintendent of Police, who was present in the Court, was called upon to submit the case diary for the purpose of perusing the 164 Cr.P.C. statements of the victims. The Deputy Superintendent of Police informed the Court that, albeit the statements were recorded by the Magistrate as early as 29.06.2017 and 30.06.2017, the police have not been furnished with copies of the same and that the police would have to make a copy application for getting the same from the jurisdictional Magistrate and only thereafter, the same would be furnished to them. 2.4. The learned Additional Public Prosecutor submitted that in the State of Tamil Nadu, if the Investigating Officer wants to have the 164 Cr.P.C. statement of a victim or witness recorded, he has to undertake the following steps: 1. Make an application before the Chief Metropolitan Magistrate/Chief Judicial Magistrate, as the case may be, for nominating a Magistrate for recording the 164 Cr.P.C. statement. 2. The CMM/CJM will then nominate a Magistrate. 3. Pursuant thereto, after ascertaining the convenience of the said Magistrate, the victim/witness should be produced before the Magistrate, who records the 164 Cr.P.C. statement of the victim/witness. 4. After recording the statement, the Magistrate sends the same in a sealed cover to the jurisdictional Court. 5. The Investigating Officer files an application for obtaining a certified copy of the 164 Cr.P.C. statement before the jurisdictional Court, only after which, the same is supplied to the Investigating Officer. Until then, the Investigating Officer is in the dark as to the contents of the statement of the victim/witness made before the Magistrate. 2.5. The learned Additional Public Prosecutor also submitted that this practice is being adopted even for recording the confession statements of the accused and for the conduct of Test Identification Parades as well. It was also brought to the notice of the Court that even a dying declaration recorded by a Magistrate is not furnished immediately to the Investigating Officer and the Investigating Officer is required to apply for a certified copy in the jurisdictional Court and obtain the same. 3. This triggered the formulation of the above issue by one of us (P.N.Prakash, J.) and the

formation of this Special Bench to decide the same. 4. This Court gave its anxious consideration to the submissions made by Mr. N. Ramesh, learned counsel representing Mr.J.Franklin, learned counsel-on-record for the petitioner, Mr. R. Rajarathinam, learned Public Prosecutor, M/s. K. Srinivasan and B.Mohan, learned Special Public Prosecutors for C.B.I., Mr.R.Karthikeyan, learned Special Public Prosecutor for N.I.A. and Mr.J.Saravanavel, learned counsel for the intervener. 5. We propose to deal with the issue at hand in four sub parts. a The 164 Cr.P.C. statement of victim/witness; b The 164 Cr.P.C. confession statement of the accused; c Dying declaration and d Test Identification Parade reports. a The 164 Cr.P.C. statement of victim/witness: 6. The institution of police preceded the formation of the Magistracy as we know it today. The Magistracy in the Madras Presidency owes its formation to Madras Regulation No.VI of 1802 A.D. "A regulation for the guidance of Magistrates in apprehending persons charged with crimes or offences and bringing them to trial". It may be interesting to extract Article IV and V of the above Regulation: "IV It shall be the duty of the magistrate to apprehend murderers, robbers, thieves, house-breakers and disturbers of the peace; and persons charged before him with crimes or misdemeanors. V Upon a complaint in writing being preferred to the magistrate, against any person for murder, robbery; or any crime or misdemeanor; the Magistrate, upon the party complaining, making oath to the truth of the complaint, shall issue a warrant, under his seal and signature, for the apprehension of the person complained against; in which shall be specified the crime or misdemeanor with which he may have been charged. Upon the prisoner being brought before the magistrate, he shall enquire into the circumstances of the charge, and examine the prisoner, and the complainant; and also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner; and commit their respective depositions to writing. The complainant and the witnesses shall be examined upon oath, but the prisoner shall not be required to swear to the truth of his deposition. After this inquiry, if it shall appear to the magistrate that the crime or misdemeanor charged against the prisoner was never committed, or that there is no ground to suspect him to have been concerned in the committing of it, the magistrate shall cause him to be forthwith discharged; recording his reasons for releasing him, and submitting them to the court of circuit; with the calendar ordered to be prepared in Section XVII. If, on the contrary, it shall appear to the Magistrate, that the crime or misdemeanor was actually committed; and that there are grounds for suspecting the prisoner to have been concerned in the perpetration of it; the magistrate shall cause him to be committed to prison, or held to bail (according as the offence may be bailable or not) to take his trial at the next session of the court of circuit; and shall bind over the complainant to appear, and carry on the prosecution; and the witnesses to attend and give their evidence. All bail bonds for prisoners released upon bail, and the recognizances required to be taken from prosecutor and witnesses shall be for a specific sum; the amount of which shall be determined by the magistrate, upon a due consideration of the case, and the circumstances and the situation in life of the parties; and shall

contain a clause declaring the amount forfeited to Government, in the event of the condition of it not being performed." Similarly, Regulation XI of 1816 entrusted police powers on certain authorities like Heads of villages, Tahsildars, Zamindars, Ameen of Police, Kotwals and Magistrates of Zillas and their Assistants. Thus, a reading of the provisions of Regulation VI of 1802 and Regulation XI of 1816 shows that the police and the Magistrates were working in tandem in the investigation of offences. On 01.01.1862, the Indian Penal Code, 1861 and the Code of Criminal Procedure, 1861, came into force under which the police and the Magistrates continued to work together in unison. Their functions often overlapped with each other. Hence, the 1861 Code of Criminal Procedure did not make a clear distinction between the terms "statement" and "evidence", as could be seen from the wordings of Section 194, which contemplated recording of statement of witnesses in the presence of the accused. Only in the 1872 Code, the presence of the accused for recording the statement of a witness during investigation was dispensed with. The 1872 Code clarified the position with its Chapter X dealing with "Powers of the police to investigate". Section 119, *ibid*, empowered the police officer to examine any person and reduce into writing his statement. Section 122, *ibid*, empowered the Magistrate to record the statements and confessions. The heading that was given to Chapter X of the 1872 Code was given a further elaboration in Part V of the 1882 Code of Criminal Procedure which read as "Information to the police and their powers to investigate." Under this Part, Chapter XIV began with Section 154 and concluded with Section 176. In the 1882 Code, Section 164 read as under: "164. Power to record statements and confessions: Any Magistrate not being a police officer may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial. Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried. No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession he shall make a memorandum at the foot of such record to the following effect:- "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. Signed A B., Magistrate" 7. A reading of the above provision in the 1882 Code shows that after recording the statement, the Magistrate was directed to send the same to the Magistrate by whom the case is to be enquired into or tried. 8. Since 1882, in all the subsequent Codes, we have been following the same template upto the present Code, viz., the 1973 Code, of course, with some variations in individual provisions. We are emphasising this to show that after the repeal of the 1861 Code, there has been a slow and steady separation of the police from the Magistracy and after the Constitution of India

came into force, in tune with Article 50, the present 1973 Code has completed the separation between the functions of the police and the Magistracy. 9. Even during the currency of the 1898 Code, the Privy Council recognised the cleavage in the functions, as could be seen from the statement of law in *Emperor v. Khwaja Nazir Ahmad* [AIR 1945 PC 18], wherein, it has been held that the functions of the judiciary and the police are complementary and not overlapping. 10. As described above, at one point of time, the Magistracy actively assisted the police and slowly, its role got defined and a stage came where the Magistrates were required to aid the police in the investigation of offences by performing the following functions, inter alia: a. Recording the statement of witnesses under Section 164 Cr.P.C., 1973 b. Recording the confession of the accused under Section 164 Cr.P.C., 1973 c. Recording the dying declaration d. Conducting Test Identification Parade e. Sending the weapons, handwritings, signatures and samples to the expert for opinion 11. The aforesaid magisterial functions are vestiges of the 1861 Code. The *raison d'être* for the police seeking the help of the Magistrate to have the statement of a witness recorded under Section 164 Cr.P.C., 1973 is not far to seek. A statement recorded by the police under Section 161(3) of the Code can be used only to contradict the maker in the witness box and it cannot be used to corroborate him. The police felt the need to have the 164 Cr.P.C. statement of a witness, whom they suspect would turn hostile during trial, recorded so that he would think twice before resiling from his earlier version and if he does not resile, his 164 Cr.P.C. statement can be used for corroborating his evidence in the trial. If he resiles, he may be prosecuted for perjury. 12. Witnesses turning hostile is not something new in our system. This has been observed by Chailley-Bert, Joseph, (1854-1928), in his book "Administrative Problems in British India" from a French point of view, translated by Sir Meyer William Stevenson and extracted in the Magisterial and Police Guide-Volume I, Part-I, MLJ Publication, 1951 at page 162, which reads thus: ".....It would be no exaggeration to say that a judge, and especially a criminal judge, rarely finds, in the course of a case, a man on whose testimony he can rely, and of whom he can say, "Here is a person who is telling the truth." The Indian magistrate or judge has indeed a hard task, for he has often to marshal the evidence both for the prosecution and for the defence, and then to try and evolve an impartial opinion. Every one is agreed as to the untrustworthy character of the witnesses. Oral evidence, says a Madras lawyer, is *prima facie* untrustworthy, and when a judge declares that he is convinced of some particular fact, this must be understood in the sense that, being obliged to come to a conclusion, that which he adopted seemed to him the most probable.... " 13. When a Magistrate records the statement of a witness, it has a higher sanctity than the one recorded by the police. The oft-levelled allegation that the police themselves have recorded facts under Section 161 (3) Cr.P.C., 1973 that were not stated by the witness thus stands mitigated when the Magistrate records the statement. 14. There is yet another misconception that requires to be dispelled. This relates to the issue as to whether the police can be present when the statement under Section 164 Cr.P.C., 1973 of a witness is being recorded by the Magistrate. A

Division Bench of this Court, in *Ganganaboyina Pullamma v. Emperor* [1932 Madras MWN (Cr.) 105], has answered the issue in the affirmative in the following words: "As to the confessions, all the witnesses 5 to 9 speak to the appellant having admitted putting aconite into the food when charged in the presence of her suffering husband and mother-in-law and to her having expressed regret. But, as regards four of these witnesses, 5,6,8 and 9, they did not make any statement as to the appellant's alleged confession in their first statement made under Section 164. Ordinarily, this would be an important circumstance which would weaken that part of the evidence considerably. In this case, however, we notice that the Magistrate to whom these statements were made thought it his duty to exclude the police from the Court while these statements were being recorded. He apparently thought that the same precautions which are prescribed for recording the confessions of accused persons should be observed while recording the statements of witnesses and, therefore, excluded the police from the court. We do not mean to suggest that Magistrates have not the power, if they think it necessary to ensure the voluntary character of the witnesses' statements and have any reason to apprehend that the police are exercising an influence over the witnesses which they ought not to do, to exclude the police or in fact any others from the court during the examination under Section 164. But we must point out that they are not required to do so by law and that the practice is, as in this case, likely to lead to the statements of witnesses being incomplete as only the police who have investigated the case know the information which the witnesses are able to give and the Magistrate, without their help will not be able to elicit all that the witnesses are able to speak to. In the course of the examination of those witnesses, there is a note that the Sub Inspector came in in the middle, that the examination was then stopped and that it was continued after he was sent out. It is clear that the Magistrate excluded the police during the examination of those witnesses and therefore, we think it not surprising that the above said witnesses, 5, 6, 8 and 9, did not mention the fact that the appellant had admitted putting aconite into the food the previous night. In fact the 7th witness did mention the fact, and as a piece of corroboration it is material whether all the witnesses said so or only one. We therefore think that the statements of those witnesses as to the confessions made by the appellant during the night have to be believed." 15. It is significant to note that the judgment in *Pullamma* (supra) has been referred to in the Circular issued by the High Court way back in the year 1958, the relevant portion of which is extracted as under: "1. Statements of persons other than accused persons: (iv) When recording statements of witnesses under Section 164 of the Code, it may not be necessary to exclude from the court the police officer in charge of the investigation or the police officer deputed by him to attend the court. It is, however, for the Magistrate to examine witnesses and record the statements made by them. The police officer should not be allowed to put questions to the witness or prompt him. Normally with the case diary before him, the Magistrate should experience no difficulty in examining the witnesses. See *Re. Pullamma* 1932 M.W.N. (Cr.) P.625 . It is open to the Magistrate to seek

the assistance of the police officer in clarifying the points on which the Magistrates should question the witness." 16. The law laid down by the Division Bench of this Court in Pullamma (supra) has been subsequently followed by a learned Single Judge in Public Prosecutor v. K. Jalayya and another AIR 1954 Madras 303. 17. Notwithstanding all this, the judgment in Pullamma (supra) has been referred to by the Law Commission in its 185th Report on the Review of the Indian Evidence Act, 1872 in Part III B (2003). 18. To sum up, in a given case, if the Magistrate is of the opinion that the assistance of the police is essential to elicit relevant facts from a witness whose 164 Cr.P.C. statement is being recorded, it is not illegal for the Magistrate to have the assistance of the police officer in clarifying the points on which the Magistrate should question the witness. 19. In Jogendra Nahak and others v. State of Orissa and Others (2000) 1 SCC 272, the Supreme Court has categorically held that a statement under Section 164 Cr.P.C., 1973 can be recorded by the Magistrate only when it is sponsored by the police and not at the instance of any other person. Obviously, it is the police who can first identify to the Magistrate, the person whose statement, the police think, is essential for prosecuting the accused. 20. At the first blush, it may appear that Section 164 (6) of the 1973 Code, which is extracted below, operates as a stumbling block for the Magistrate to issue a copy of the 164 Cr.P.C. statement to the police immediately. "164 Recording of confessions and statements: (6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried." 21. From a reading of the above, it is seen that after recording the statement, the Magistrate is required to send the same immediately to the jurisdictional Magistrate. However, in State of Karnataka by Nonavinakere Police v. Shivanna alias Tarkari Shivanna [(2014) 8 SCC 913], the Supreme Court has issued certain directions in exercise of powers under Article 142 of the Constitution of India which read as under: "10. On considering the same, we have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the Police Stations in Charge in the entire country to follow the directions of this Court which are as follows: 10.1 Upon receipt of information relating to the commission of offence of rape, the investigating officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C., 1973 A copy of the statement under Sections 164 Cr.P.C., 1973 should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge-sheet/report under Section 173, Cr.P.C., 1973 is filed. 10.2. The investigating officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate. 10.3. The investigating officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid. 10.4.

If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the investigating officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate." (emphasis supplied) 22. In fact, the Supreme Court, in paragraph no.20 in Shivanna (supra), directed that the police throughout the country should follow the mandate strictly. Thus, the Supreme Court has, by judicial order, expanded the contours of Section 164 (6), Cr.P.C., 1973 by mandating the Magistrate recording the statement under Section 164 Cr.P.C., 1973 to hand over a copy to the police immediately. Therefore, we propose to harmonise Section 164 (6) Cr.P.C., 1973 and the Supreme Court mandate in Shivanna (supra) by directing the Magistrate recording a statement under Section 164 of the Code to take two photocopies of the statement, and after certifying them, issue one to the Investigating Officer, keep the other in his custody and then send the original to the jurisdictional Court. How this method proposed by us will enure to the benefit of the accused also can be best explained by referring to another case that was dealt with by one of us (P.N. Prakash, J.). 23. "X" complained to the police that her husband "Z" had sexually abused their minor daughter "Y". The police registered a case in Cr. No.7 of 2017 on 08.05.2017 and arrested "Z" for offences under the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act"). The statement of the victim girl "Y" was recorded by a Magistrate on 19.06.2017 under Section 164 Cr.P.C., 1973 When the bail application in Crl.O.P. No.12952 of 2017 preferred by "Z" came up for hearing before one of us (P.N.Prakash, J.) on 11.07.2017, the Investigating Officer was called upon to produce the case diary for the purpose of perusing the 164 Cr.P.C. statement of the victim girl "Y". The Investigating Officer informed that the Magistrate has not furnished the 164 Cr.P.C. statement of the victim girl, so far. Therefore, the concerned Court was directed to send a photocopy of the 164 Cr.P.C. statement of the victim girl "Y" in a sealed cover. On receipt of the sealed cover, the statement of the victim girl was perused and it was found that she had clearly told the Magistrate that her father "Z" had not at all abused her sexually and that on account of frequent quarrel between her parents, her mother had given a false complaint to the police against her father. After reading the 164 Cr.P.C. statement of the victim girl, bail was granted to "Z" immediately on 11.07.2017. Had the police and the Magistrate followed the judgment of the Supreme Court in Shivanna (supra), the statement of the victim girl "Y" should have been recorded within 24 hours. Whereas, the accused father "Z" was arrested on 09.05.2017 and the 164 Cr.P.C. statement of the victim girl "Y" was recorded on 19.06.2017, but, the copy of the same was not furnished to the police and the police were in the dark as to what the girl had stated to the Magistrate until this Court called for the 164 Cr.P.C. statement of the victim girl "Y" from the concerned Court. Thus, effectively, the poor man "Z" languished in jail from July 09.05.2017 to 11.07.2017 until he was granted bail. Is this not a judicially sanctioned violation of the fundamental right of a person." 24. Yet another disheartening part is that the Magistracy seems to be oblivious of the significance of the amendments that have been introduced in Section 164 Cr.P.C., 1973 by the Criminal Law (Amendment) Act (13 of 2013)

with effect from 03.02.2013, after the Nirbhaya episode and the consequent Justice Verma Committee Report on Amendments to Criminal Law (23rd January 2013), which read as follows: "(5-A) (a) In cases punishable under section 354, section 354-A, section 354-B, Section 354-C, section 354-D, sub-section (1) or sub-section (2) of section 376, section 376-A, section 376-B, section 376-C, section 376- D, section 376-E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police: Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement: Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed. (b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial." 25. Indubitably, Section 164(5-A), Cr.P.C. is of far-reaching significance in relation to trial of a rape case. Section 164(5-A) Cr.P.C. states that if the maker of the statement is temporarily or permanently, mentally or physically disabled, the statement made by such a person shall be considered as substantive evidence by the Trial Court and the maker need not be examined-in-chief, but, can be subjected to cross-examination on the basis of the statement recorded under Section 164(5-A) Cr.P.C. This is to save the victim from the embarrassment of explaining to the trial Court, repeatedly, as to how she was sexually assaulted. 26. In the case at hand, as already stated, the victims, viz., "A", "B", "C" and "D" are deaf and dumb children whose statements were recorded by the Magistrate under Section 164 Cr.P.C, 1973 with the help of an Interpreter. Hence, it is open to the Trial Court to treat those statements as their examination-in-chief, if they satisfy the conditions stated in Section 164(5A)(a) & (b) and the said witnesses can be subjected cross-examination straightaway. 27. The provisions of Section 376, IPC, have been telescoped into the POCSO Act and when a rape is committed on a minor girl, it is considered as an aggravated form of crime. Therefore, whatever the Supreme Court has stated in Shivanna (supra), would apply in all its fours for investigation under the POCSO Act as well, especially in the light of Section 25 of the POCSO Act which reads as follows: "25 Recording of statement of a child by Magistrate: (1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child: Provided that the provisions contained in the first proviso to subsection (1) of section 164 of the Code shall,

so far it permits the presence of the advocate of the accused shall not apply in this case. (2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under Section 207 of the Code, upon the final report being filed by the police under section 173 of that Code." 28. At this juncture, it is pertinent to point out that one should not get confused with the demand of the accused for statements, because, an accused will not be entitled to these records until the final report is filed, as laid down by a Full Bench of this Court in Selvanathan @ Raghavan v. State by Inspector of Police [1988 L.W. (Crl.) 503]. 29. The accused does not stand on the same footing as that of the Investigating Officer because the Investigating Officer is enjoined by Chapter XII of the Cr.P.C. to conduct investigation and recording of statement under Section 164 Cr.P.C., 1973 is part of the investigation process and the Investigating Officer is required to complete the investigation expeditiously and file the final report before the jurisdictional Court. 30. We have also referred to the cumbersome procedure by which the police are required to first make an application to the Chief Metropolitan Magistrate/Chief Judicial Magistrate, as the case may be, for nominating a Magistrate for the purpose of recording the 164 Cr.P.C. statement and thereafter, taking the victim/witness to the said Magistrate for the said purpose. This will undoubtedly take more than 24 hours and it will fall foul of the Supreme Court's direction in Shivanna (supra). 31. It has also been brought to the notice of this Court that in the cases investigated by the Central Bureau of Investigation and the National Investigating Agency, when the Investigating Officer wants the 164 Cr.P.C. statement of a witness to be recorded, the following is the procedure: - he is required to first approach the Special Court for C.B.I./N.I.A. cases with an application. - On such an application, the Special Court would direct the CMM/CJM to nominate a Magistrate to record the 164 Cr.P.C. statement. - On receipt of the communication from the Special Court, the CMM/CJM will nominate a Magistrate to record the 164 Cr.P.C. statement and only thereafter, the nominated Magistrate would record the 164 Cr.P.C. statement. The above procedure is being invariably followed even in respect of cases arising under the POCSO Act and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989, etc. There is no legal sanctity at all for adopting such a circuitous procedure. 32. Research by us to find out the origin of such a circuitous procedure revealed that the High Court had issued a circular in P.Dis. No.864/52 dated 09.12.1952, which is as follows: "Except in cases of urgency, e.g., when a dying declaration has to be recorded, when approach has to be made to the nearest magistrate, the police should normally apply to the Sub Divisional Magistrate to depute a Magistrate to hold identification parades or to record statements under Section 164 of the Code. And the Sub-divisional Magistrate should normally ask a magistrate other than the one who has the territorial jurisdiction to try the case, to comply with the request of the police." (emphasis supplied) 33. The Inspector General of Police reported to the High Court stating that the procedure prescribed in the aforesaid Circular results in delay in the recording of the 164 Cr.P.C. statement. Therefore, this Court, vide Circular in P.Dis. No.162/55 dated

10.03.1955, issued the following directions: "The District Magistrates will nominate a magistrate of a particular court, other than the magistrate having territorial jurisdiction to comply with the requisitions of the officers in charge of specified police stations. This may be adopted as a standing arrangement well within the scope of the instructions issued in the High Court's Circular P.Dis. No.864/52. In selecting the Sub-Magistrate's Court, the District Magistrate will pay due attention to the facilities for travelling and the distance and such selections should be made preferably in consultation with the District Superintendents of Police concerned. The District Magistrates and Sub-divisional magistrate will, however, be at liberty to authorize a departure from these standing instructions should the necessities of a particular case warrant such a departure." 34. The following tabular column showing the differences in the wordings of Section 164(1) under the 1898 Code and 1973 Code will throw some light on the circumstances which led to the issuance of the aforesaid circulars by the High Court.

164 (1) of the 1898 Code 164(1) of the 1973 Code Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the State Government may, if he is not a police officer, record any statement or confession made to him in the course of an investigation under this Chapter or under any other law for the time being in force or at any time afterwards before the commencement of the inquiry or trial. Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial: Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence: Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

35. A comparative analysis of the above two provisions unmistakably shows that in the 1973 Code, the expression "whether or not he has jurisdiction in the case" has been consciously included by the Legislature. 36. Under the 1898 Code, the jurisdictional Magistrate was required to examine the witnesses produced by the prosecution during committal proceedings and the accused was given an opportunity to cross-examine them. Only thereafter, if the Magistrate was satisfied that the case is triable by a Court of Sessions, can he commit the case to the Sessions Court. Once again, in the Sessions Court, the same witnesses will be re-examined and there also, the accused will get a second opportunity to cross-examine them. Pursuant to the 41st report of the Law Commission on the Code of Criminal Procedure, 1898, a full fledged committal proceeding in cases instituted on a police report where the witnesses were required to be examined before the committal Magistrate, was dispensed with in the 1973 Code. Therefore, there was no question of the committal Magistrate recording the

evidence of witness in the committal proceedings whose statement he had recorded under Section 164 Cr.P.C., 1973 during investigation. 37. In our opinion, much water has flown under the bridge after 1973 when the new Code came into force and therefore, the said circulars issued under the old Code have lost their relevance, especially in the light of the authoritative pronouncement of the Supreme Court in Shivanna (supra). Thus, the expression "whether or not he has jurisdiction in the case" occurring in Section 164 of the 1973 Code, empowers a jurisdictional Magistrate as well as a Magistrate having no jurisdiction to inquire into the case, to record the statements of witnesses and the accused under Section 164 of the Code. It is trite that any circular or administrative instructions contrary to statutory provisions can be of no avail. 38. There may be cases triable by the Magistrate wherein the statement of a witness or an accused may have to be recorded under Section 164 of the Code. In view of the usage of expression "whether or not he has jurisdiction in the case" in Section 164 of the 1973 Code, a Magistrate who has jurisdiction to try the offence can also record the statement of a witness under Section 164 Cr.P.C., 1973 39. In our above narration, we have referred to the procedure that is being adopted by the Special Courts established under various special Acts like Prevention of Corruption Act, 1988 POCSO Act, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, etc. for recording the statement of a witness under Section 164 Cr.P.C., 1973 Clearly, we do not approve of the method that is being adopted hitherto. In In-Re: the Registrar (Judicial), High Court, Madras 600 104, [2017-(1)-L.W. (Cr.) 813], a Division Bench of this Court, in which, one of us (P.N. Prakash, J.) was a part, has discussed the original jurisdictions of various Special Courts created under the aforesaid special enactments and has held that though the Special Courts are manned by officers of the rank of a Sessions Judge, they are also empowered to exercise the powers of a Magistrate for certain purposes. 40. As regards the POCSO Act, Sections 25 and 26 place certain additional safeguards while recording the statement of a child victim under Section 164 Cr.P.C., 1973 Section 28 of the POCSO Act provides for creation of a Special Court by a process of designation. Section 33 of the POCSO Act, empowers the Special Court to take cognizance of any offence without the accused being committed to it for trial. Thus, for all practical purposes, a Special Court that has been created in a district by designating a Court of Sessions, becomes a Court of original jurisdiction and the Special Judge is invested with the powers of a Magistrate. That is why, when an FIR is registered under the POCSO Act, the same is sent to the jurisdictional Special Court and not to the jurisdictional Magistrate. In In-Re: the Registrar (Judicial), High Court, Madras 600 104 (supra), the Division Bench has held that a Special Court is empowered to pass orders of remand under Section 167 Cr.P.C., 1973 Thus, when Section 167 Cr.P.C., 1973 has been made applicable to the Special Courts, there can be no fetters in extending the provisions of Section 164 (1) Cr.P.C., 1973 to the Special Courts as well, for the purpose of recording the statement of victims/witnesses. 41. The aforesaid interpretation draws support from the provisions of Section 25 of the POCSO Act. Though Section 25

of the POCSO Act uses the expression "Magistrate", Section 25(2), *ibid*, clearly states that the Magistrate should furnish a copy of the documents specified under Section 207 of the Code upon the final report being filed by the police under Section 173 Cr.P.C., 1973 to the child and its parents. Section 33(1) of the POCSO Act reads thus: "33. Procedure and powers of Special Court: (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts." 42. Thus, Section 33 of the POCSO Act empowers the Special Court to take cognizance of any offence under the Act either on a complaint or on a police report under Section 173 Cr.P.C., 1973. This means that in a district in which a special court has been constituted, the police are required to file the final report under Section 173 Cr.P.C., 1973 in the Special Court and not to the Magistrate. Therefore, the Magistrate will not be in a position to provide to the child and his parents, the documents specified under Section 207 of the Code and comply with the mandates of Section 25(2) of the POCSO Act. Hence, the expression "Magistrate" under Section 25 of the POCSO Act should perforce include the Special Judge designated under Section 28 of the POCSO Act also and only then, these two sections can be harmoniously blended. 43. The provisions relating to taking of cognizance in the POCSO Act which have been set out above are also available in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, NDPS Act, 1985, Prevention of Corruption Act, 1988 and the Unlawful Activities (Prevention) Act, 1967, etc. Therefore, we hold that the Special Judges under the various special enactments, referred to *supra*, can record the statement of a witness under Section 164 Cr.P.C., 1973 as if they are Magistrates and the investigating agency need not be directed to approach the CMM/CJM for nominating a Metropolitan Magistrate/Judicial Magistrate to record statement under Section 164 Cr.P.C., 1973. 44. In the light of our discussions in paragraph nos.39 to 43 above, we hold that the expression "he has jurisdiction in the case" referring to a Metropolitan Magistrate or Judicial Magistrate under Section 164(1) of the Code, would also include Special Judges, who have been vested with the power to take cognizance of an offence without there being a need for committal under certain special enactments such as the Prevention of Corruption Act, 1988, the POCSO Act, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the NDPS Act, 1985, the Unlawful Activities (Prevention) Act, 1967, etc. 45. *A fortiori*, it does not mean that the Metropolitan Magistrate or Judicial Magistrate who has no jurisdiction to inquire into or try a case cannot record a statement under Section 164 (1) Cr.P.C., 1973 in respect of cases falling under the special enactments. The Metropolitan Magistrate/Judicial Magistrate who does not have jurisdiction under the special enactments may also record a statement of a witness under Section 164 (1) Cr.P.C., 1973 at the request of the investigating agency. This is in consonance with the provisions of Section 164 (1) Cr.P.C., 1973 and would also serve the mandate of the Supreme Court in *Shivanna* (*supra*), wherein, the Investigating Officers have been directed to record the statement of victims in rape cases within 24 hours. Thus, henceforth, the investigating agency

need not approach the CJM/CMM with an application for nominating a Magistrate to record the 164(5) Cr.P.C. statement of a witness in a case. Similarly, the Special Courts constituted under various enactments need not forward such requests to the CMM/CJM for nominating a Magistrate to record the statement of a witness under Section 164(5) of the Code as they can record the same, themselves. 46. A Division Bench of this Court, in *R. Murugesan v. State* [2014-(1)-LW (CrL.) 339], in which, one of us (P.N. Prakash, J.) was a part, has elaborately discussed the evidentiary value of the statement of a witness recorded under Section 164 Cr.P.C., 1973. Despite the directions of the said Division Bench that the Magistrate recording the statement under Section 164 Cr.P.C., 1973 need not be examined as a witness, the essence of those directions has not percolated into the subordinate judiciary. In the said judgment, the Division Bench has set out the procedure as to how Public Prosecutors in the Trial Courts should deal with a witness, vis-a-vis, his statement recorded under Section 164 Cr.P.C., 1973. The Division Bench has placed reliance upon the judgment of the Supreme Court in *State of Delhi v. Shri Ram Lohia* [AIR 1960 SC 490] and the Division Bench judgment of the Andhra Pradesh High Court in *Bashapaka Laxmiah and another v. State of Andhra Pradesh* [2001 CrL.J. 4066], to conclude that a Magistrate recording the statement of a witness under Section 164 Cr.P.C., 1973 need not be examined as a witness in the trial of the case. We are extracting below the relevant passages from *Shri Ram Lohia* (supra) and *Bashapaka Laxmiah* (supra): *Shri Ram Lohia*: "Statements recorded under Section 164 of the Code are not substantive evidence in a case and cannot be made use of except to corroborate or contradict the witness. An admission by a witness that a statement of his was recorded under Section 164 of the Code and that what he had stated there was true would not make the entire statement admissible; much less could any part of it be used as substantive evidence in the case. A Judge commits an error of law in using the statement of a witness under Section 164 as a substantive evidence in coming to the conclusion that he had been won over." *Bashapaka Laxmiah*: "18. Repeatedly, we have issued instructions that statement under Section 164 Cr.P.C., 1973 is not a substantive piece of evidence. It is not necessary to call the Magistrate to give evidence to prove Section 164 statement. Statements under Section 164 Cr.P.C., 1973 are available to the defence for contradiction by obtaining the certified copies. The Section 164 statement recorded by the Magistrate is a public document. Such practice, hereinafter, be stopped." 47. In *Re:-To issue certain guidelines regarding inadequacies and deficiencies in criminal trials* [2017 SCC Online SC 298], the Supreme Court has called for remarks from various stakeholders on the suggestions made by Justice Basant, a retired Judge of the Kerala High Court, for streamlining and putting in place good practices in the conduct of criminal trials. One such suggestion is as under: "11. The practice of omnibus marking of Section 164 statement of witness deserves to be deprecated. The relevant portion of such prior statements of living persons used for contradiction or corroboration under section 145/157 of the Evidence Act deserves to be marked separately and specifically." 48. In the light of the above discussion, we

seek to build upon the Division Bench judgment of this Court in Murugesan (supra) by holding that even in cases, where, the witness completely denies having given a statement under Section 164 Cr.P.C., 1973 the Magistrate need not be examined as a witness and the factum of the witness having given such a statement to the Magistrate and the contradiction between his evidence and his previous statement can be proved in the examination of the Investigating Officer, on whose sponsorship, the said witness was produced before the Magistrate for the purpose of recording his statement. This, in our considered opinion, will be in consonance with the observations of the Privy Council in Nazir Ahmad v. The King Emperor [AIR 1936 PC 253] and Kashmira Singh v. State of Madhya Pradesh [AIR 1952 SC 159], about which, we shall discuss in detail in the subsequent paragraphs. 49. A statement recorded under Section 164 Cr.P.C., 1973 is a public document within the meaning of Section 74(iii) of the Evidence Act as held by a Full Bench of this Court in State of Madras v. Krishnan [AIR 1961 Madras 92] . The original of the statement, which would form part and parcel of the Court records, is a primary evidence under Section 62 of the Evidence Act for proving the fact that the said witness had appeared before the Magistrate on the date found thereon and had given a statement, but, it does not prove the veracity of its contents. 50. We now give our reasons for directing the Judicial Officers to take two photocopies of the documents like 164 Cr.P.C. statement, dying declaration and Test Identification Parade report. During the hearing of Crl.O.P. No.5233 of 2010, it was brought to the notice of a learned Single Judge of this Court (S.Nagamuthu,J., as His Lordship then was) that dying declarations, 164 Cr.P.C. statements and Test Identification Parade reports are being sent by the recording Magistrates to the jurisdictional Courts by ordinary post, resulting in those important documents getting lost in transit. It was also brought to the notice of the said learned Judge that in a particular case, the dying declaration was lost in transit. Pursuant to the directions issued by the learned Single Judge, the High Court issued a circular in P.Dis. No. 152/2010 dated 13.12.2010 by which Magistrates have been directed to send these important documents through a special messenger or through Registered Post with Acknowledgment Due, to the jurisdictional Court. Therefore, as a measure of abundant caution, it will be desirable to take two photocopies and after certifying them, one should be furnished to the Investigating Officer free of cost and the other should be retained by the Magistrate so that if the original is lost in transit, there will be a back-up. 51. As held by a Full Bench of this Court in Selvanathan @ Raghavan (supra), dying declaration, 164 Cr.P.C. statement and confession statement and Test Identification Parade report are documents which cannot be shared with the accused until the final report is filed. If the certified copies of these documents are directed to be taken for the purpose of issuing to the police, there is every possibility of leakage via the Copyist Department of the Court. As discussed by us above, these documents are confidential documents till the filing of the final report and they are sine qua non for the Investigating Officer and he cannot be ping ponged for getting certified copies of these documents through the Copyist Department of the Court. Therefore, it is desirable that the photocopies are taken

under the direct supervision of the Judicial Officer. To summarise: - A statement of a witness/victim can be recorded under Section 164 Cr.P.C., 1973 only at the instance of the Investigating Officer of the case. - It is not necessary for the Investigating Officer to approach the CMM/CJM with an application for nominating a Magistrate to record the statement of a witness/victim under Section 164 Cr.P.C., 1973 - A Magistrate, whether he has got jurisdiction or not, to inquire into or try the case, can record the statement of a witness/victim under Section 164 Cr.P.C., 1973 on the request of the Investigating Officer of the case. - The Presiding Officer of a Special Court which has been empowered to take cognizance of an offence without there being a need for committal may also record the statement of a witness/victim under Section 164 Cr.P.C., 1973 on the request of the Investigating Officer of the case. - After recording the statement of a witness/victim under Section 164 Cr.P.C., 1973 the Judge/Magistrate shall arrange to take two photocopies of such statement, under his direct supervision and certify the same as true copies. - He shall furnish one such certified photocopy of the statement to the Investigating Officer, free of cost, immediately, with a specific direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed. - The other certified photocopy of such statement shall be kept in a sealed cover in the safe custody of the Judge/Magistrate. - If the Magistrate who had recorded the 164 Cr.P.C. statement is not the jurisdictional Magistrate, he shall send the original statement to the jurisdictional Court, either through a special messenger or by registered post with acknowledgment due. - If the Judge/Magistrate who had recorded the 164 Cr.P.C. statement is himself the jurisdictional Magistrate, he shall keep the original of the statement in the case records. b. The 164 Cr.P.C. confession statement of the accused: 52. The recording of confession by a Magistrate under Section 164 Cr.P.C., 1973 stands on a slightly different footing in view of Section 463 Cr.P.C., 1973 The confession of an accused cannot be treated on par with the statement of a witness under Section 164 of the Code. To highlight this aspect, it may be necessary to extract two associated provisions relating to confessions, viz., Section 463 Cr.P.C., 1973 and Section 80 of the Evidence Act. "463 Non-compliance with provisions of Section 164 or Section 281: 1. If any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under section 164 or section 281, is tendered or has been received, in evidence finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in section 91 of the Indian Evidence Act, 1872, (1 of 1872), take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement. 2. The provisions of this section apply to Courts of appeal, reference and revision." 80. Presumption as to documents produced as record of evidence: Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence or of any part of the evidence,

given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume - that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken." 53. Our experience shows that the Trial Courts are in a state of oblivion as to the two provisions extracted above and as a matter of routine, the Magistrate recording the confession of an accused is summoned as a witness. This has been frowned upon by the Privy Council in Nazir Ahmad (supra) in the following words: "As a matter of good sense, the position of accused persons and the position of the magistracy are both to be considered. An examination of the Code shows how carefully and precisely defined is the procedure regulating what may be asked of or done in the matter of examination of accused persons and as to how the results are to be recorded and what use is to be made of such records. Nor is this surprising in a jurisdiction where it is not permissible for an accused person to give evidence on oath. So with regard to the magistracy; it is for obvious reasons most undesirable that Magistrates and Judges should be in the position of witnesses insofar as it can be avoided. Sometimes it cannot be avoided, as under Section 533, but where matter can be made of record and therefore admissible as such there are the strongest reasons of policy for supposing that the legislature designed that it should be made available in that form and no other. In their Lordships' view it would be particularly unfortunate if Magistrates were asked at all generally to act rather as police officers than as judicial persons; to be by reason of their position freed from the disability that attaches to police officers under Section 162 of the Code; and to be at the same time freed, notwithstanding their position as magistrates from any obligation to make records under Section 164. In the result, they would indeed be relegated to the position of ordinary citizens as witnesses and then would be required to depose to matters transacted by them in their official capacity unregulated by any statutory rules of procedure or conduct whatever. Their Lordships are, however, clearly of opinion that this unfortunate position cannot in future arise because, in their opinion, the effect of the statute is clearly to prescribe the mode in which confessions are to be dealt with by magistrates when made during an investigation, and to render inadmissible any attempt to deal with them in the method proposed in the present case." The aforesaid observations of the Privy Council have also been approved by the Supreme Court in Kashmira Singh (supra) in the following words: "There is one argument about this confession advanced on behalf of the appellant with which we shall have to deal. The prosecution were criticised for not calling the Magistrate who recorded the confession as a witness. We wish to endorse the remarks of Their Lordships of the Privy Council in Nazir Ahmad v. King Emperor [AIR 1936 PC 253] regarding the undesirability of such a practice. In our opinion, the Magistrate was rightly not called and it would have been improper and undesirable for the prosecution

to have acted otherwise." 54. Section 533 of the 1898 Code, referred to by the Privy Council, is in pari materia with Section 463 of the 1973 Code which we have extracted above. Therefore, a Magistrate who had recorded the confession statement of an accused can be summoned as a witness, only if it is found by the Trial Court that there has been an infraction of Section 164 or Section 281 of the Code and not otherwise. The Trial Courts should bear in mind this salutary aspect before unnecessarily summoning a judicial officer and putting him in the witness box at the cost of judicial time. 55. Since there may be a possibility of a Magistrate recording the confession of an accused under Section 164 Cr.P.C., 1973 being examined as a witness for infraction of section 164 or 281 Cr.P.C., 1973 we are of the view that it will not be desirable for the jurisdictional Magistrate to record the confession of an accused under Section 164 (4) Cr.P.C., 1973 This would apply to the Special Courts as well. In other words, though a Special Judge has the power to record the confession statement of an accused, yet, demands of propriety require that he should refrain from recording the confession of an accused in order to avoid the embarrassment of being examined as a witness in that case. We are also aware that the Magistrates come under the administrative control of the CMM/CJM and not under the Special Judges. Therefore, in order to save time, whenever the investigating agency wants the statement of an accused to be recorded under Section 164 Cr.P.C., 1973 it should file an application before the CMM/CJM for nominating a Magistrate other than the jurisdictional Magistrate for the purpose of recording such a statement. The investigating agency need not approach the Special Court and obtain a direction from the Special Court to the CMM/CJM for this purpose. 56. Thus, the upshot of the aforesaid discussion with regard to the confession statement of an accused recorded under Section 164 Cr.P.C., 1973 shows that it is done not only in the aid of investigation but also to be used as a substantive piece of evidence during trial. Therefore, it is imperative that the Investigating Officer is immediately supplied with a copy of the confession statement. To summarise: - The Investigating Officer shall make an application before the CMM/CJM for nominating a Magistrate, other than the jurisdictional Magistrate, to record the confession statement of an accused. - After recording the confession statement of an accused, the recording Magistrate shall arrange to take two photocopies of the same under his direct supervision and certify the same as true copies. - The confession statement, in original, shall be sent in a sealed cover to the jurisdictional Magistrate or Court, as the case may be, through a special messenger or by registered post with acknowledgment due. - One certified copy of the confession statement shall be immediately furnished to the Investigating Officer, free of cost, with a specific direction to him, to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed. - The other certified photocopy of the confession statement shall be kept in a sealed cover in the safe custody of the recording Magistrate. c. Dying declaration: 57. As regards recording of dying declaration, we are informed that the CMM and CJMs nominate Magistrates on turn duty to be available readily for recording the dying declaration whenever a requisition is

received either from the police or from the hospital. 58. The procedure of nominating a Magistrate on a case-to-case basis for recording the 164 Cr.P.C. statement may not be viable for recording dying declarations. This can be best explained by way of an illustration. A woman committing self immolation in a remote village in Thiruvallur District will be immediately taken to the headquarters hospital in Thiruvallur, from where, she may be referred to the Government Stanley Hospital in Chennai, since the Burns Department there has state-of-the-art facilities to treat her. Hence, one cannot wait for the jurisdictional Magistrate from Thiruvallur District to come all the way to the Government Stanley Hospital in Chennai for recording the dying declaration. Therefore, under the present dispensation, the duty Magistrate in Chennai will rush to the hospital for recording the dying declaration. The existing system does not suffer from any infirmity and has been working well thus far. However, we direct the Magistrates to take two photocopies of the dying declaration so recorded, under their direct supervision and after certifying them, send the original by a special messenger or by Registered Post with Acknowledgment Due to the jurisdictional Court. Of the two photocopies taken, one shall be kept in a sealed cover with the Magistrate and the other shall be handed over to the Investigating Officer of the case, free of cost, with a direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed. To summarise: - After recording the dying declaration, the Magistrate shall arrange to take two photocopies of the same under his direct supervision and certify the same as true copies. - The dying declaration in original shall be sent in a sealed cover to the jurisdictional Magistrate or Court, as the case may be, through a special messenger or by registered post with acknowledgment due. - One such certified photocopy of the dying declaration shall be furnished by the Magistrate to the Investigating Officer of the case free of cost, immediately, with a specific direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed. - The other certified photocopy of the dying declaration shall be kept in a sealed cover in the safe custody of the Magistrate. d. Test Identification Parade report: 59. The identification of the accused by a witness during trial is a relevant fact under section 9 of the Indian Evidence Act and it is substantive evidence. However, such an identification is necessary during investigation in cases where the witness is not previously acquainted with the suspect, but, states that he can identify him. 60. The purpose behind holding of Test Identification Parade has been succinctly stated by a Constitution Bench of the Supreme Court in Harnath Singh v. State of Madhya Pradesh [(1969) 2 SCR 289]: 9.... During the investigation of a crime the police has to hold identification parades for the purpose of enabling witnesses to identify the properties which are the subject matter of the offence or to identify the persons who are concerned therein. They have thus a two-fold object; first, to satisfy the investigating authorities that a certain person not previously known to the witnesses was involved in the commission of the crime or a particular property was the subject of the crime. It

is also designed to furnish evidence to corroborate the testimony which the witness concerned tenders before the court...." 61. There was no provision in the 1898 Code as well in the 1973 Code (until recently) authorising the conduct of Test Identification Parade. It was essentially done under the Police Standing Orders. Until 1955, in the erstwhile Madras State, Test Identification Parades were conducted by the police and this practice found sanction in a Division Bench judgment of this Court in *Gurusami Tevan and Others v. Emperor* [1936 MWN. CrL. 25] . In the said judgment, the Division Bench held that the act of a witness identifying a suspect to the police officer is not a statement and therefore, it will not be hit by Section 162 of the Code. However, a different view was taken by the Calcutta High Court in *Kabhiruddin v. Emperor* [AIR 1943 Calcutta 644] . The Supreme Court considered the divergent views of the Madras High Court and the Calcutta High Court in *Ramkishan Mithanlal Sharma v. State of Bombay* [AIR 1955 SC 104] and held that the act of the witness identifying the suspect to the police in Test Identification Parade would attract the ban under Section 162 of the Code and therefore, would be inadmissible. In *Ramkishan Mithanlal Sharma* (supra), the Supreme Court specifically overruled the judgment of the Madras High Court in *Gurusami Tevan* (supra) and upheld the view of the Calcutta High Court in *Kabhiruddin* (supra). 62. Following the judgment of the Supreme Court in *Ramkishan Mithanlal Sharma* (supra), a Division Bench of the Madras High Court, in *Moorthy v. State* [1956 MWN CrL. 71], held as follows: "There can be no doubt that in this case inadmissible evidence hit by Section 162 Cr.P.C., 1973 has been allowed to be let in and it is to be hoped that in future identification parades, though they may be arranged by the Police, would not be directed and supervised by them and that after arranging test identification parades, the police would completely obliterate themselves and leave the Honorary magistrate and the Panch witnesses solely in charge of the parade so that the statement made by the identifiers would be outside the purview of section 162 of the Code of Criminal Procedure, 1973." Pursuant to the said judgment, PSO 585 (4) was amended by G.O.Ms.No.3239, Home (Police - IV) Department dated 20.11.1956 as follows: "Identification parade shall be conducted by a Magistrate and the Police shall, after arranging the preliminaries of the parade withdraw, allowing the Magistrate to conduct the parade alone. This was further amended and re-numbered as PSO 600 which reads as follows: "PSO 600: Identification: 1 When witnesses allege that they can identify persons who took part in an occurrence, the investigating officers shall record their description of them in detail. 2. When persons are to be shown to witnesses for identification, they shall be carefully kept out of view of the witnesses and mingled with a considerable number of other persons of a like class. The witnesses shall then be asked, one by one and independently, to point out any person whom they recognise. 3. It should then be seen whether the description of the person tallies with that given in the first instance. 4. Identification parade shall be conducted by a Magistrate or where the presence of the Magistrate cannot be secured without considerable amount of delay by panch witnesses and the police shall, after arranging the preliminaries for the parade, withdraw allowing the Magistrate or the panch witnesses as the

case may be, to conduct the parade under his/their exclusive direction and supervision. Whenever panch witness are requested to conduct the parade, the investigation officer shall record in writing the reasons for not being able to secure the presence of a magistrate to conduct the Parade." 63. We have narrated the historical evolution of the Test Identification Parade only to emphasis the point that, the conduct of Test Identification Parade shifted from the hands of the Police to the Magistracy in the Madras State, as a result of the judgment of the Supreme Court in Ramkishan Mithanlal Sharma (supra). Therefore, Test Identification Parades are now conducted by the Magistrates only in aid of investigation and hence, the Investigating Officer needs to know without delay whether the suspect has been identified by the witness or not in the Test Identification Parade. 64. Pursuant to the 154th report of the Law Commission of India on the Criminal Procedure Code, 1973 Section 54A was inserted in the Code of Criminal Procedure by Act 25 of 2005 with effect from 23.06.2006. After the Nirbhaya's case, Section 54-A was further amended pursuant to the Justice Verma Commission's report by Criminal Law Amendment Act, 2013 with effect from 03.02.2013, on account of which, two provisos have been added to the same. Thus, Section 54-A, as it stands now, reads as follows: 54-A Identification of person arrested: Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit: Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed." 65. From a reading of the above, it is seen that Test Identification Parade can be ordered by the "Court having jurisdiction". The expression "Court having jurisdiction" would mean the Court having jurisdiction to inquire into or try the case. The expression "Court" has to be construed in the context of the stage in which the case is pending. If it is pending investigation, it is the Magistrate or the Special Court which would have the jurisdiction. Supposing the case is pending trial before the Sessions Court and a further investigation is in progress, in which, identification of an arrested person is necessary, the Investigating Officer should move the Sessions Court and obtain orders. 66. Yet another significant aspect to be borne in mind is that the person who is to be identified should have been arrested by the police. This does not mean that he should be in custody when the Identification Parade is sought to be done. In other words, Test Identification Parade can be conducted even in respect of a person who has been arrested and released on bail. On an application made to the Court by the Investigating Officer, the Court shall require the accused to subject himself to identification by any person or persons in such

manner as the Court may deem fit. Thus, the manner in which the person should be identified has to be left to the discretion of the Court. 67. At this juncture, it may be necessary for us to emphasise that when an application is made by the Investigating Officer to the Court, it is not necessary for the Court to order notice to the accused or hear him. The accused does not have a right to a hearing in this regard. When an application is made to the Court for conduct of Test Identification Parade, the Court is required to pass orders immediately without dragging its feet, inasmuch as passage of time may lead to the accused being exposed to the witness and the entire parade becoming a charade. Though the broad manner in which the identification parade should be done can be laid down by the Court, yet, the Court should leave the nitty gritty to the Magistrate who actually conducts the Identification Parade. The first proviso to Section 54-A Cr.P.C. mandates that if the person identifying the accused is mentally or physically disabled, then, the Identification Parade should be conducted by a Judicial Magistrate. This means that if the person identifying the accused is not mentally or physically disabled, any other person can conduct the parade. 68. However, after 1955, in the State of Tamil Nadu, a procedure has come to stay, whereby, identification parades are conducted by Metropolitan Magistrates/Judicial Magistrates and not by the Executive Magistrates or other persons. The Madras High Court has issued guidelines for the conduct of Identification Parade which is available at page no.56 in the book titled "A Manual of Instructions for the guidance of Magistrates in Tamil Nadu" (1993 edition) which is self explanatory. Therefore, in our opinion, the Courts in Tamil Nadu need not have to prescribe the manner in which the Identification Parade has to be done in view of the guidelines that are already available. The guidelines in the Manual are only guiding principles and that should be borne in mind and any deviation per se will not vitiate the Test Identification proceedings as such. Since the Magistrate who conducts the Test Identification Parade will have to be examined as a witness, the Court to which the application is made, shall issue directions to the accused under Section 54-A and make a request to the CMM/CJM concerned to nominate a Metropolitan Magistrate/Judicial Magistrate, other than the jurisdictional Magistrate, to conduct Test Identification Parade and send the report directly to the jurisdictional Court. On receipt of the request, the CMM/CJM shall immediately nominate a Magistrate, other than the jurisdictional Magistrate, and communicate the same to the Investigating Officer and to the Magistrate so nominated. Test Identification Parades are normally conducted in jails and sub-jails so that the Magistrate can conveniently select dummies of the suspect. Usually, dummies are selected in the ratio of 1 suspect : 6 dummies. This is not a hard and fast rule and it should be left to the discretion of the Magistrate depending upon the availability of dummies. 69. Thus, it is clear that the Test Identification Parade is conducted by the Magistrate only in aid of investigation and the statement of the witness identifying the suspect in the parade cannot be treated as a substantive evidence of identification in the trial of the accused. It is only corroborative evidence. 70. However, we have noticed that Test Identification Parades are presently conducted in the jail by lining up the suspect

along with the dummies in the open air and the witness is required to walk alongside the row of such persons, as if he is receiving a guard of honour. This procedure, in our view, is primitive, inasmuch as, this does not take into consideration, the adverse impact on the psychology of the victims, especially, gang rape victims, victims of dacoity and victims of terrorist attack. Many a time, they shudder to identify the suspect in the open, fearing reprisal. When a gang rape victim sees the suspect, the entire incident will, in all likelihood, get recreated in her mind, which for certain, will have an adverse impact on her ability to boldly identify the perpetrator. In *Mojib Ansari and others v. State of Jharkhand* [2015 Cr.L.J. 4702 : 2015 (3) Crimes 569], a Division Bench of the Jharkhand High Court has graphically described, in the following words, the manner in which a rape victim was subjected to ignominy and humiliation during Test Identification Parade. The relevant portion of the said judgment reads thus:

2. The most dirty role of police has surfaced from the evidence brought on record which shows the police remained silent spectator, when filthy comments were being passed against the victim girl when she was accompanying the police for Test Identification Parade (T.I.P.) as well as for recording her statement under Section 164, Cr.P.C., 1973 This omission of the police to shield the victim from constant taunt adversely affected the investigation as victim refused to accompany the police for T.I.P. of other accused persons. The victim's father too refused to extend cooperation to investigating officer as he realised the traumatic experiences of his daughter. The frequent taunting made the life of victim hell and ultimately, she succumbed to that shock. The father of the victim also got himself transferred to another place and shifted with his entire family..." 71.

Unfortunately, in India, we do not have a system of protecting the lives of witnesses. This has been vividly referred to in the following words in the Report of the Committee of Reforms of Criminal Justice System, March 2003 (popularly known as Justice Malimath Committee Report). "11.3 Another major problem is about safety of witnesses and their family members who face danger at different stages. They are often threatened and the seriousness of the threat depends upon the type of the case and the background of the accused and his family. Many times crucial witnesses are threatened or injured prior to their testifying in the court. If the witness is still not amenable he may even be murdered. In such situations, the witness will not come forward to give evidence unless he is assured of protection or is guaranteed anonymity of some form of physical disguise. Sometimes holding of in-camera proceedings may be sufficient to protect the interest of the witness. If, however, the circumstances indicate that the life of any particular witness is in danger, the court must take such measures as are necessary to keep the identity of the witness secret and make arrangements to ensure protection to the witness without affecting the right of the accused to cross-examine him. The threat from the accused side may be before he gives his statement before the police officer or evidence before the court or after the conclusion of the trial. There is a growing tendency of subjecting the witness and his family members to serious threats to life, abduction or raping, or damaging the witnesses' property or harming his image

and interest in other ways. The witness has no protection whatsoever. Many countries in the world have enacted laws for witnesses' protection. There is no such law in India. Time has come for a comprehensive law being enacted for protection of the witness and members of his family." 72. The attempt by the Government of India to pass the Witness Identity Protection Bill, 2015 stands unfulfilled. In other democracies, the procedure of identification is done in a specially designed room in which the suspect is lined up along with the dummies and there will be an one-side view glass partition separating them from the witness and the Magistrate. The suspect will not be able to see them, but, the witness and the Magistrate will be able to see the suspect and the dummies. The witness would identify the suspect and that will be recorded by the Magistrate in the proceedings. The process of reshuffling and asking those persons to change their attire is also done for which an ante chamber is made available. The suspect is also allowed to stand in any place by reshuffling. The above method of identification requires to be implemented in our State as well, as a step towards protection of witnesses. Until very recently, the victim was an orphan and the judicial system was totally impervious to his cries. Farreaching amendments have been made in the Code of Criminal Procedure by the Central Act 5 of 2009, on account of which, the victim now has a say, at least to some extent, in the administration of criminal justice. The Court has a duty to protect the interests of the victim during the course of the proceedings before it. 73. It was submitted that if this procedure is adopted, the accused will not know whether the witness really identified him or not. We pose ourselves this question: "Does an accused have a right to know as to whether he has been identified by the witness in the Test Identification Parade, before the final report is filed?" 74. To answer the above question, it may be necessary to state the procedure that is being presently followed by the Magistrates in the State. After lining up the accused with the dummies, the Magistrate would ask the witness to identify the accused in one of the following three manners: a. to point the accused; or b. to touch the accused; or c. to softly tell the Magistrate the order or serial number in which the accused is standing. Only if the witness chooses one of the first two methods mentioned above, would the accused know that he has been identified. Under the third method, the accused would not know that he has been identified by the witness till the final report is filed, because, as per the judgment of the Full Bench of this Court in Selvanathan @ Raghavan (supra), the accused is entitled to a copy of the Test Identification Parade report only after the final report is filed and not at any time before that. There is no statutory provision or binding judicial precedent mandating that the Magistrate should not adopt the third method and that he should resort to a method by which the accused should know that he has been identified in the Test Identification Parade by the witness even before the final report is filed. Such a statutory provision, in our opinion, will be an anachronism and will be perilous to the very safety and life of the witness. Therefore, we have no hesitation in holding that an accused has no right to know that he has been identified in the Test Identification Parade by a witness, till the final report is filed. 75. The question as to whether the statements of witnesses

and accused made to a Magistrate during Test Identification parade are admissible or not, came to be decided by the Constitution Bench of the Supreme Court in Harnath Singh (supra), wherein, the Supreme Court, relying upon its earlier judgment in Deep Chand v. the State of Rajasthan [(1962) 1 SCR 662], held as under: "17. According to this Court, the above decision was "an authority for the position that the evidence given by a Magistrate on the basis of the verification proceedings conducted by him is relevant evidence, though he could not speak to statements made by the accused or a witness recorded by him in contravention of section 164 of the Code of Criminal Procedure, 1973." (emphasis supplied) 76. Before winding up our discussion on the Test Identification Parade subject, we may profitably extract the following passage from a Division Bench judgment of this Court in Public Prosecutor v. Sankarapandia Naidu and others [1932 MWN (CrL.) 59]: "Identification parades are held not for the purpose of giving defence advocates material to work on, but in order to satisfy investigating officers of the bona fides of the prosecution witnesses." 77. Equally relevant are the following lines extracted from the judgment of the U.S. Supreme Court in Aldridge v. United States (1930) 283 US 308: "Courts ought not to increase the difficulties by magnifying theoretical possibilities. It is their province to deal with matters actual and material, to promote order, and not to hinder it by excessive theorising or by magnifying what in practice is really not important." 78. In fine, we direct the Government of Tamil Nadu to establish a Test Identification Parade Centre, in all the Central Prisons in the State, as indicated by us above, in paragraph no.72, within a period of six months from the date of receipt of a copy of this order. 79. We also direct the Magistrate conducting the Test Identification Parade to take two photocopies of the Test Identification Parade report under his direct supervision and after certifying the same, without having them sent to the Copyist Department, hand over one such photocopy to the Investigating Officer with specific directions that the contents of such report should not be divulged to any person till the charge sheet under Section 173 Cr.P.C., 1973 is filed. Since the Magistrate conducting the Test Identification Parade will not be the jurisdictional Magistrate, he shall send the original by a special messenger or by registered post with acknowledgment due to the jurisdictional Court. The second photocopy shall be retained by the Magistrate as a "confidential" record in a sealed cover for future requirements, if necessary. To summarise: - An application for conduct of Test Identification Parade, shall be made under Section 54-A of the Code by the Investigating Officer, to the Court having jurisdiction. - On such application being made, the Court may direct the person so arrested to subject himself to identification. - The Court shall make a request to the CMM/CJM of the District to nominate a Magistrate, other than the Magistrate who has jurisdiction of the case, to conduct the Test Identification Parade. - Upon receipt of such request, the CMM/CJM shall immediately pass orders nominating a Magistrate, other than the jurisdictional Magistrate, to conduct Test Identification Parade and inform the same to the Magistrate so nominated and to the Investigating Officer. - The Magistrate so nominated shall conduct Test Identification Parade and after

preparing the Test Identification Parade report, he shall arrange to take two photocopies of the said report under his direct supervision and certify the same as true copies. - He shall send the Test Identification Parade report in original in a sealed cover to the jurisdictional Court through a special messenger or by registered post with acknowledgment due. - One certified photocopy of the Test Identification Parade report shall be furnished by the Magistrate to the Investigating Officer of the case free of cost, immediately, with a specific direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed. - The other certified photocopy of the Test Identification Parade report shall be kept in a sealed cover in the safe custody of the Magistrate. 80. We are aware that the Chief Metropolitan Magistrate/Chief Judicial Magistrates have issued notifications distributing the business relating to recording of statements under Section 164 Cr.P.C., 1973 and conduct of Test Identification Parades to various Magistrates under their jurisdiction. For example, the Chief Judicial Magistrate, Sivaganga, has issued a notification dated 05.09.2000, by which, if, in a case pending on the file of the Judicial Magistrate, Devakottai, a statement under Section 164 Cr.P.C., 1973 has to be recorded or Test Identification Parade has to be conducted, the same shall be done by the Judicial Magistrate, Karaikudi. Such notifications are not against law and the directions given by us herein are intended to supplement such notifications. If the post of Judicial Magistrate, Karaikudi, is vacant, it is open to the police to move the Chief Judicial Magistrate, Sivaganga, for nominating a Magistrate other than the Judicial Magistrate, Devakottai, for the required purpose. Therefore, we hold that, wherever such notifications have been issued by the Chief Metropolitan Magistrate/Chef Judicial Magistrates, the directions issued by us herein should be harmoniously construed and implemented. 81. To recapitulate and for easy reference, we summarise as follows: a. The 164 Cr.P.C. statement of victim/witness: A statement of a witness/victim can be recorded under Section 164 Cr.P.C., 1973 only at the instance of the Investigating Officer of the case. It is not necessary for the Investigating Officer to approach the CMM/CJM with an application for nominating a Magistrate to record the statement of a witness/victim under Section 164 Cr.P.C., 1973 A Magistrate, whether he has got jurisdiction or not, to inquire into or try the case, can record the statement of a witness/victim under Section 164 Cr.P.C., 1973 on the request of the Investigating Officer of the case. The Presiding Officer of a Special Court which has been empowered to take cognizance of an offence without there being a need for committal, may also record the statement of a witness/victim under Section 164 Cr.P.C., 1973 on the request of the Investigating Officer. After recording the statement of a witness/victim under Section 164 Cr.P.C., 1973 the Judge/Magistrate shall arrange to take two photocopies of such statement, under his direct supervision and certify the same as true copies. He shall furnish one such certified photocopy of the statement to the Investigating Officer free of cost, immediately, with a specific direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed. The other

certified photocopy of such statement shall be kept in a sealed cover in the safe custody of the Judge/Magistrate. If the Magistrate who had recorded the 164 Cr.P.C. statement is not the jurisdictional Magistrate, he shall send the original statement to the jurisdictional Court, either through a special messenger or by registered post with acknowledgement due. If the Judge/Magistrate who had recorded the 164 Cr.P.C. statement is himself the jurisdictional Magistrate, he shall keep the original of the statement in the case records. b. The 164 Cr.P.C. confession statement of the accused: The Investigating Officer shall make an application before the CMM/CJM for nominating a Magistrate, other than the jurisdictional Magistrate, to record the confession statement of an accused. After recording the confession statement of an accused, the recording Magistrate shall arrange to take two photocopies of the same under his direct supervision and certify the same as true copies. The confession statement, in original, shall be sent in a sealed cover to the jurisdictional Magistrate or Court, as the case may be, through a special messenger or by registered post with acknowledgement due. One certified copy of the confession statement shall be immediately furnished to the Investigating Officer free of cost, with a specific direction to him, to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed. The other certified photocopy of the confession statement shall be kept in a sealed cover in the safe custody of the recording Magistrate. c. Dying Declaration After recording the dying declaration, the Magistrate shall arrange to take two photocopies of the same under his direct supervision and certify the same as true copies. The dying declaration in original shall be sent in a sealed cover to the jurisdictional Magistrate or Court, as the case may be, through a special messenger or by registered post with acknowledgement due. One such certified photocopy of the dying declaration shall be furnished by the Magistrate to the Investigating Officer of the case, free of cost, immediately, with a specific direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed. The other certified photocopy of the dying declaration shall be kept in a sealed cover in the safe custody of the Magistrate. d. Test Identification Parade report: An application for conduct of Test Identification Parade, shall be made under Section 54-A of the Code by the Investigating Officer, to the Court having jurisdiction. On such application being made, the Court may direct the person so arrested to subject himself to identification. The Court shall make a request to the CMM/CJM of the District to nominate a Magistrate, other than the Magistrate who has jurisdiction of the case, to conduct the Test Identification Parade. Upon receipt of such request, the CMM/CJM shall immediately pass orders nominating a Magistrate, other than the jurisdictional Magistrate, to conduct Test Identification Parade and inform the same to the Magistrate so nominated and to the Investigating Officer. The Magistrate so nominated shall conduct Test Identification Parade and after preparing the Test Identification Parade report, he shall arrange to take two photocopies of the said report under his direct supervision and certify the same as true copies. He shall send the Test Identification Parade report in original in a

sealed cover to the jurisdictional Court through a special messenger or by registered post with acknowledgment due. One certified photocopy of the Test Identification Parade report shall be furnished by the Magistrate to the Investigating Officer of the case, free of cost, immediately, with a specific direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed. The other certified photocopy of the Test Identification Parade report shall be kept in a sealed cover in the safe custody of the Magistrate. Further Directions: 82. We direct: i. the Government of Tamil Nadu to construct special rooms for conduct of Test Identification Parades in all the prisons in the State within a period of six months from the date of receipt of a copy of this order. Such rooms shall have one side view glass partition separating those lined up for the parade, on the one hand and the witness and Magistrate, on the other. The witness and the Magistrate should not be visible to those who are lined up, but, the suspect and the dummies should be visible clearly to the witness and the Magistrate. The enclosure in which the suspect and the dummies are lined up shall be well illumined and should also have an ante room for them to change their attire. ii. the Registrar General of this Court to circulate a copy of this order to all the Judicial Officers in the State. iii. the Director General of Police to translate the directions issued in this order into Tamil and circulate the same to all the police stations in the State for strict adherence. iv. the Tamil Nadu State Judicial Academy and the Tamil Nadu State Police Academy to take effective steps to sensitise the Judicial Officers and police officers respectively to follow the aforesaid directions in letter and spirit. 83. We make it clear that the directions given in paragraph no.81 above would apply to cases that are pending investigation. 84. The issue under reference is answered accordingly. However, we have taken this opportunity to address other issues as well that are intimately connected to the issue under reference with the objective of streamlining the criminal justice system. Before parting with the matter, we place on record, our profound appreciation to all the learned counsel who assisted this Bench to answer the issue under reference.