

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MMO No. 680 of 2026****Reserved on: 15.09.2026****Date of Decision: ____ .09.2026**

ABC (victim)**...Petitioner****Versus****State of H.P. & others****...Respondents**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting? Yes*****For the Petitioner : Mr K.S. Gill, Advocate.****For the respondents : Mr Jitender Sharma,
/State Additional Advocate General.**

Rakesh Kainthla, Judge

The present petition is directed against the order dated 11.05.2026 passed by the learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, H.P. (learned trial Court) in F.I.R. No.19 of 2026, dated 17.04.2026, vide which the prayer to re-record the victim's statement was rejected.

2. Briefly stated, the facts giving rise to the present petition are that the informant made a complaint to the police

that his daughter, the victim, had left the home on 17.04.2026, and she could not be traced despite efforts. The police registered the missing report and searched for the victim. Subsequently, the victim was recovered at Bagheri. She made a statement that she had left the home after a dispute with her mother. She was produced before the learned Magistrate, where she reiterated that she had left the home voluntarily without any influence from any person after a quarrel with her mother.

3. The victim filed an application for recording her statement, asserting that she was tutored by the police to make a statement before the learned Magistrate that nothing had happened to her and she had left the home voluntarily. She could not explain the matter in its entirety due to mental trauma and other circumstances beyond her control. She wants to get her statement recorded. Therefore, it was prayed that her statement be recorded.

4. Learned trial Court held that the provisions of Section 183 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 do not contemplate the recording of a second or repeated statement and once the statement has been recorded, it is

impermissible to record the second statement. Hence, the learned trial Court dismissed the application.

5. Being aggrieved by the order passed by the learned trial Court, the victim has filed the present petition asserting that the learned trial Court erred in dismissing the application. She is not precluded from bringing the truth before a Court of law because her earlier statement under Section 183 of BNSS was obtained under severe psychological coercion. The investigating agency unilaterally decided to close the investigation by filing a cancellation report. Learned Trial Court erred in dismissing the application. Therefore, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

6. I have heard Mr K.S. Gill, learned counsel for the petitioner and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

7. Mr K.S. Gill, learned counsel for the petitioner, submitted that the learned trial Court erred in dismissing the application. The victim had made the earlier statement at the

instance of the police. Subsequently, she regained composure and filed an application before the Court. The learned Trial Court erred in dismissing the application. He relied upon the following judgment in support of his submissions:

- *ABC vs. State of Chhattisgarh & others; Cr.MP No. 895 of 2022, decided on 08.07.2022; and*
- *Halke Bhai Gond vs. The State of Madhya Pradesh, Writ Appeal No. 602 of 2022, decided on 14.07.2022*

8. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

9. It is undisputed that the victim had filed the application on her own and she was not sent by the police for recording her statement. It was laid down by the Hon'ble Supreme Court in *Jogendra Nahak v. State of Orissa*, (2000) 1 SCC 272: 2000 SCC (Cri) 210: 1999 SCC OnLine SC 698, that the Magistrate is not empowered to record the statement of a person unsponsored by the Investigating Officer. It was observed at page 277:

“24. Thus, on a consideration of various aspects, we are disinclined to interpret Section 164(1) of the Code as empowering a Magistrate to record the statement of a person unsponsored by the investigating agency. The High Court has rightly disallowed the statements of the

four appellants to remain on record in this case. Of course, the said course will be without prejudice to their evidence being adduced during trial, if any of the parties requires it.”

10. In *ABC (supra)*, the Chhattisgarh High Court had noticed in para 22 of the judgment of Jogendra Nahak (*supra*), but failed to notice the ultimate conclusion. Therefore, the judgment of Chhattisgarh in *ABC (supra)* cannot be followed.

11. Therefore, there is no infirmity in the order passed by the learned trial court in refusing to record the statement of the victim.

12. It is undisputed that the victim's statement was recorded by the learned Magistrate. The learned Magistrate had questioned the victim and satisfied herself that the statement was being made voluntarily. She had endorsed a certificate to this effect on the statement. It was laid down by the Allahabad High Court in *Kirti Verma v. State of U.P.*, 2026 SCC OnLine All 528, that a direction to record the second statement can be issued in exceptional circumstances. It was observed:-

“16. Ordinarily, no routine direction for a second statement under Section 183 B.N.S.S. can be given but under exceptional circumstances. High Court, in exercise

of its extraordinary jurisdiction, if justified to rectify injustice, may issue directions for recording a second statement under Section 183 B.N.S.S., but it cannot be exercised as a general rule where the victim alleges that her statement recorded under Section 183 B.N.S.S. was not read over to her or that she was not given an opportunity to confirm its correctness. The High Court can, in appropriate cases, exercise its extraordinary jurisdiction to direct a fresh recording of the statement before the Magistrate, and the power is not a routine or an automatic power but is exercised by the High Court or Supreme Court to prevent abuse of process, to secure ends of justice or rectify grave procedural irregularities that could lead to miscarriage of justice.”

13. In the present case, no exceptional circumstance is made out. The victim had made a statement to the police that she had left the home voluntarily. She repeated this statement before the learned Magistrate, who had satisfied herself about the voluntariness of the statement. Therefore, the learned Magistrate was justified in refusing to record her statement.

14. In *Halke Bhai Gond (supra)*, the Hon'ble High Court of Madhya Pradesh had held that the accused would be within his right to oppose the recording of the second statement. Hence, the cited judgment does not apply to the present case.

15. Therefore, there is no infirmity in the order passed by the learned trial Court requiring any interference from this

Court; hence the present petition fails and is dismissed. Pending application(s), if any, also stand disposed of.

16. The observation made hereinbefore shall remain confined to the disposal of the present petition and will have no bearing whatsoever on the merits of the main case.

30th September, 202
(Ravinder)

(Rakesh Kainthla)
Judge