

A.F.R.

Judgement Reserved on 19.02.2026
Judgement Delivered on 26.02.2026



2026:AHC:43696-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. WRIT PETITION No. - 3822 of 2026

Kirti Verma

.....Petitioner(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Petitioner(s) : In Person
Counsel for Respondent(s) : G.A.

Court No. - 45

HON'BLE RAJIV GUPTA, J.
HON'BLE ACHAL SACHDEV, J.

Per: Hon'ble Achal Sachdev, J.

1. The petitioner has filed a certified copy of her statement in the present case recorded under Section 183 B.N.S.S. before the Magistrate concerned.
2. Heard the petitioner Kirti Verma, who appears in person, learned A.G.A. for the State and perused the record and the case law cited by the petitioner.

3. The Petitioner, Kirti Verma, is complainant/victim in case crime number 320 of 2024, under sections 70(1), 352, 351(1), 61(2) B.N.S., 2023, Police Station Rani Ki Sarai, Azamgarh.

4. The petitioner, who is victim herein, has filed the present writ petition seeking issue of writ, order or direction in the nature of mandamus commanding and directing the respondent to re-record the statement of the victim/petitioner again under section 183 of B.N.S.S. 2023, in pursuance of order dated 13.01.2026 passed by the learned Additional District & Session Judge, FTC Court No. 01, Azamgarh and issue any other suitable writ, order or direction which the Court may deem fit and proper under the facts and circumstances of the case.

5. The petitioner has submitted that the petition is being filed strictly in compliance with and pursuant to the liberty granted by the order dated 13.01.2026 and is confined only to be procedural aspect as indicated by the learned court below and the petitioner is not seeking adjudication on the merits of the case, nor raising any factual controversy. The petitioner further submits that her statement has not been correctly recorded by the Magistrate and there has been gross violation of the express provisions of Section 183 B.N.S.S., which necessitates directions of this Court for re-recording of her statement under Section 183 B.N.S.S.

6. The learned Additional District & Session Judge, FTC Court No.01, Azamgarh in it's order dated 13.01.2026, while disposing applications dated 08.12.2025 and 09.01.2026 for re-recording of her statement under Section 183 B.N.S.S., made the following observations:-

(a). the Statement under section 183 B.N.S.S. is ordinarily recorded only once.

(b). any direction for recording such statement again can be issued only by the Hon'ble High Court or Hon'ble Supreme Court.

(c). until the procedural statement is clarified, it would not be appropriate to proceed further in the matter.

7. At this juncture, it is pertinent to refer to the provisions of Section 183 of B.N.S.S.

“183. (1). Any Magistrate of the District in which the information about commission of any offence has been registered, 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 but 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.

(2). The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3). If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4). Any such confession shall be recorded in the manner provided in section 316 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and 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."*

(5). Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) (a) In cases punishable under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bhartiya Nayay Sanhita, 2023 the Magistrate shall record the statement of the person against whom such offence has been committed in the manner specified in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that such statement shall, as far as practicable, be recorded by a woman Magistrate and in her absence by a male Magistrate in the presence of a woman:

Provided further that in cases relating to the offences punishable with imprisonment for ten years or more or imprisonment for life or with death, the Magistrate shall record the statement of the witness brought before him by the police officer:

Provided also 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 also 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 recorded through audio-video electronic means preferably by mobile phone;

(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 142 of the Bhartiya Sakshya Adhinyam, 2023 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.

(7). 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.”

8. Moreover, Section 176 of B.N.S.S. relates to Procedure for Investigation and allows optional audio-video recording of statements during police investigation including any statement made to the police and for rape/sexual offence cases victim statements must preferably be recorded at their residence or place of choice by a woman officer and may use audio-video means.

9. Section 183 of B.N.S.S. corresponds to Section 164 Cr.P.C. and it mandates safeguards for voluntariness. The statements including confessions can be recorded in writing or through audio-video electronic means preferably by mobile phones. For certain vulnerable cases, example rape victims or disable persons audio-video recording is required or strongly preferred often by a woman Magistrate when applicable.

10. The primary purpose of Section 183 of B.N.S.S. is to provide a safe voluntary and judicially supervised mechanism for recording confessions (by the accused) and statements (witnesses or the victims) during a criminal investigation or even afterwards before inquiry or trial begins and this ensures that these statements or confession are made freely and without coercion and it carries higher reliability and evidentiary values as compared to ordinary police statements recorded under Section 180 B.N.S.S. The procedural safeguards directs constitutional rights under Article 20(3) and the Article 21 of the constitution against self incrimination and for fair procedure, the core objectives of section 183 B.N.S.S. is to prevent police coercion or torture and police officer cannot record confessions even though they may be adorned with magisterial powers. Only a Judicial Magistrate can record a statement under Section 183 B.N.S.S., thus reducing risk of forced or induced confessions but the Magistrate must ensure voluntariness on part of the person making the statement. Magistrate must explain to the person making a confession or a statement that the person is not bound

to confess or give the statement and he must warn him prior to the recording of the statement that it may be used as evidence against them.

11. In essence, Section 183 BNSS acts as a judicial filter between police investigation and trial evidence, thereby capturing important statements/confessions in a protected, verifiable manner to aid truth-finding while safeguarding against abuse of power. It balances effective prosecution with protection of individual rights, with BNSS adding digital and victim-focused enhancements over the old CrPC framework.

12. The provision does not contemplate or authorize "second" or repeated statements under this section as a standard procedure. The purpose is to record a reliable, voluntary statement/confession once, with evidentiary value (e.g., statements under this section can be used to corroborate or contradict trial testimony, and confessions if voluntary can be substantive evidence). There is no statutory mandate for multiple recordings of the same person's statement under Section 183 BNSS. Police statements under Section 180 BNSS (old Section 161 CrPC) can be recorded multiple times if needed during investigation, but magisterial statements under Section 183 BNSS are exceptional and meant to preserve evidence with higher reliability.

13. High Courts have supervisory powers under Article 226/227 of the Constitution and Section 528 BNSS (old Section 482 CrPC) to intervene in criminal proceedings to prevent abuse, secure ends of justice, or correct grave errors. In exceptional cases — such as where a prior statement under Section 183 was allegedly coerced, not voluntary, improperly recorded, or where fairness demands re-recording (e.g., new material facts, witness hostility, or serious procedural lapses) and a High Court may direct a fresh recording before a Magistrate as part of its extraordinary jurisdiction but this is not a routine direction. The High Court may direct re-recording if the original statement's integrity is seriously compromised, especially in sensitive cases involving victims (e.g., sexual offences, POCSO), where the statement carries significant weight for corroboration/contradiction at trial. While not every allegation will succeed, a credible claim of non-reading over (a core

procedural safeguard) provides strong grounds for High Court intervention to order a second statement under Section 183 BNSS, to uphold fairness and prevent misuse. Outcomes depend on case facts, evidence, and judicial discretion.

14. Learned Additional District Judge in its order dated 13.01.2026 has observed that any direction for re-recording of the statement under Section 183 B.N.S.S. can be issued only by Hon'ble High Court or Hon'ble Supreme Court but it is pertinent to mention here that High Court cannot directly order or direct the recording of the second or additional statement under Section 183 B.N.S.S. in the sense of compelling the Magistrate to record another statement from the same person as a routine or an investigative measure. The power to record a statement under Section 183 B.N.S.S. is discretionary and is typically initiated by- (i) the investigating officer to producing the person (witness/victim or accused) and (ii) the person voluntarily approaching the Magistrate.

15. Section 183 B.N.S.S. like old section 164 Cr.P.C. incorporates strong safeguards to ensure voluntariness and accuracy. The Magistrate must explain to the person that they are not bound to make a statement or confession and that the confession may be used against them and the Magistrate must have reason to believe about voluntariness after initial questioning and the recorded statements must be read over and explain to the person making it moreover sign it or affix thumb impression. Where the person making the statement is unable to read it thereby confirming its correctness and especially in cases of sexual offenses, the Magistrate may resort to audio-video recording. If the victim claims that the statement was not read over to him or her, it raises serious questions about whether the procedural safeguards were followed as to its voluntariness and authenticity and potential coercion or misunderstanding or clerical error and such lapses, if prima-facie established by victims affidavit, may lead to interference. The direction for re-recording of statement under Section 183 B.N.S.S. may be issued if the original statements integrity is seriously compromised. While not

every allegation is bound to succeed, a credible claim of non-reading of statement by the victim provides a strong ground for intervention to order a second statement under Section 183 B.N.S.S. to promote fairness and prevent misuse.

16. Ordinarily no routine direction for 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 second statement under Section 183 B.N.S.S. but it cannot be exercised as a general rule where 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 statement before the Magistrate and the power is not a routine or an automatic power but is exercised by 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.

17. The case law *Yogendra Yadav & Others vs. State of Jharkhand & Anr.(2014)9 SCC 653* does not apply to the facts of the present writ petition.

18. The petitioner, in order to substantiate her argument in support of the petition, has filed certified copy of her statement recorded under Section 183 B.N.S.S. before the Court of Civil Judge (Senior Division), Azamgarh.

19. Perusal of statement shows that statement was recorded on the basis of oral statement of the victim and after recording of the statement the victim/petitioner had read the statement and it is also noted that the victim gave the statement without any duress. The statement of the victim/petitioner recorded by the Magistrate clearly shows that the petitioner had given the statement without any duress and had read the statement and thereafter had signed the statement and all the procedural aspects have been followed. Trial court vide its order dated 13.01.2026 has rightly observed that the statement under section 183 B.N.S.S. is

ordinarily recorded only once and any direction for recording of such statement can be issued only by Hon'ble High Court or by Hon'ble Supreme Court only under exceptional circumstances. The conditions under which High Court or Hon'ble Supreme Court can issue directions for re-recording of his statement under Section 183 B.N.S.S. has already been discussed above.

20. In the light of analysis given, we are of the opinion that there are no extraordinary circumstances warranting the re-recording of the statement under Section 183 B.N.S.S. and hence the instant writ petition lacks merit and is accordingly liable to be dismissed and is accordingly **dismissed.**

(Achal Sachdev,J.) (Rajiv Gupta,J.)

February 26, 2026
Zafar