

A person should be produced before a Magistrate, by the police for recording his statement under Section 164 Cr.P.C.

A three Judge bench of this Court in **Jogendra Nahak & Ors. v. State of Orissa & Ors.**, AIR 1999 SC 2565, held that Sub-Section 5 of Section 164, deals with the statement of a person, other than the statement of an accused i.e. a confession. Such a statement can be recorded, only and only when, the person making such statement is produced before the Magistrate by the police. This Court held that, in case such a course of action, wherein such person is allowed to appear before the Magistrate of his own volition, is made permissible, and the doors of court are opened to them to come as they please, and if the Magistrate starts recording all their statements, then too many persons sponsored by culprits might throng before the portals of the Magistrate courts, for the purpose of creating record in advance to aid the said culprits. Such statements would be very helpful to the accused to get bail and discharge orders.

6. The said judgment was distinguished by this Court in **Mahabir Singh v. State of Haryana**, AIR 2001 SC 2503, on facts, but the Court expressed its anguish at the fact that the statement of a person in the said case was recorded under Section 164 Cr.P.C. by the Magistrate, without knowing him personally or without any attempt of identification of the said person, by any other person. 7. In view of the above, it is evident that this case is squarely covered by the aforesaid judgment of the three Judge bench in **Jogendra Nahak & Ors.** (Supra), which held that a person should be produced before a Magistrate, by the police for recording his statement under Section 164 Cr.P.C.

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