OFFICE OF THE COMMISSIONER OF POLICE : DELHI
POLICE HEADQUARTERS, MSO BUILDING, ITO, NEW DELHI 110002
Tele/Fax No. 011-23072794, 23075081 Email : courtcellphqdp@gmail.com

CIRCULAR

Circular No. 09 /2018

Subject: Regarding Judgment dated 04.08.2018 passed by Hon'ble High Court of Delhi in of Crl. Ref. No.2/2016-Court on its own motion Vs. State.

A criminal reference was made to the Hon'ble High Court of Delhi by Sh. Vishal Singh, Principal Magistrate, Juvenile Justice Board-I, Sewa Kutir, Kingsway Camp, Delhi for ascertaining the legality of the aspect of recording of ***multiple statements*** of the victims of rape and sexual assault and the practice to get the ***statement of a victim recorded through a private Counsellor working with an NGO and then filing the same as a part of Challan u/s 173 Cr.P.C.***

The above aspects have been examined in detail by the Hon'ble High Court of Delhi and the legal position has been clarified as under :-

Q.No.1: ***What is the legality of recording a statement or version of the incident enumerated by a victim of sexual offence by an NGO or a private counselor and filing of such statement or counseling report alongwith a chargesheet before the trial court under Section 173 of the Cr.P.C.?***

I) A statement under the POCSO act can be made only to a police officer or a magistrate, and;

II) Provisions of the POCSO Act or the JJ Act do not contemplate any report to be made by a counselor. It further makes it explicitly clear that couselling report/notes of the cousellor (as well as any person or expert recognized under the POCSO Act and Rules of 2012 and the JJ Act) are confidential in nature and the same cannot be made a part of the chargesheet or otherwise on the trial court record.

Q.No.2: ***What is the permissibility and legality of recording of multiple statements/versions of a victim of sexual assault, both women and children, by an investigating officer/judicial officer?***

I) The law allows the investigating agencies to record multiple statements of the victims. There is no prohibition on recording multiple statements by the police.

II) A seemingly contradictory initial account is not a reason in itself to disbelieve the subsequent accounts by the victims. The multiple statements placed by the investigating agency should be carefully scrutinized by the Trial Courts in order to ensure that complete justice is done.

Keeping in view the above judgment of the Hon'ble High Court of Delhi, it is emphasized upon the I.Os., entrusted with the investigation of the cases registered under POCSO Act, 2012 and Juvenile Justice (Care and Protection of Children) Act-2015 to strictly adhere to the above laid down provision. The practice of getting the statement of the victim recorded through Counselor need to be stopped forthwith.

These instructions should be followed meticulously.

20/9/18

(RAJESH DEO)
DY. COMMISSIONER OF POLICE
LEGAL CELL: PHQ : DELHI.

No. 1351-1500 /Record Branch /PHQ dated, Delhi, the 20-9-18

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