

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Writ Petition No. 832/2020

Satyaprakash Vaishnav

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary Home Department Government Of Raj. Secretariat Jaipur
2. The Superintendent Of Police, Office Of Superintendent Of Police Baran Dist. Baran Raj.

----Respondents

For Petitioner(s) : Mr. Anurag Kalavatiya, Adv.

For Respondent(s) : Mr. Arvind Bhadu, PP

Order

19/11/2020

1. The Investigating Officer moved an application before the Learned Magistrate for getting statements under section 164 Cr.PC recorded of the minor prosecutrix in terms of section 26 of the POCSO Act in the presence of the parents. However, Learned Judicial Magistrate has refused to accept the application against which revision was filed before the learned District & Sessions Judge, Baran who has also rejected the revision vide order dated 20.10.2020.

2. Learned counsel for the petitioner submits that the earlier statement recorded under Section 164 Cr.P.C. was not in accordance with the provisions of Section 26 of the POCSO Act.

act.”

8. Thus it is exclusive domain of the IO alone to move an application for getting statement recorded of any witness u/s 164 Cr.P.C. On moving such an application, the Magistrate will have to get the statement recorded.

9. In **SBCRLMP No. 3681/2020 Smt. Lada Devi vs. State of Rajasthan**, taking into consideration the overall circumstances, this Court directed the concerned IO to get the statement of the girl-prosecutrix again recorded by moving an application under Section 164 Cr.P.C. before the concerned Judicial Magistrate.

10. In the present case also, the circumstances show that the prosecutrix, who are minor in age, have not given their statements in terms of Section 26 of the POCSO Act. Provisions of POCSO Act are mandatory in nature.

14. Learned Judicial Magistrate shall now immediately proceed to record the statements of the prosecutrix, however, the procedure as laid down under Section 26 of the POCSO Act shall be strictly followed.

15. It is further directed that in future, as and when a case relating to POCSO Act comes up before any Magistrate, they are bound to follow the provisions of Section 26 of the POCSO Act while recording the statements under Section 164 Cr.P.C. at the first instance.

16. With the aforesaid directions, the writ petition is allowed.

(SANJEEV PRAKASH SHARMA),J