

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

**CRM(M) No. 1281/2025  
CrIM No. 2381/2025**

**Gudia Devi**

.....Appellant(s)

Through: Mr. Iqbal Hussain Bhat, Advocate

**Vs**

**UT of J&K and Anr.**

..... Respondent(s)

Through: Mr. Bhanu Jasrotia, GA

**Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

**ORDER**  
**05.12.2025**

**01.** Heard.

**02.** Through the medium of the instant petition filed under and in terms of provisions of Section 528 of Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as "BNSS" for short), the petitioner has sought the issuance of a direction upon the respondent No.2 i.e. SHO Police Station Nowshera, Rajouri for production of the petitioner/complainant before a Competent Judicial Magistrate for re-recording her voluntary statement under Section 183 BNSS and for a corresponding direction upon the learned Judicial Magistrate concerned to re-record the same in accordance with the law.

**03.** The case of the petitioner in brief is that she has been married to one Gourav Singh in the year 2017. That her matrimonial relation with her husband did not remain cordial as the later started beating and using abusive language with her immediately within one month of the marriage. That two issues have begotten out of their wedlock. That both of their issues are daughters namely Tanshi Manhas, born on 3<sup>rd</sup> March, 2018 and Mansi Manhas, born on 20<sup>th</sup> June,

2019 who are respectively reading in 3<sup>rd</sup> and L.K.G. Classes in Government Middle School, Hanjana. That she filed a complaint with the Women's Cell Gandhi Nagar, Jammu against her husband complaining about the violence being meted out to her. That she often used to go to the home of her sister namely Harpreet Kour, upon being thrown from her matrimonial home by her husband. That her sister namely Harpreet Kour was not having cordial relation with her husband. That in the month of August 2025, she was again beaten by her husband and thrown out of her matrimonial home whereupon she was forced to go to her sister's home leaving her two daughters with their father i.e. the husband of the petitioner. That thereafter, she came to her matrimonial home after two months i.e. on 09.10.2025 and found that both the daughters are fine being taken care by their father in her absence. That however, on that day, she on the instigation of her sister namely Harpreet Kour, lodged a complaint with the Police Station Nowshera, Rajouri against her husband on the basis of which FIR No. 148/2025 dated 09.10.2025 came to be registered with the said Police Station. That she in her complaint leveled the allegation of molestation of her two daughters by her husband i.e. the father of the minor daughters. That however, she did not see anything herself and the said allegations were leveled by her on the instigation of her sister and her other relatives in the state of anger. That after the lodging of the FIR by her, she was pressurized and forced by her sister and other relatives to get her statement recorded in support of her complaint under Section 183 BNSS corresponding to Section 164 of the repealed code. That she was told by her aforesaid relatives that if she does not make a statement under Section 183 BNSS, she will be booked under law and will be sent to jail, whereafter, she made her statement in terms of Section 183

BNSS before the Magistrate. That now, in view of the real facts, she wanted to give a fresh clarified and voluntary statement under Section 183 BNSS before the concerned Magistrate. That she, accordingly, approached the Investigating Officer of the case on multiple occasions requesting him to get her statement re-recorded but the respondent No.2/SHO refused to do so without giving any justification. That the refusal on the part of the SHO/IO of the case to get her statement re-recorded before the concerned Magistrate is violative of her right to fair investigation flowing from the Article 21 of the Constitution of India. That she is ready and willing to appear before the Competent Magistrate at any time as directed by this Court for getting her statement re-recorded under Section 183 BNSS.

**04.** It is submitted by the learned counsel for the petitioner that the statement made during investigation under Section 183 BNSS on oath is a substantive piece of evidence which is used for the purposes of both corroboration and contradiction. He submitted that such a statement is meant to be a complete, elucidative and a voluntary account of the witness. He submitted that since the earlier statement of the petitioner recorded during investigation in terms of Section 183 BNSS is not voluntary as admitted by the petitioner herself, as such, her statement for bringing on record a true account needs to be re-recorded before a Competent Magistrate. He submitted that there is no bar under the Sanhita for recording of the statement of a material witness more than one time with a view to bring a clear and true account of the case on record.

**05.** The learned counsel in support of his contentions placed reliance on the judgment of Hon'ble Supreme Court in "**R. Shaji Vs. State of Kerala**" AIR 2013 Supreme Court 651 and submitted on the basis of reliance upon such

authoritative judgment that evidence given an oath by a witness during investigation has a great sanctity. That such statements under Section 183 BNSS can be used both for corroboration and contradiction and, as such, in a case, where the Magistrate has to perform the duty of recording a statement under Section 183 BNSS, he is under an obligation to elicit all information which the witness wishes to disclose.

**06.** The learned counsel also placed a reliance on the judgment of this Court passed in CRM(M) No. 206/2025 decided on 17.03.2024 and submitted that this Court under similar circumstances directed the SHO/IO of the Police Station concerned to consider the desirability of re-recording of statement of the petitioner under Section 164 CrPC and to take an informed decision in that record at an earliest.

**07.** I have perused the memo of the instant petition and have also considered the submissions of the learned counsel for the petitioner.

**08.** Although there appears to be no express bar under the Sanhita of 2023 for re-recording of the statement of a witness during investigation of a case yet such an exercise needs to be undertaken with great care and caution especially where the witness and the accused are in relation or where the accused is in an influencing position to have undue influence on the witness. The statements of material witnesses which are desired to be recorded before a Magistrate during investigation of the case in terms of provisions of Section 183 BNSS corresponding to Section 164 of the repealed Code especially in the cases involving heinous offences for the purposes of the corroboration need to be clear, exhaustive and elucidative so as to reflect a true account of the crime. It is,

as such, the duty of the recording Magistrate to elicit all information which the witness wishes to disclose as sometimes, a witness who may be an illiterate or otherwise ignorant of the purpose of the statement may not on his/her own give a whole voluntary account of the occurrence. So, the case of re-recording of a statement during investigation in terms of Section 183 BNSS needs to be considered in the first instance by the Investigating Officer of the case, who is obliged to have a fair investigation of the case and secondly by the recording Magistrate, so as to rule out any tactics of defeating the cause of justice by allowing a material witness in a criminal case - may be a complainant or a victim of crime to change his/her statement under collusion with the accused.

**09.** The nature of statement being recorded during investigation of a material prosecution witness and the manner of recording such a statement was *inter alia* dealt with by the Hon'ble Apex Court in "**R. Shaji Vs. State of Kerala**" AIR **2013 Supreme Court 651** also relied upon by the learned counsel for the petitioner. It is profitable to reproduce relevant paras 14, 15 and 16 of the said judgment for the sake of convenience.

*"14. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction. In a case where the magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 Cr.P.C. Hence, the magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.*

*15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the*

*effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted. (Vide: Jogendra Nahak & Ors. v. State of Orissa & Ors., AIR 1999 SC 2565; and Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Ltd. & Ors., AIR 2000 SC 2901).*

*16. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C., can be relied upon for the purpose of corroborating statements made by witnesses in the Committal Court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence. During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Cr.P.C. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced."*

10. The question whether statement of a witness under Section 164 CrPC can be recorded more than once has been dealt with by this Court in the case of **"Showkat Ali Vs. State and Ors."** (561-A No. 259/2014 decided on 04.09.2014). The relevant portion of the Judgment is reproduced as under:-

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

11. The observations of this Court made under similar circumstances in case titled **"Masrat Maqbool Vs. UT of J&K"** in CRM(M) No. 731/2023 decided on 21.02.2025 at para 6 of the judgment are also reproduced for ready reference:

*"06. The object behind undertaking the investigation is to unearth the true facts and not to somehow or other to file a challan against the suspect. The endeavor of the Investigating Officer should not only be to book the culprit but he/she has also to ascertain as to whether the offence has taken place at all. This exercise has to be undertaken by the Investigating Officer by evaluating and assessing the statements of the witnesses recorded during the investigation of the case as also the other material collected during the investigation. Whether or not the statement of a witness is to be relied upon is a question which has to be addressed*

*by the Investigating Officer by evaluating the other circumstances and material collected during investigation. Merely because a witness supports the version of the complainant does not mean that Investigating Officer should close his eyes to the other material assembled during the investigation. Ultimately, it depends upon the assessment and discretion of the Investigating Officer and he has to take a call whether it is necessary to re-record the statement of a witness and whether the same would help in reaching the correct conclusion.”*

12. In the backdrop, this Court is of the opinion that it may meet the ends of justice in case, the Investigating Officer of the case is directed to consider the request of the petitioner for re-recording her statement in the light of the attending circumstances of the case.

13. The instant petition is, accordingly, disposed of at the threshold stage with the direction to the Investigating Officer of the case FIR No. 148/2025 dated 09.10.2025 of Police Station, Nowshera, Rajouri to consider the desirability of the re-recording of statement of the petitioner under Section 183 BNSS and to take an informed decision in this regard at an earliest. If the Investigating Officer decides to get the statement of the petitioner/complainant re-recorded, her statement shall be assessed and evolved by him in the light of her earlier statement and also the other material collected during investigation of the case, whereafter, the IO concerned shall take a final call in matter in accordance with the law.

14. **Disposed of.**

**(Mohd. Yousuf Wani)**  
**Judge**

**Jammu**  
**05.12.2025**  
**Riya Kochhar**