A PRAKASH KUMAR @ PRAKASH BHUTTO

v.

STATE OF GUJARAT

JANUARY 12, 2005

B [R.C. LAHOTI, CJ., B.N. AGRAWAL, H.K. SEMA, G.P. MATHUR AND P.K. BALASUBRAMANYAN, JJ.]

Terrorist and Disruptive Activities (Prevention) Act, 1987:

C *Sections 15 & 12—Trial of offences under TADA together with offence under any other law—Admissibility of confession recorded under S.15 of TADA, in case accused acquitted of offences under TADA in the same trial—Held, it would continue to remain admissible for offences under any other law which were tried alongwith TADA offences.*

D *Section 12—Trial under TADA—Non-availability of ordinary procedural law—Held, not discriminatory—Persons tried under TADA form a distinct class—Procedure prescribed for trying them for the aggravated and incensed nature of offences are under different classification—Constitution of India, 1950—Articles 14 and 21.*

E *Section 18—Invocation of, for transferring cases to regular courts—Held, the provision is invokable only at the stage where the Designated Court takes cognizance, i.e. after the investigation is complete and charge-sheet is filed.*

F *Misuse of the Act—Caution against, to Police Officials as well as Presiding Officers of Designated Courts—To enforce the Act effectively and in consonance with the legislative intendment i.e. after application of mind.*

Interpretation of Statutes—Jurisdiction of Court to interpret a statute can be invoked only in case of ambiguity.

G *Words and Phrases— "but subject to the provisions of this Section" and "for an offence under this Act" —Meaning of, in context to S.15 of the Terrorist and Disruptive Activities (Prevention) Act.*

Doubting the correctness of the decision in *State* **v.** *Nalini,* **[1999] 5**

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SCC 253 as to admissibility of a confession in terms of Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), a two-Judge Bench of this Court referred the matter to a three-Judge Bench which in turn made this reference to a five-Judge Bench. A

The primary question for determination is, as to whether the confessional statement duly recorded under Section 15 of the TADA would continue to remain admissible as 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 was acquitted of offences under TADA in the said trial. B

Answering the reference, the Court C

HELD: 1.1. The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), though a miniature legislation, is very harsh and drastic containing stringent provisions to combat the menace of terrorism. [415-H] D

Kartar Singh v. *State of Punjab,* [1994] 3 SCC 569 and *Hitendra Vishnu Thakur* v. *State of Maharashtra,* [1994] 4 SCC 602, referred to.

Pradip Chandra Parija v. *Pramod Chandra Patnaik,* [2002] 1 SCC 1, cited. E

1.2. The more stringent the law, the less is the discretion of the Court. Stringent laws are made for the purpose to achieve its objectives. This being the intendment of the legislature the duty of the court is to see that the intention of the legislature is not frustrated. [422-G-H]

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Bilal Ahmed Kaloo v. *State of A.P.,* [1997] 7 SCC 431, overruled.

Rambhai Nathabhai Gadhvi v. *State of Gujarat,* [1997] 7 SCC 744 and *Gurprit Singh* v. *State of Punjab,* [2002] 10 SCC 201, held, per incuriam.

Swedish Match AB and Anr. v. *Securities & Exchange Board, India and Anr.,* (2004) 7 Scale 158, relied on. G

2.1. The jurisdiction of the Court to interpret a statute can be invoked only in case of ambiguity. The Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. [426-C] H

A *Nasiruddin* v. *Sita Ram Agarwal,* [2003] 2 SCC 577; *Mohan Kumar Singhania* v. *Union of India,* [1992] Supp. 1 SCC 594 and *Balram Kumawat* v. *Union of India,* [2003] 7 SCC 628, relied on.

Supdt. And Remembrancer of Legal Affairs to Govt. of W.B. v. *Abani Maity,* [1979] 4 SCC 85, cited.

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2.2. Section 15 of the TADA Act and Rules framed thereunder is a self-contained code in itself, providing procedural safeguards and the words, "but subject to the provisions of this Section" employed therein would mean the procedural safeguards prescribed under the Section. Section 15 has overriding effect over the Evidence Act and Criminal C **Procedure Code, the only procedure to be followed in recording confession is the procedure prescribed under the provisions of Section 15 and Rules framed thereunder. This would be the only intention of the Legislation while introducing the words, "but subject to provisions of this section" in Section 15(1). [430-H; 431-A-B]**

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2.3 So far the words "for an offence under this Act" employed in Section 15 is concerned, the word 'Act' referred to in Section 15(1) is relatable to Section 12 of the Act. Section 15 therefore has to be read together with Section 12. [431-B]

E **2.4. A conjoint reading of Sections 12 and 15 as a whole leaves no manner of doubt that one provision is to be construed with reference to the other provision and *vice versa* so as to make the provision consistent with the object sought to be achieved. [432-D-E]**

Reserve Bank of India v. *Peerless General Finance & Investment Co.* F *Ltd.,* [1987] 1 SCC 424 and *Anwar Hasan Khan* v. *Mohd. Shafi and Ors.,* [2001] 8 SCC 540, relied on.

2.5. The legislative intendment underlying Section 12(1) and (2) is clearly discernable, to empower the Designated Court to try and convict the accused for offences committed under any other law along with G **offences committed under the Act, if the offence is connected with such other offence. 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 the TADA and if the accused is charged under the Code** H **and tried together 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 the legislation and read something into it which is not there. [433-C-E]

3.1. The contention that the rigours of Section 12 is discriminatory and attract the wrath of Articles 14 and 21 of the Constitution as it empowers the Designated Court to try and convict the accused for the offences committed under any other law along with the offences committed under the TADA thereby depriving the rights available to the accused under the ordinary law, is misconceived. [433-F]

3.2. Article 14 prohibits discrimination, but allows reasonable classification based on intelligible differentia, having nexus with the object sought to be achieved. The object sought to be achieved by introducing Section 12 is to take care of the offence connected with or incidental to terrorist activities,the other offence being connected and inextricably intertwined with the Terrorist Act. [433-F-G]

3.3. Trial under TADA is a departure from the ordinary law. The persons who are tried for offences specified under the provisions of TADA are a distinct class of persons and the procedure prescribed for trying them for the aggravated and incensed nature of offences are under different classification distinguishable from the ordinary criminals and procedure. This distinction and classification of grouping of the accused and the offences to be tried under TADA are to achieve the meaningful purpose and object of the Act as reflected from the preamble as well as the statement of objects and reasons. [433-H; 434-A]

Kartar Singh v. *State of Punjab,* [1994] 3 SCC 569, relied on.

4. The confessional statement duly recorded under Section 15 of TADA 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 that the accused was acquitted of offences under TADA in the same trial. [434-C-D]

State v. *Nalini,* [1999] 5 SCC 253, affirmed.

5.1. It cannot be said that the words, "after taking cognizance" employed in Section 18 of the Act would include any stage of trial including

A **the stage when the judgment is to be delivered. If it ought to have been the intention of the legislature they could have said so. The legislature deliberately uses the words "after taking cognizance of any offence" to mean that Section 18 would be attracted only at the stage where the Designated Court takes cognizance of offence i.e., after the investigation is complete and charge-sheet is filed. There is no ambiguity in the language used in Section 18. [434-G-H; 435-C]**

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5.2. The provisions of Section 209 Cr.P.C. to which the appellants sought to rely are not in *pari materia* with Section 18. In Section 209 Cr.P.C. the words "after taking cognizance" are absent conspicuously. Section 18 is a filtered provision which is attracted only at a stage the Designated Court takes cognizance of offence. [434-H; 435-A]

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6. The note of caution given by this Court in *Kartar Singh's* case is eloquently sufficient to caution police officials as well as the Presiding Officers of the Designated Courts from misusing the Act and to enforce the Act effectively and in consonance with the legislative intendment which would mean after application of mind. [435-C, H; 436-A]

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Kartar Singh v. *State of Punjab,* **[1994] 3 SCC 569, affirmed.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 526 of 2001.

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From the Judgment and Order dated 19.3.2001 of the Designated Court No. 3 at Ahmedabad in Terrorist Crl. Case No. 2 of 1977.

Manish Singhvi, Saurabh, Ajay and Ashok K. Mahajan for the Appellant in Crl. A. No. 526/2001.

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Sushil Kumar, Adolf Mathew, Puneet Rai, Vinay Arora and Sanjay Jain for the Appellant in Crl.A. No. 545/2001.

Ms. Asha G. Nair and Ms. Anu Mohla for the Appellant in Crl. A. No. 665/2001.

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Yashank Adhyaru, Ms. Hemantika Wahi and Ms. Aruna Gupta for the Respondent.

The Judgment of the Court was delivered by

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H.K. SEMA, J. All these appeals are directed against the judgment and order dated 19th March, 2001 passed by the Designated Court No.3 at Ahmedabad in Terrorist Case No.2 of 1997, Terrorist Case No. 33 of 1994 and Terrorist Case No. 16 of 1995. The two-Judge bench before whom these appeals were posted for hearing referred the matters to a three-Judge Bench by an order dated 24.9.2002. The said Order reads as under:-

> "The issue involved concerns the admissibility of a confession in terms of Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short "TADA ACT"). Consequently, therefore, the other provisions as contained in Sections 12 and 18 have to be read in order to assess the legislative intent therein.
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> This Court in *State* v. *Nalini,* [1999] 5 SCC 253, in paragraphs 80 and 81 stated the law to be as below:-
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> > "80. Section 12 of TADA enables the Designated Court to jointly try, at the same trial, any offence under TADA together with any other offence "with which the accused may be charged" as per the Code of Criminal Procedure. Sub-section (2) thereof empowers the Designated Court to convict the accused, in such a trial, of any offence "under any other law" if it is found by such Designated Court in such trial that the accused is found guilty of such offence. If the accused is acquitted of the offences under TADA in such a trial, but convicted of the offence under any other law, it does not mean that there was only a trial for such other offence under any other law.
> >
> > 81. Section 15 of TADA enables the confessional statement of an accused made to a police officer specified therein to become admissible "in the trial of such a person". It means, if there was a trial of any offence under TADA together with any other offence under any other law, the admissibility of the confessional statement would continue to hold good even if the accused is acquitted under TADA offences."
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> The view expressed above stands in unison with view expressed in paragraphs 408 and 674 and same is noticed as below:- .
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> "408.As to whether any offence under Section 3 or Section 4 of TADA is made out in the present case, we will consider at subsequent stage of the judgment. In view of the decision of this Court in *Bilal*

A *Ahmed Kaloo Case* contention of Mr. Natarajan is rather correct. However, it appears to us that while holding the confession to be inadmissible in a trial when the accused is acquitted of offences under Section 3 or Section 4 of TADA, provisions of Section 12 of TADA were not taken into consideration by this Court in the said judgment. Section 12 reads as under:

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> "12. Power of Designated Courts with respect to other offences.
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> (1) When trying any offence, a Designated Court may also try any other offence with which the accused may, under the
C Code, be charged at the same trial if the offence is connected with such other offence.
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> (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
D under any other law, 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."

"674. Having regard to the provisions of Section 12 of the TADA
E Act, the confession recorded under Section 15 will be admissible in the trial of a person, co-accused, abettor or conspirator for an offence under the TADA Act or the rules made thereunder and such other offence with which such a person may be charged at the same trial under the provisions of the Criminal Procedure Code provided the offence under the TADA Act or the rules made thereunder is connected
F with such other offence."

We are, however, constrained to record our doubt as regards the state of the law as declared by the 3-Judge Bench of this Court in *Nalini* (supra).

G The issue, therefore, is whether the confessional statement 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. *Nalini* (supra) ,

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however, answers this as noticed above, in positive terms but we have some doubts pertaining thereto since the entire justice delivery system is dependent upon the concept of fairness: It is the interest of justice which has a pre-dominant role in the criminal jurisprudence of the country The hall-mark of justice is the requirement of the day and the need of the hour. Once the Court comes to a definite finding that invocation of TADA Act is wholly unjustified or there is utter frivolity to implicate under TADA, 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. There is thus doubt as noticed above!!

On the wake of the aforesaid and having regard to the decision of the Constitution Bench of this Court in *Pradip Chandra Parija* v. *Pramod Chandra Patnaik,* [2002] 1 SCC 1, we do feel it expedient to direct the Registry for placing this matter before Hon'ble the Chief Justice of India for constituting a 3-Judge Bench for the purpose. It is ordered accordingly."

In turn, the three-Judge Bench by an order dated 9.3.2004 has referred the matters to a five-Judge Bench. The order reads:-

"This matter has been referred to a 3-Judge Bench doubting the correctness of the decision in *State* v. *Nalini,* [1999] 5 SCC 253 as to admissibility of a confession in terms of Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. It is stated that there are similar provisions available even under Prevention of Terrorist Activities Act (POTA). If really the question as posed by the 2-Judge Bench is to be answered, it could only be done by a Bench of 5 Judges as Nalini's case (supra) has been decided by a bench of three learned Judges. Therefore, this matter is referred to 5-Judge Bench. The Registry is directed to place the papers before Hon'ble the Chief Justice of India for appropriate orders."

This is how the matters have been placed before this Bench.

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the Act) is a piece of Legislation containing 30 Sections. Though miniature legislation, the Act tends to be very harsh and drastic containing the stringent provisions to combat the menace of terrorism which has taken an endemic form indulging in wanton killings, arson, looting

A of properties and other heinous crimes affecting human rights and individual liberty. The constitutionality of the Act has been concluded by the Constitution Bench of this Court in *Kartar Singh* V. *State of Punjab,* [1994] 3 SCC 569. The validity of Section 15 of the Act which would be relevant for the present purpose has been held to be intra-virus the Constitution. In paragraphs 217, 218, 220, 222, 236 and 243 it is said:

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"217. If the procedural law is oppressive and violates the principle of just and fair trial offending Article 21 of the Constitution and is discriminatory violating the equal protection of laws offending Article 14 of the Constitution, then Section 15 of TADA Act is to be struck C down. Therefore, it has become inevitably essential to examine the classification of 'offenders' and 'offences' so as to enable us in deciding whether Section 15 is violative of Articles 14 and 21 of the Constitution.

218. The principle of legislative classification is an accepted principle D whereunder persons may be classified into groups and such groups may differently be treated if there is a reasonable basis for such difference or distinction. The rule of differentiation is that in enacting laws differentiating between different persons or things in different circumstances which govern one set of persons or objects such laws may not necessarily be the same as those governing another set of E persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different set of circumstances.

220. Coming to the distinction made in TADA Act grouping the terrorists and disruptionists as a separate class of offenders from F ordinary criminals under the normal laws and the classification of the offences under TADA Act as aggravated form of crimes distinguishable from the ordinary crimes have to be tested and determined as to whether this distinction and classification are reasonable and valid within the term of Article 14 of the Constitution. G In order to consider the question as to the reasonableness of the distinction and classification, it is necessary to take into account the objective for such distinction and classification which of course need not be made with mathematical precision. Suffice, if there is little or no difference between the persons and the things which have been grouped together and those left out of the groups, the classification H cannot be said to be a reasonable one. In making the classification,

various factors have to be taken into consideration and examined as to whether such a distinction or classification justifies the different treatment and whether they subserve the object sought to be achieved.

222. As pointed out supra, the persons who are to be tried for offences specified under the provisions of TADA Act are a distinct class of persons and the procedure prescribed for trying them for the aggravated and incensed nature of offences are under different classification distinguishable from the ordinary criminals and procedure. This distinction and classification of grouping of the accused and the offences to be tried under TADA are to achieve the meaningful purpose and object of the Act as reflected from the preamble as well as the 'Statement of Objects and Reasons' about which we have elaborately dealt with in the preceding part of this judgment.

236. Keeping the above proposition, we have to decide whether the provisions of Section 15 of the 1987 Act (TADA) contravene Article 14. True, if the classification is shown to be arbitrary and unreasonable and without any substantial basis, the law would be contrary to the equal protection of laws by Article 14.

243. The above decision, in our view, cannot be availed of for striking down Section 15 of TADA Act because the classification of 'offenders' and 'offences' to be tried by the Designated Court under the TADA Act or by the Special Courts under the Act of 1984, are not left to the arbitrary and uncontrolled discretion of the Central Government but the Act itself has made a delineated classification of the offenders as terrorists and disruptionists in the TADA Act and the terrorists under the Special Courts Act, 1984 as well as the classification of offences under both the Acts.

This Court also pointed out in paragraph 259 the procedural safeguards to be followed by the police officer with regard to the mode of recording the confession. It is then held in paragraph 260 (SCC p.681) as under:-

"260.For the foregoing discussion, we hold that Section 15 is not liable to be struck down since that section does not offend either Article 14 or Article 21 of the Constitution."

This Court, however, as a matter of abundant caution laid down certain guidelines, so as to ensure that the confession obtained is not tainted with any

A vice and then said in paragraph 263 (SCC p.682) as under:-

"263. However, we would like to lay down following guidelines so as to ensure that the confession obtained in the pre-indictment interrogation by a police officer not lower in rank than a Superintendent of Police is not tainted with any vice but is in strict conformity with
B the well-recognised and accepted aesthetic principles and fundamental fairness:

(1) The confession should be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him;
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(2) The person from whom a confession has been recorded under Section 15(1) of the Act, should be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5) along with the original statement of confession, written or recorded on mechanical
D device without unreasonable delay;

(3) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of
E torture, the person should be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon;

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant
F Commissioner of Police in the Metropolitan cities and elsewhere of a Deputy Superintendent of Police or a police officer of equivalent rank, should investigate any offence punishable under this Act of 1987.

This is necessary in view of the drastic provisions of this Act.
G More so when the Prevention of Corruption Act, 1988 under Section 17 and the Immoral Traffic Prevention Act, 1956 under Section 13, authorise only a police officer of a specified rank to investigate the offences under those specified Acts.

(5) The police officer if he is seeking the custody of any person for
H pre-indictment or pre-trial interrogation from the judicial custody,

must file an affidavit sworn by him explaining the reason not only for such custody but also for the delay, if any, in seeking the police custody;

(6) In case, the person, taken for interrogation, on receipt of the statutory warning that he is not bound to make a confession and that if he does so, the said statement may be used against him as evidence, asserts his right to silence, the police officer must respect his right of assertion without making any compulsion to give a statement of disclosure;

The Central Government may take note of these guidelines and incorporate them by appropriate amendments in the Act and the Rules.

The 1985 Act received the assent of the President on 23rd May and came into force on 24th May, 1985. The preamble of this Act reads that the special provisions of this Act were made "for the prevention of, and for coping with, terrorist and disruptive activities *and for matters connected therewith or incidental thereto*".

(emphasis supplied)

The Statement - of Objects and Reasons of the Act reads as follows:-

"Prefatory Note - Statement of Objects and Reasons.- Terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh. Since the 10th May, 1985, the terrorists have expanded their activities to other parts of the country, i.e. Delhi, Haryana, Uttar Pradesh and Rajasthan as a result of which several innocent lives have been lost and many suffered serious injuries. In planting of explosive devices in trains, buses and public places, the object to terrorise, to create fear and panic in the minds of citizens and to disrupt communal peace and harmony is clearly discernible. This is a new and overt phase of terrorism which requires to be taken serious note of and dealt with effectively and expeditiously. The alarming increase in disruptive activities is also a matter of serious concern."

As the Act of 1985 was due to expire on 23rd May 1987, the President promulgated the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987) which came into force from 24th May 1987. The Ordinance was repealed by the enactment of 1987 (No.28 of 1987) which received the

A assent of the President on 3rd September 1987. However, the scheme of the special provisions in the Act of 1985 and the Act of 1987 remains the same. The scheme of the Act being, for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto.

B The 1987 Act was further amended by an Amending Act 43 of 1993. The Statement of Objects and Reasons to Amending Act are as follows:-

"The Terrorist and Disruptive Activities (Prevention) Act, 1985 was enacted on 23rd May, 1985 in the background of escalating terrorist activities in many parts of the country. The Act came into force with
C effect from 24th May, 1985 with the stipulation that it would remain valid for a period of two years with effect from the date of its commencement as it was hoped at that time that it would be possible to control, the menace of terrorism in a period of two years. Unfortunately, terrorist violence has continued unabated, necessitating
D the Government to periodically extend the Act on the due dates in 1987, 1989 and 1991. The life of the Act is now due to expire on the 23rd May, 1993. The views of the State Governments were obtained while processing these extensions and most of them had recommended extension of the Act.

E 2. Terrorism which was initially confined to the States of Punjab, Jammu and Kashmir and North East has spread its tentacles to the States of Uttar Pradesh, Madhya Pradesh, Himachal Pradesh, Maharashtra, Haryana, Delhi, Gujarat and West Bengal. Apart from this, the sophisticated weapons, remote control devices, rocket launchers, professional training and international
F involvement have added a new and disturbing dimension to the problem.

3. The menace of terrorism has also been a matter of international concern. Recently, we have entered into an agreement with the United Kingdom for mutual assistance in the investigation and
G prosecution of terrorist crime and the tracing, restraint and confiscation of the proceeds and instruments of crime and terrorist funds. This agreement is particularly useful in dealing with terrorism inspired from abroad.

4. Keeping in view the above considerations, it is proposed to
H amplify some of the existing provisions so as to also concretize

the agreement signed recently with the United Kingdom for mutual assistance in investigation and prosecution of terrorists crime and the tracing, restraint and confiscation of the proceeds and instruments of crime and terrorist funds and to extend the Act for a further period of two years up to 23rd May, 1995.

5. The present Bill seeks to achieve the above mentioned objects."

Thus, this type of extra ordinary laws are made to contain the extraordinary situation by providing harsh, drastic and stringent provisions, prescribing special procedure, departing from the procedure prescribed under the ordinary procedural law for the reasons that the prevalent ordinary procedural law was found to be inadequate and not sufficiently effective to deal with the offenders indulging in terrorist and disruptive activities. The preambles and statements of objects and reasons as referred to above are manifestly evident that such extra-ordinary Act was made to deal with extra-ordinary situation for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto.

The term 'terrorism' has not been defined under the Act. This Court in *Hitendra Vishnu Thakur* v. *State of Maharashtra,* [1994] 4 SCC 602 held in paragraph 7 (SCC p. 618) as under:-

"7. "Terrorism' is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. 'Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquility of the society and create a sense of fear and insecurity. A

'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that 'terrorism' is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation. More often than not, a hardened criminal today takes advantage of the situation and by wearing the cloak of 'terrorism', aims to achieve for himself acceptability and respectability in the society because unfortunately in the States affected by militancy, a 'terrorist' is projected as a hero by his group and often even by the misguided youth. It is therefore, essential to treat such a criminal and deal with him differently than an ordinary criminal capable of being tried by the ordinary courts under the penal law of the land. Even though the crime committed by a 'terrorist' and an ordinary criminal would be overlapping to an extent but then it is not the intention of the Legislature that every criminal should be tried under TADA, where the fall out of his activity does not extend beyond the normal frontiers of the ordinary criminal activity. Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA. The criminal activity in order to invoke TADA must be committed with the requisite intention as contemplated by Section 3(1) of the Act by use of such weapons as have been enumerated in Section 3(1) and which cause or are likely to result in the offences as mentioned in the said section."

As already noticed, the Act provides harsh and stringent provisions aimed at to achieve the statement of objects and reasons for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto.

The more stringent the Law, the less is the discretion of the Court. Stringent laws are made for the purpose to achieve its objectives. This being the intendment of the legislature the duty of the court is to see that the intention of the legislature is not frustrated. If there is any doubt or ambiguity in the statutes, the rule of purposive construction should be taken recourse to,

to achieve the objectives. (*See Swedish Match AB and Anr.* v. *Securities and Exchange Board, India and Anr.*, (2004) 7 Scale 158 para 84 at p. 176) A

Before we proceed further, we may at this stage, notice a few decisions of this Court on the subject. In the case of *Bilal Ahmed Kaloo* v. *State of A.P.*, [1997] 7 SCC 431 the two-Judge Bench of this Court held in paragraph 5 (SCC p.434) as under:- B

> "5. While dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA. Any confession made to a police officer is inadmissible in evidence as for these offences and hence it is fairly conceded that the said ban would not wane off in respect of offences under the Penal Code merely because the trial was held by the Designated Court for offences under TADA as well. Hence the case against him would stand or fall depending on the other evidence." C D

This decision was rendered on 6th August, 1997. On the same day another decision by the same Bench was rendered in the case of *Rambhai Nathabhai Gadhvi* v. *State of Gujarat*, [1997] 7 SCC 744 where it was pointed out in paragraph 18 (SCC p.751) as under:

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> "18. It is obvious that power of the Designated Court to charge the accused with any offence other than TADA offences can be exercised only in a trial conducted for any offence under TADA. When trial for offence under TADA could not have been held by the Designated Court for want of valid sanction envisaged in Section 20-A(2) the consequence is that no valid trial could have been held by that court into any offence under the Arms Act also. It is clear that a Designated Court has no independent power to try any other offence. Therefore, no conviction under Section 25 of the Arms Act is possible on the materials collected by the Designated Court in the present case." F

It will be noticed that in both the judgments provisions of Section 12 of the Act have not been noticed. The decision rendered in *Bilal Ahmed's* case was followed in *Gurprit Singh* v. *State of Punjab*, [2002] 10 SCC 201. G

The decision rendered in *Bilal Ahmed's* case was noticed by a three-Judge Bench of this *Court in State* v. *Nalini*, [1999] 5 SCC 253. In *Nalini's* H

A case the Bench reconsidered the decision in *Bilal Ahmed's* case and overruled the decision in *Bilal Ahmed's* case. However, the decisions in *Rambhai's* case and *Gurprit Singh's* case have not been noticed in *Nalini's* case. In view of the decision in *Nalini's* case the decision rendered by a two-Judge Bench in *Rambahi's* and Gurprit Singh's case are *per incuriam.*

B The primary question referred to this Bench for determination is, as to whether the confessional statement duly recorded under Section 15 of TADA would continue to remain admissible as 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 was acquitted of offences under C TADA in the said trial.

The questions posed before us for the termination are no more *res integra.* In our view, the same have been set at rest by the three-Judge Bench decision rendered in *Nalini* (supra). The rigours of Sections 12 and 15 were considered in *Nalini's* case and rendered a finding in paragraphs 80, 81 and D 82 (SCC p.304) as under:-

> "80. Section 12 of TADA enables the Designated Court to jointly try, at the same trial, any offence under TADA together with any other offence "with which the accused may be charged" as per the Code of Criminal Procedure. Sub-section (2) thereof empowers the Designated E Court to convict the accused, in such a trial, of any offence "under any other law" if it is found by such Designated Court in such trial that the accused is found guilty of such offence. *If the accused is acquitted of the offences under TADA in such a trial, but convicted of the offence under any other law, it does not mean that there was* F *only a trial for such other offence under any other law.*
>
> 81. Section 15 of TADA enables the confessional statement of an accused made to a police officer specified therein to become admissible "in the trial of such a person". It means, if there was a trial of any offence under TADA together with any other offence under any other G law, *the admissibility of the confessional statement would continue to hold good even if the accused is acquitted under TADA offences."*
>
> (emphasis supplied)
>
> 82. The aforesaid implications of Section 12 *vis-a-vis* Section 15 of TADA have not been adverted to in Bilal Ahmed case. Hence the H

observations therein (at SCC p. 434, para 5) that

> "while dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA"

cannot be followed by us. *The correct position is that the confessional statement duly recorded under Section 15 of TADA would continue to remain admissible as for the other offences under any other law which too were tried along with TADA offences, no matter that the accused was acquitted of offences under TADA in that trial."*

(emphasis supplied)

We are in respectful agreement with the findings recorded by a three-Judge Bench in *Nalini's* case.

S.S.M. Quadri, J. in his concurring judgment held in paragraphs 674 and 675 at SCC p.571 as under:-

> "674. Having regard to the provisions of Section 12 of the TADA Act, the confession recorded under Section 15 will be admissible in the trial of a person, co-accused, abettor or conspirator for an offence under the TADA Act or the rules made thereunder and such other offence with which such a person may be charged at the same trial under the provisions of the Criminal Procedure Code provided the offence under the TADA Act or the rules made thereunder is connected with such other offence.
>
> 675. An analysis of sub-section (1) Section 15 shows that it has two limbs. The first limb bars application of provisions of the Code of Criminal Procedure and the Indian Evidence Act to a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by him in any of the modes noted in the section. The second limb makes such a confession admissible, *dehors* the provisions of the Evidence Act in the trial of such person or co-accused, abettor or conspirator for an offence under the TADA Act or rules made thereunder provided the co-accused, abettor or conspirator is charged and tried in the same case together with the accused. The import of Section 15 (1) is that insofar as the provisions of CrPC and the Evidence Act come in conflict with either

A recording of a confession of a person by a police officer of the rank mentioned therein, in any of the modes specified in the section, or its admissibility at the trial, they will have to yield to the provision of Section 15(1) of the TADA Act as it is given overriding effect."

It was also pointed out in paragraph 704 at SCC p.580 that a confession of B an accused under Section 15 of the TADA Act is substantive evidence against the co-accused, abettor or conspirator jointly tried with the accused.

Before we proceed to consider the rigours of Sections 15 and 12 we may at this stage point out that it is a trite law that the jurisdiction of the Court to interpret a statute can be invoked only in case of ambiguity. The C Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that D when an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the consequences of the alternative constructions. In this connection, we may notice few decisions of this Court.

In *Nasiruddin* v. *Sita Ram Agarwal,* [2003] 2 SCC 577, the three judge- E Bench of this Court pointed out in paragraphs 35 and 37 (SCC p. 588) and (SCC p. 589) as under:-

"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom."

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"37. The Court's jurisdiction to interpret a statue can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add G or subtract words to a statue or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be H true that use of the expression "shall or may" is not decisive for

arriving at a finding as to whether the statue is directory or mandatory. A
But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

(See also *Mohan Kumar Singhania* v. *Union of India,* [1992] Supp. 1 B
SCC 594 (SCC p.624) para 67.

In the case of *Balram Kumawat* v. *Union of India,* [2003] 7 SCC 628, the three-Judge Bench of this Court pointed out in paragraph 23 at SCC p. 635 as under:-

C

"Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so." D

and further in paragraph 30 at SCC p.638 it was pointed out as under:-

"30. Yet again in Supdt. And Remembrancer of Legal Affiars to *Govt. of W.B.* v. *Abani Maity* [1979] 4 SCC 85 the law is stated in the following terms: (SCC p.90, para 18) E

"19{18}. Exposition ex visceribus actus is a long-recognised rule of construction. Words in a statue often take their meaning from the context of the statute as a whole. They are therefore, not to be construed in isolation. For instance, the use of the word 'may' would normally indicate that the provision F
was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, as it were, 'of an in effectual angel beating its wings in a luminous void in vain'. 'If the choice is between G
two interpretations', said Viscount Simon, L.C. In *Nokes* v. *Doncaster Amalgamated Collieries,* Ltd. (AC at p.1022)

'the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder H

A construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result'".

In the backdrop of referred decisions and keeping in view the legislative intendment and scheme of the Act, we may now examine rigours of Sections 15 and 12 of the Act.

B

Section 15 deals with certain confessions made to police officers to be taken into consideration. It reads:-

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, C a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks 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 D made thereunder:

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

(2) The police officer shall, before recording any confession under E 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.

F Rule 15 deals with the recording of confession made to police officers. It reads:-

(1) A confession made by a person before a police officer and recorded by such police officer under Section 15 of the Act shall invariably be recorded in the language in which such confession is made and if that G is not practicable, in the language used by such police officer for official purposes or in the language of the Designated Court and it shall form part of the record.

(2) the confession so recorded shall be shown, read or played back to the person concerned and if he does not understand the language H

in which it is recorded, it shall be interpreted to him in a language which he understands and he shall be at liberty to explain or add to his confession. A

(3) The confession shall, if it is in writing, be-

(a) signed by the person who makes the confession; and B

(b) by the police officer who shall also certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person and such police officer shall make a memorandum at the end of the confession to the following effect:- C

"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 recorded by me and was read over to the person making it and admitted by him to be D correct, and it contains a full and true account of the statement made by him.

Sd/- Police Officer.".

(4) Where the confession is recorded on any mechanical device, the memorandum referred to in sub-rule (3) in so far as it is applicable E and a declaration made by the person making the confession that the said confession recorded on the mechanical device has been correctly recorded in his presence shall also be recorded in the mechanical device at the end of the confession.

F

(5) Every confession recorded under the said Section 15 shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Designated Court which may take cognizance of the offence. G

Section 12 deals with the power of Designated Courts with respect to other offences. It reads:-

(1) When trying any offence, a Designated Court may also try any other offence with which the accused may, under the Code, be charged H

A at the same trial *if the offence is connected with such other offence.*

(emphasis supplied)

(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, the B 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 laws, for the punishment thereof.

On a cursory reading of both the Sections, it appears to us that the C language employed therein is plain and unambiguous. As pointed out by this Court in *Nalini's* case (supra) Section 15 consists of two limbs. The first limb bars application of provisions of the Code of Criminal Procedure and the Indian Evidence Act to a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by him in any of the modes noted in the Section. The second limb makes such a confession D admissible, *dehors* the provisions of the Evidence Act in the trial of such person or co-accused, abettor or conspirator for an offence under the TADA Act or rules made thereunder provided the co-accused, abettor or conspirator is charged and tried in the same case together with the accused as provided in Section 12 of the Act. It was also pointed out that in the event Cr.P.C. and the Evidence Act come in conflict with either recording of a confession of E a person by a police officer of the rank mentioned therein, in any of the modes specified in the Section, or its admissibility at the trial, Section 15 of the TADA Act will have a overriding effect over the Cr.P.C. and the Evidence Act.

F Counsel for the appellants strenuously urged that the words "for an offence under this Act" employed in Section 15 suggest that the confession recorded under Section 15 in the manner provided, excludes the confession admissible in evidence if no offence under TADA is made out. In other words, the confession recorded under Section 15 in the manner provided excludes the confession admissible in evidence insofar for the other offences G are concerned. Counsel also urged that the words, "but subject to provisions of this Section" also suggest that the said provisions are confined only to the TADA offences. We are unable to accept this contention. Section 15 of the TADA Act and Rules framed thereunder is a self-contained code in itself, providing procedural safeguards and the words, "but subject to the provisions H of this Section" employed therein would mean the procedural safeguards

prescribed under the Section. As already pointed out Section 15 has overriding effect over the Evidence Act and Criminal Procedure Code, the only procedure to be followed in recording confession is the procedure prescribed under the provisions of Section 15 and Rules framed thereunder. This would be the only intention of the Legislation while introducing the words, "but subject to provisions of this section" in Section 15(1).

A

B

So far the words "for an offence under this Act" is concerned, the word 'Act' referred to in Section 15(1) is relatable to Section 12 of the Act. Section 15 therefore has to be read together with Section 12.

By now it is well settled Principle of Law that no part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is also trite that the statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved.

C

D

In *Reserve Bank of India* v. *Peerless General Finance and Investment Co. Ltd.*, [1987] 1 SCC 424, this Court said: (SCC p. 450, para 33)

> "33. Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. *A statute is best interpreted when we know why it was enacted.* With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. *No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."*
>
> (emphasis supplied)

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In *Anwar Hasan Khan* v. *Mohd. Shafi and Ors.*, [2001] 8 SCC 540, this Court held:

> "8.....It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved....."

Section 12 which empowers the Designated Court to try any other offence with which the accused may be charged under the Code at the same trial provided the offence is connected with such other offence. This section has been brought to the statute book in consonance with the preamble of the Act, which says, "for the prevention of, and for coping with, terrorist and disruptive activities and *for matters connected therewith or incidental thereto.*" Therefore, Section 12 is introduced to take care of the matters connected with or incidental to terrorist activities.

A conjoint reading of two sections as a whole, it leaves no manner of doubt that one provision is to be construed with reference to the other provision and vice versa so as to make the provision consistent with the object sought to be achieved. The scheme and object of the Act being the admissibility of the confession recorded under Section 15 of the Act in the trial of a person or co-accused, abettor or conspirator is charged and tried in the same case together with the accused, as provided under Section 12 of the Act.

Counsel contends that Section 12 is only enabling provision empowering the Designated Court to try and convict for the offences committed under any other law along with the offences under the TADA so as to avoid multiplicity of the Trial and does not empower the Designated Court to try and convict for other offences, even if the offences under the TADA are not made out. Does it mean, "Thou shalt have teeth, but not bite". We think not. When the Courts have power to try, it is implicit in it that they have the power to convict also. In the present case sub-section 2 of Section 12 expressly empowered the Designated Court to convict the accused person of such other offence and pass any sentence authorised by the Act - if the offence is connected with such other offence and - if it is found that the accused person has committed any other offence.

Section 12(1) as quoted above authorises the Designated Court to try

offences under the TADA along with another offence with which the accused may be charged under Cr.P.C. at the same trial. The only embargo imposed on the exercise of the power is that the offence under the TADA is connected with any other offence being tried together. Further, Section 12(2) provides that the Designated Court may convict the accused person of offence under that Act or any rule made thereunder *or under any other law and pass any sentence authorised under that Act or the rules or under any other law, as the case may be for the punishment thereof, if in the course of any trial under the TADA the accused persons are found to have committed any offence either under that Act or any rule or under any other law.*

The legislative intendment underlying Section 12(1) and (2) is clearly discernable, 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. 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 the TADA and if the accused is charged under the Code and tried together 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 there.

Counsel also urged that the rigours of Section 12 is discriminatory and attract the wrath of Articles 14 and 21 of the Constitution as it empowers the Designated Court to try and convict the accused for the offences committed under any other law along with the offences committed under the TADA thereby depriving the rights available to the accused under the ordinary law. In our opinion, this contention is misconceived. It is trite law that Article 14 prohibits discrimination, but allows reasonable classification based on intelligible differentia, having nexus with the object sought to be achieved. The object sought to be achieved by introducing Section 12 is to take care of the offence connected with or incidental to terrorist activities. The other offence being connected and inextricably inter-twined with the Terrorist Act. As already pointed out in *Kartar Singh* (supra) the Trial under TADA is a departure from the ordinary law. The persons who are tried for offences specified under the provisions of TADA are a distinct class of persons and the procedure prescribed for trying them for the aggravated and incensed

A nature of offences are under different classification distinguishable from the ordinary criminals and procedure. This distinction and classification of grouping of the accused and the offences to be tried under TADA are to achieve the meaningful purpose and object of the Act as reflected from the preamble as well as the statement of objects and reasons.

B The Act, as noticed above, is a special provision for special purpose. It is a departure from the ordinary procedural law. Plea of discriminatory treatment for want of availability of ordinary procedural law would not be available.

C For the reasons aforestated, we are of the view that the decision in *Nalini's* case has laid down correct law and we hold that the confessional statement duly recorded under Section 15 of TADA 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 that the accused was acquitted of offences under D TADA in the same trial.

The other leg of the submission is rigours of Section 18 of the Act. Section 18 deals with the power to transfer cases to regular courts. It reads:-

> "Where, *after taking cognizance* of any offence, a Designated Court E is of opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence."
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> F (emphasis supplied)

It is contended that the words, "after *taking cognizance*" employed in Section 18 of the Act would include any stage of trial including the stage when the judgment is to be delivered. This submission is also misconceived. G If it ought to have been the intention of the legislature they could have said so. The legislature deliberately uses the words "after taking cognizance of any offence" to mean that Section 18 would be attracted only at the stage where the Designated Court takes cognizance of offence i.e., after the investigation is complete and charge-sheet is filed. The provisions of Section 209 Cr.P.C. to which the counsel for the appellants sought to rely are not in H *pari materia* with Section 18. In Section 209 Cr.P.C. the words "after taking

cognizance" are absent conspicuously. Section 18 is a filtered provision. The Section is attracted only at a stage the Designated Court takes cognizance of offence. It is at the stage of taking cognizance, the Designated Court is expected to scan the documents and evidence collected therewith, if the Designated Court is of opinion that the offence is not triable by it, it shall, then notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence. In our view, there is no ambiguity in the language used in Section 18. If the submissions of the counsel for the appellant are accepted, it would amount to reading something into the statute which is not there.

Having said so, we also notice the note of caution of this Court in *Kartar Singh* (supra) in paragraph 352 (SCC p.707) as under:-

> "352. It is true that on many occasions, we have come across cases wherein the prosecution unjustifiably invokes the provisions of the TADA Act with an oblique motive of depriving the accused persons from getting bail and in some occasions when the courts are inclined to grant bail in cases registered under ordinary criminal law, the investigating officers in order to circumvent the authority of the courts invoke the provisions of the TADA Act. This kind of invocation of the provisions of TADA in cases, the facts of which do not warrant, is nothing but sheer misuse and abuse of the Act by the police. *Unless, the public prosecutors rise to the occasion and discharge their onerous responsibilities keeping in mind that they are prosecutors on behalf of the public but not the police and unless the Presiding Officers of the Designated Courts discharge their judicial functions keeping in view the fundamental rights particularly of the personal right and liberty of every citizen as enshrined in the Constitution to which they have been assigned the role of sentinel on the* **qui vive**, *it cannot be said that the provisions of TADA Act are enforced effectively inconsonance with the legislative intendment."*
>
> (emphasis supplied)

In our view the above observation is eloquently sufficient to caution police officials as well as the Presiding Officers of the Designated Courts from misusing the Act and to enforce the Act effectively and inconsonance

A with the legislative intendment which would mean after the application of mind. We reiterate the same.

For the reasons aforestated, the reference is answered in the above terms. The appeals shall now be listed before a regular Bench for hearing.

B B.B.B. Reference answered.