

SUNDERLAL KANAIALAL BHATIJA

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v.

STATE OF MAHARASHTRA AND ORS.
(Criminal Appeal No. 1222 of 2006)

MARCH 31, 2010

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[DR. MUKUNDAKAM SHARMA AND H.L. DATTU, JJ.]

Evidence Act, 1872: s.25 – Confessional statement recorded in case relating to offences under the TADA Act would not be admissible in evidence against the accused in prosecution for offence under any other law if the offences under any other law and those under the TADA Act are being tried separately – On facts, accused convicted in TADA case on the basis of his confessional statement – In a separate complaint accused charged under ss302, 307, 353 and 402 IPC – Some offences under TADA Act were also incorporated initially but later same were dropped – Confession made by accused under TADA Act cannot be used by prosecution for offences committed under IPC – Terrorist and Destructive Activities Act, 1987 – ss.12 and 15 – Penal Code, 1860 – ss.302, 307, 353 – Arms Act, 1959 – s.35(c).

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The Private respondent No.4 was convicted in TADA case on the basis of his confessional statement. A separate complaint was filed wherein he was charged under Sections 302, 307, 353 and 402 of the Indian Penal Code, r.w. Section 35(c) of the Arms Act, 1959. The provisions of the Terrorist and Disruptive Activities Act, 1987 (TADA Act) were also applied in the said case. However, the said provisions of the TADA Act were dropped since the TADA Review/Screening Committee came to the conclusion that offences under the TADA Act were not attracted in the said case.

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The question which arose for consideration in the present appeal was whether the confessional statements

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A recorded in a case relating to offences under the TADA Act would be admissible in evidence against the accused in prosecution for offences other than those under the TADA Act.

Dismissing the appeal, the Court

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HELD: 1.1. Section 25 of the Indian Evidence Act deals with the general provision regarding a confession made by an accused to a police officer. In terms of the Section 25 of the Indian Evidence Act, a confession made by an accused to a police officer is not admissible. However, an exception has been carved out under the provision of Section 15 of the TADA Act which provides that certain confessions made to police officers by an accused involved in a case charged for an offence under the TADA Act or rules made thereunder would be admissible in evidence in the trial of such person. [Para 12] [1156-G-H; 1157-A-B]

Prakash Kumar @ Prakash Bhutto v. State of Gujarat (2005) 2 SCC 409; *State of Gujarat v. Mohammed Atik & Others* (1998) 4 SCC 351, referred to.

1.2. It is now a settled law that a confessional statement duly recorded by a police officer in a case related to TADA Act and the rules framed thereunder would continue to remain admissible for the offences under any other law which were tried along with TADA offences under Section 12 read with Section 15 of the Act notwithstanding that the accused was acquitted of offences under the TADA Act in the same trial. But, in the instant case the allegation was mainly for the offences under the IPC. Some offences under the TADA Act were also incorporated initially but later on the same were dropped. Consequently, charges in the said case were framed only for offences under the IPC and not under the TADA Act and the trial was also only for offences under the IPC and not under the TADA Act. Therefore, such

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confessional statement as made by the respondent no. 4 under the TADA Act, in a different case, cannot be used or utilised by the prosecution in the present case as the charges were framed only for the offences under the Indian Penal Code. [Para 16] [1159-D-G] A

Case Law Reference: B

(2005) 2 SCC 409 referred to Para 11

(1998) 4 SCC 351 referred to Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1222 of 2006. C

From the Judgment & Order dated 29.9.2006 of the High Court of Judicature at Bombay in Criminal Writ Petition No. 354 of 2006 with Criminal Revision Application 36 of 2006.

R. Sundervardhan, Hari, Sanjeev Tyagi, Rekha Pandey, Bhupender Yadav, S.S. Shamsberry, Debaleena Kilikdar, Ram Lal Roy, Chinmany Khaladkar, Sanjay Kharde, Nitin S. Tambwekar, B.S. Sai, Asha Gopalan Nair, R.C. Kohli, R.N. Keshwani, Atishi Dipankar, K. Rajeev for the appearing parties. D

The Judgment of the Court was delivered by E

DR. MUKUNDAKAM SHARMA, J.1. The issue that falls for consideration in the present appeal is whether the confessional statements recorded in a case relating to offences under the Terrorist and Disruptive Activities Act, 1987 [for short 'TADA Act'] would be admissible in evidence against the accused in prosecution for offences other than those under the TADA Act. In order to answer the aforesaid issue arising for our consideration, some background facts are required to be stated so as to make it easier to appreciate the issues urged. F G

2. The private respondent No. 4 was arrested in TADA Case No. 114 of 1991 and 114-A of 1991. In the said case, there was a confessional statement made by the private respondent no. 4 which was recorded on 17.03.1991 along with another co- accused. The said confessional statements so H

A recorded by the police were used by the prosecution as substantive evidence in the aforesaid TADA case. The aforesaid TADA case resulted in the conviction of the private respondent No. 4, which was finally confirmed even by this Court.

B 3. Apart from the aforesaid TADA case, a separate complaint was filed by Sh. Ghansyam Vijay Kumar Bendre, pursuant to which a criminal case came to be registered at the Vithalwadi Police Station, Ulhasnagar against the private respondent No. 4 and some others for the offences punishable under Sections 302, 307, 353 and 402 of the Indian Penal Code [for short "IPC"] read with Section 35(c) of the Arms Act, 1959. The provisions of the TADA Act were also applied in the said case. However, the said provisions of the TADA Act were dropped since the TADA Review / Screening Committee came to the conclusion that offences under the TADA Act were not attracted in the said case. Faced with the aforesaid situation, the prosecution filed an application before the Sessions Judge-Kalyan, praying that the original confessional statement of the private respondent No. 4 made in the aforesaid TADA case(s) be called for. The said application was rejected by the trial Court by its order dated 22.11.2005. The aforesaid order passed by the trial Court was challenged by the prosecution as well as the relative of the deceased by filing a Criminal Revision Application and a Criminal Writ Petition respectively in the High Court of Bombay. The High Court, after hearing the parties, however, dismissed both the aforesaid revision application and the writ petition by an order dated 29.09.2006. Being aggrieved by the aforesaid order, the present Special Leave Petition was filed in which leave was granted and consequently the present appeal.

G 4. During the pendency of the present appeal, the appellant died and therefore an application seeking for substitution of the appellant was filed.

H 5. We have heard the learned counsel appearing for the

parties on the said application and have also gone through the records. After hearing the counsel appearing for the parties and for the reasons stated in the application, we allow the application for substitution of the appellant in terms of this order and the name of Kamal Sunderdas Bathija be substituted in place of Sunderlal Kanaialal Bhatija.

6. Having allowed the application seeking the substitution, we are now required to deal with the main appeal. At this stage, we would like to indicate that being aggrieved by the impugned order dated 29.09.2006 passed by the Bombay High Court, the State of Maharashtra, filed a Special Leave Petition in this Court, challenging the legality of the same, which was registered as CRLMP Nos. 8215-16 of 2008. Since, there was a delay in filing, an application for condonation of the delay was also filed by the State of Maharashtra. Both, the aforesaid ☐ appeals, as also the application, were listed for consideration before a bench of this Court and by a judgment and order dated 13.05.2008, the Special Leave Petition was dismissed on the ground of delay as also on merits.

7. Subsequently, an application was filed by the State of Maharashtra which was registered as CRLMP No. 8133 of 2008 seeking their transposition as appellant. However, no order was passed on the application seeking transposition. Considering the facts and circumstances of the case and particularly, in view of the fact that, the substantive appeal of the State has been dismissed on merits, the application seeking transposition of the State of Maharashtra as appellant cannot be allowed. The said application accordingly stands dismissed.

8. The fact which is therefore apparent on the face of the record is that one of the appeals, which was filed by the State of Maharashtra as against the impugned order stood dismissed on merits by this Court by its order dated 13.05.2008, but, since in the present appeal, we had issued notice, therefore, we are required to consider the points urged

A and issues raised by the appellant in the present appeal.

9. There is no denial of the fact that there was a confessional statement made by respondent no. 4 in the said TADA case which was recorded on 17.03.1991 on the basis of which respondent no. 4 was convicted in the criminal case under the TADA Act which was registered as Case Nos. 114 of 1991 and 114-A of 1991. But, the said confessional statement made by the respondent no. 4 in the TADA case sought to be used and utilised and placed as evidence in the complaint filed by Sh. Ghansyam Vijay Kumar Bendre and now registered as a case for the offences under the Indian Penal Code and not under the TADA Act, for the TADA Review / Screening Committee had opined that no offence under the TADA Act was attracted in the said case and consequently the charges under the TADA Act were dropped. As noted earlier, the said prayer calling for the confessional statement made in the said TADA case for use as evidence in the criminal case under the IPC was rejected by the trial Court as well as by the High Court. Both the orders have been challenged by the legal representative of the deceased-complainant.

10. We have heard the learned counsel appearing for the parties. Counsel appearing for the appellant submitted before us that the confessional statement made before the police by respondent no. 4 in the TADA case could be used in the criminal case pending against respondent no. 4 under the IPC. In support of the said contention counsel appearing for the appellant relied upon the provisions of Sections 12 and 15 of the TADA Act and Section 25 of the Indian Evidence Act, 1872. Since reference has been made to the said provisions, the same are extracted hereinbelow:-

Terrorist and Disruptive Activities Act, 1987: -

"12. Power of Designated Courts with respect to other offences:-

(1) When trying any offence, a Designated Court may also

try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence. A

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule made thereunder or under any other law, a the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof." B

"Section 15 - Certain confessions made to Police Officers to be taken into consideration:- C

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police office not lower in rank than a Superintendent of Police and recorded by such police officer in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person [or co-accused, abettor or conspirator] for an offence under this Act or rules made thereunder: D E

[Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.] F

(2) The police officer shall, before recording any confession under sub-section (1), 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 such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily." G

Indian Evidence Act, 1872: -

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A "Section 25 - Confession to police officer not to be proved:-

No confession made to a police officer, shall be proved as against a person accused of any offence."

B 11. It was contented on behalf of the counsel for the
 C appellant that a bare look at Section 12 and Section 15 of the
 D TADA Act would make it clear that certain confessions made
 E to police officers could be taken into consideration and that the
 F same would be admissible in trial of a person or his co-
 accused, abettor or conspirator for an offence under the TADA
 Act or rules made thereunder. This is, however, subject to a
 rider and that is that the co-accused, abettor or conspirator
 must be charged and tried in the same case together with the
 accused. Reliance was placed by the counsel appearing for the
 appellant on the case of *Prakash Kumar @ Prakash Bhutto*
v. State of Gujarat reported in (2005) 2 SCC 409 on the basis
 of which it was submitted that confessional statement duly
 recorded under Section 15 of the TADA Act and rules framed
 thereunder would continue to remain admissible for the offences
 under any other law which were tried along with TADA offences
 under Section 12 of the Act notwithstanding the fact that the
 accused were acquitted of the provisions of the TADA Act in
 the same trial. The aforesaid submission of the counsel
 appearing for the appellant was refuted by the counsel
 appearing for the respondent by placing reliance on the same
 decisions as relied upon by the counsel appearing for the
 appellant and also on the same provisions of the TADA Act and
 the Indian Evidence Act.

G 12. Section 25 of the Indian Evidence Act deals with the
 H general provision regarding a confession made by an accused
 to a police officer. In terms of the Section 25 of the Indian
 Evidence Act, a confession made by an accused to a police
 officer is not admissible. However, an exception has been
 carved out under the provision of Section 15 of the TADA Act
 which provides that certain confessions made to police officers

by an accused involved in a case charged for an offence under the TADA Act or rules made thereunder would be admissible in evidence in the trial of such person. A careful perusal of the said provision would also make it explicitly clear that such confessional statement made by an accused to a police officer would be admissible in evidence in the trial of such person where he is charged for an offence under the TADA Act or rules made thereunder. This is an exception to the general rule contained in Section 25 of the Indian Evidence Act or Section 162 of the Code of Criminal Procedure but one of the pre-conditions to make it admissible in evidence is that such trial must be for an offence under the TADA Act or the rules framed thereunder. If the aforesaid requirement which operates as a pre-condition is not satisfied, the confession does not become admissible in evidence.

13. A similar issue had come up for consideration before this Court in *State of Gujarat v. Mohammed Atik & Others* reported in (1998) 4 SCC 351. In the said case also, the provisions of Section 15 of the TADA Act were analysed by this Court and on such analytical study it was held that the requirements stipulated in Section 15(1) of the TADA Act for admissibility of confession made to a police officer are: (1) that the confession should have been made to a police officer not lower in rank than a Superintendent of Police, (2) it should have been recorded by the said police officer, (3) the trial should be against the maker of the confession and (4) such trial must be for an offence under TADA or the Rules framed thereunder. In the said decision, it was further held that if all the above requirements are satisfied, the confession would become admissible in evidence and it is immaterial whether the confession was recorded in one particular or in a different case.

14. Subsequently, a Constitutional Bench of this Court came to consider almost the same issue as now before us in the case of *Prakash Kumar* case (supra). The issue that had arisen for consideration in the said Constitutional Bench case was whether the confessional statement made in a TADA case

- A would continue to hold good even if the accused is acquitted under TADA offences and there is a clear finding that TADA Act has been wrongly taken recourse to or the confession loses its legal efficacy under the Act and thus rendering itself to an ordinary confessional statement before the Police under the general law of the land. The Constitutional Bench considered the question that once the Court comes to a definite finding that invocation of the TADA Act is wholly unjustified or there is utter frivolity to implicate the accused under the TADA Act, would it be justified that Section 15 would be made applicable with equal force as in TADA cases to book the offenders even under the general law of the land.

15. In the said decision, the Constitutional Bench had held that in a case where the accused is charged both under the TADA Act as also under other sections under the IPC and tried together, in that event, a confessional statement made by him under TADA could be utilised against him although he is acquitted of the provisions of the TADA Act. It was held in paragraph 37 of the said Constitutional Bench judgment as follows: -

- E "37. The legislative intendment underlying Sections 12(1) and (2) is clearly discernible, to empower the Designated Court to try and convict the accused for offences committed under any other law along with offences committed under the Act, if the offence is connected with such other offence.
- F The language "if the offence is connected with such other offence" employed in Section 12(1) of the Act has great significance. The necessary corollary is that once the other offence is connected with the offence under TADA and if the accused is charged under the Code and tried together
- G in the same trial, the Designated Court is empowered to convict the accused for the offence under any other law, notwithstanding the fact that no offence under TADA is made out. This could be the only intendment of the legislature. To hold otherwise, would amount to rewrite or recast legislation and read something into it which is not
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there."

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Finally in paragraph 40 this Court answered the issues framed by them in the following manner: -

"40. For the reasons aforestated, we are of the view that the decision in Nalini case has laid down correct law and we hold that the confessional statement duly recorded under Section 15 of TADA and the Rules framed thereunder would continue to remain admissible for the offences under any other law which were tried along with TADA offences under Section 12 of the Act, notwithstanding that the accused was acquitted of offences under TADA in the same trial."

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16. That being the position, it is now a settled law that a confessional statement duly recorded by a police officer in a case related to TADA Act and the rules framed thereunder would continue to remain admissible for the offences under any other law which were tried along with TADA offences under Sections 12 read with Section 15 of the Act notwithstanding that the accused was acquitted of offences under the TADA Act in the same trial. But, here is a case where the allegation was mainly for the offences under the IPC and some offences under the TADA Act were also incorporated initially but later on the same were dropped. Consequently, charges in the said case were framed only for offences under the IPC and not under the TADA Act and the trial is also only for offences under the IPC and not under the TADA Act. Therefore, such confessional statement as made by the respondent no. 4 under the TADA Act, in a different case, cannot be used or utilised by the prosecution in the present case as the charges were framed only for the offences under the Indian Penal Code.

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17. We, therefore, uphold the orders passed by the trial Court as also by the High Court and dismiss the appeal filed by the appellant herein. The bail bonds, if any, shall stand cancelled.

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Appeal dismissed.

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