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KANHAIYALAL

v.

UNION OF INDIA AND ORS.

(Crl. A. No. 788 of 2005)

JANUARY 9, 2008

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[ALTAMAS KABIR AND B. SUDERSHAN REDDY, JJ.]

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Narcotic Drugs and Psychotropic Substances Act, 1985 — ss. 67 r/w 42 & 53 – Statement made by accused under s.67 – Extent upto which, it can be relied upon, for conviction under the Act – Bar under ss.24 to 27 of the Evidence Act, if attracted – Held: An officer for purposes of s.67 r/w s.42, is not a police officer – Hence, bar under ss. 24 to 27 of the Evidence Act is not attracted – Statement by person directed to appear before the officer concerned may be relied upon as a confessional statement against such person – Evidence Act, 1872 – ss.24 to 27.

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The questions which arose for consideration in the instant appeal are: 1) Upto what extent can a statement of accused made under s.67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 be relied upon for convicting a person accused of having committed an offence under provisions of the Act; and 2) Whether such a statement would attract the bar of ss. 24 to 27 of the Evidence Act.

Dismissing the appeal, the Court

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HELD: 1.1. A parallel may be drawn between the provisions of s. 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and ss. 107 and 108 of the Customs Act and to a large extent s.32 of the Prevention of Terrorism Act, 2002 and s.15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. These are all special Acts meant to deal with special situations and circumstances. While the provisions of the Prevention of Terrorism Act, 2002,

and TADA Act, 1987, are much more stringent and excludes from its purview the provisions of ss. 24 to 27 of the Evidence Act with regard to confession made before a police officer, the provisions relating to statements made during inquiry under the Customs Act and under the NDPS Act are less stringent and continues to attract the provisions of the Evidence Act. In the case of both the latter enactments, initially an inquiry is contemplated during which a person may be called upon to provide any information relevant to the inquiry as to whether there has been any contravention of the provisions of the Act or any Rule or Order made thereunder. At that stage the person concerned is not an accused although he may be said to be in custody. But on the basis of the statements made by him he could be made an accused subsequently. What is important is whether the statement made by the person concerned is made during inquiry prior to his arrest or after he had been formally charged with the offence and made an accused in respect thereof. As long as such statement was made by the accused at a time when he was not under arrest, the bar under ss. 24 to 27 of the Evidence Act would not operate nor would the provisions of Article 20(3) of the Constitution be attracted. It is only after a person is placed in the position of an accused that the bar imposed under the aforesaid provision will come into play. Even if a person is placed under arrest and thereafter makes a statement which seeks to incriminate him, the bar under Article 20(3) of the Constitution would not operate against him if such statement was given voluntarily and without any threat or compulsion and if supported by corroborating evidence. [Para 36] [366-C, D, E, F, G, H; 367-A, B, C]

1.2. An officer vested with the powers of an Officer-in-Charge of a Police Station under s.53 of the above Act is not a "Police Officer" within the meaning of s.25 of the Evidence Act. A statement made under s.67 of the N.D.P.S. Act is not the same as a statement made under Section

A 161 of the Code, unless made under threat or coercion. It is this vital difference, which allows a statement made under s. 67 of the N.D.P.S. Act to be used as a confession against the person making it and excludes it from the operation of ss. 24 to 27 of the Evidence Act. There is
B nothing on record to suggest that the appellant was compelled under threat to make the statement after he had been placed under arrest which renders such statement inadmissible and not capable of being relied upon in order to convict him. On the other hand, there is the evidence
C of PW9 upon which the High Court has relied in convicting the appellant. Also no question in cross-examination had been put to PW9 in this regard and the version of the said witness must be accepted as corroborative of the statement made by the accused.

D [Paras 38, 39] [368-A, B, C, D, E]

1.3. Though an application was made for retracting the confession made by the appellant, neither was any order passed on the said application nor was the same proved during the trial so as to water down the evidentiary
E value of the said statement. On the other hand, in the absence of such evidence on record, the High Court had no option but to proceed on the basis of the confession as made by the appellant under s.67 of the NDPS Act. Since an officer for the purposes of s.67 of the NDPS Act
F read with s.42 thereof, is not a police officer, the bar under ss. 24 and 27 of the Evidence Act cannot be attracted and the statement made by a person directed to appear before the officer concerned may be relied upon as a confessional statement against such person. Since a conviction can
G be maintained solely on the basis of a confession made under s.67 of the NDPS Act, there is no reason to interfere with the conclusion of the High Court convicting the appellant. [Para 40] [368-E, F, G; 369-A]

H *Raj Kumar Karwal v. Union of India and others* (1990) 2 SCC 409 - affirmed.

Muthuswami vs. State of Madras (AIR 1954 SC 4); *Puran v. State of Punjab* AIR (1953) SC 459; *Parmananda Pegu v State of Assam* (2004) 7 SCC 779; *NCT of Delhi v. Navjot Sandhu* (2005) 11 SCC 600; *Bharat v. State of U.P.* (1971) 3 SCC 950; *Haroon Hazi Abdulla v. State of Maharashtra* (1968) 2 SCR 641; *Pyare Lal Bhargava v. State of Rajasthan* (1963) **Suppl.1 SCR 689**; *A.K. Mehaboob v. Intelligence Officer, Narcotics Control Bureau* (2001) 10 SCC 203; *Pon Adhithan v. Deputy Director, Narcotics Control Bureau, Madras* (1999) 6 SCC 1; *Haricharan Kurmi v. State of Bihar* (1964) 6 SCR 623; *M.Prabhulal v. The Assistant Director, Directorate of Revenue Intellegence* (2003) 8 SCC 449 and *State of Bombay v. Kathi Kalu Oghad and Ors.* (1962) 3 SCR 10 – referred to.

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No.788 of 2005.

From the final Judgment and Order dated 18.3.2005 of the High Court of Madhya Pradesh, Bench at Indore in Cri. A. No. 108/2003.

S.K. Gambhir, T.N. Singh, Anil Sharma, A.K. Sinha, V.K. Singh and B.K. Sharma for the Appellant.

B.B. Singh, Binu Tamta, D.S. Mehra and Sushma Suri for the Respondent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. The appellant herein, along with one Phool Chand and Ram Prasad, was accused of offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') and ultimately charges were framed against them by the Special Judge under Section 8/18 and in the alternative under Section 8/18/29 of the aforesaid Act. On denying the charges framed against them the accused persons were sent to trial.

2. The learned Special Judge framed several issues and ultimately held that the charges had been fully proved against

A the accused Phool Chand, from whose possession 19 kg 200
gms. of opium was seized. Phool Chand was found guilty and
convicted under Section 8/18 of the NDPS Act and sentenced
to suffer 10 years R.I. together with fine of Rs.1 lakh, in default,
to undergo 2 years' R.I. separately.

B 3. As far as the appellant herein and Ram Prasad are
concerned, the learned Trial Judge found that the charges
against them had not been proved and acquitted them of the
charges under Section 8/18 read with Section 29 of the NDPS
Act.

C 4. Aggrieved by his conviction and sentence, Phool Chand
preferred Criminal Appeal No.47 of 2002 before the Indore
Bench of the Madhya Pradesh High Court. On the other hand,
the Union of India also preferred Criminal Appeal No.108 of
D 2003 against the acquittal of Ram Prasad and the appellant
herein.

5. The High Court heard both the appeals together and
ultimately dismissed the appeal preferred by Phool Chand and
relying on the statement made by Ram Prasad and the appellant
E herein under Section 67 of the NDPS Act, found them also guilty
of the charges framed against them and allowed the appeal
filed by the Union of India. Ram Prasad and Kanhaiyalal (the
appellant herein) were also sentenced to 10 years' R.I. each
and fine of Rs. 1 lakh each, and in default, to further undergo a
F jail sentence of 6 months R.I.

6. It is against the said judgment of the High Court that the
instant appeal had been preferred by Kanhaiyalal.

G 7. Since the appellant, Kanhiyalal was convicted on the
basis of the statement made by him under Section 67 of the
NDPS Act, a question has been raised whether such statement
made to an officer within the meaning of Section 42 of the said
Act could be treated as a confessional statement and whether
the accused could be convicted on the basis thereof in the
H absence of any other corroborative evidence.

8. As will appear from the records, the case of the prosecution was that on 22.2.1997 an information had been received by Shri Rajesh Nagpal, Assistant Narcotics Commissioner of the Central Bureau of Narcotics, Neemuch, that accused Phoolchand and Ram Prasad were involved in illegal dealing in opium and they had entered into an agreement to buy 25 kgs of opium from the appellant and the delivery of the said contraband was to be made at the site of the well of accused Ram Prasad situated in Haspur. On receipt of the said information, Shri Nagpal went to his office and reported the same. Subsequently, the same was produced before the Deputy Commissioner, Shri Prem Raj. On the basis of the said information a preventive party was constituted which proceeded to the identified site. The raiding party purportedly reached village Hadipilya Police Station, Manasa, by a Government vehicle at about 3.00 p.m. on the same day and after calling two independent witnesses, Madan Lal and Ram Rattan, who belonged to Hadipatiya, the raiding party proceeded towards the well in question belonging to Ram Prasad's father Mangi Lal. The raiding party led by Lala Ram Dinkar, Inspector, along with the said two witnesses reached the said well at about 4.00 p.m. and found two persons sitting there with 3 bags. On seeing the raiding/preventive party, one of the two persons sitting there ran away and although he was chased by some members of the raiding party, they did not manage to catch him. Inspector Lal Ram Dinkar went up to the other person sitting near the well who disclosed his name as Phool Chand son of Sita Ram and resident of Bardiya. According to the prosecution case, on being asked as to who was the person who had fled, Phool Chand indicated the name of the appellant herein. On being further asked as to the ownership of the bags lying at the spot, accused Phool Chand admitted that the bags belonged to him and to the appellant herein.

9. Thereafter, Phool Chand was told about the confidential information that had been received and that the raiding party had reasons to believe that the bags in question contained

A intoxicating materials. He was also informed that for such reasons he would have to be searched along with the bags. In keeping with the provisions of Section 50 of the NDPS Act Phool Chand was given the option of the search being conducted by any nearby Magistrate or before any Gazetted Officer. According to the prosecution, Phool Chand was willing to have the bag searched before the Gazetted Officer. Accordingly, Shri R.K. Sinha, Superintendent of the Narcotics Department, who was present with the raiding/preventive party introduced himself as a competent Gazetted Officer to Phool Chand who gave his consent in writing about such search in the Panchnama which was drawn before Shri R.K. Sinha. Pursuant to the above, search of the bags was undertaken from which the contraband opium was found and on measurement the bags were found to contain the following amounts of opium:-

D	i)	Bag 'A'	11 kgs. 500 gms.
	ii)	Bag 'B'	4 kgs. 700 gms, and
	iii)	Bag 'C'	300 gms

E From each of the bags two samples of 25 grams each were taken out for chemical examination while the remaining opium was sealed under the Panchnama (Exh.P.2)

F 10. On the basis of the proceeding in terms of Section 57 of the NDPS Act and the First Information Report filed before the Narcotic Superintendent, one Suresh Badlani was appointed as Investigating Officer and the seized opium along with samples were deposited in the Malkhana. At this point of time the statement of accused Phool Chand was taken where he confessed to the offence complained of.

G 11. During investigation, accused Ram Prasad and Kanhaiyalal(appellant herein) were served with summons under Section 67 of the NDPS Act. While Ram Prasad was present in the Neemuch office on 24.2.1997 in pursuance of the summons, the appellant herein did not appear before the concerned officer.
H Accordingly, charge-sheet was filed before the Special Judge

under the NDPS Act against Phool Chand and Ram Prasad on 20.5.1997. Subsequently, after fresh summons were issued to the appellant herein, he also appeared before the concerned officer and his statement was taken under Section 67 of the NDPS Act. In his statement the appellant confessed that he too was involved in the smuggling of opium with the co-accused. According to the prosecution, on the basis of his confessional statement, Kanhaiyalal was also arrested in connection with the offence and supplementary challan was filed against him before the Special Judge on 7.8.1997.

12. The defence of the accused was that they have been falsely implicated and accused Phool Chand took a specific plea that on 21.2.1997 he was playing *Kabbadi* at the sports ground.

13. The Trial Judge framed 4 questions for the purpose of deciding the case, namely, :-

- i) Whether seized material in the case is opium?
- ii) Whether aforesaid opium seized illegally kept in possession of accused Phool Chand in village Hadipipliya at about 4 o'clock on 22.2.1997 i.e. the day of incident ?
- iii) Whether aforesaid opium was collected for sale by all the three accused Ram Prasad and Kanhaiya Lal with co-accused Phool Chand in co-partnership ? and
- iv) Whether in this case compliance of necessary legal provisions of NDPS Act is done ?

14. The first question was answered by the learned Trial Judge in the affirmative upon holding that the seized material was proved to be opium.

15. On the second question, the Trial Judge came to the definite finding that it had been fully proved that the opium had been seized from the possession of accused Phool Chand for

A which he did not have any valid licence.

16. The answer to the third question, which is relevant to this appeal, was answered in favour of the accused Ram Prasad and the appellant herein and the Special Judge concluded that except for the contradictory confession of these two accused there was no other corroborative evidence and the prosecution had failed to prove that they were included in the smuggling operation.

17. As far as the fourth question is concerned the Special Judge was satisfied that all the provisions of the NDPS Act had been duly complied with.

18. On the basis of his findings on the first, second and fourth questions, the Special Judge under the NDPS Act convicted Phool Chand of the offences under Section 8/18 of the NDPS Act, but acquitted both Ram Prasad and the appellant herein of the said charge on his findings with regard to question no.3.

19. As mentioned hereinabove, the High Court while dismissing the appeal filed by Phool Chand allowed the appeal filed by the Union of India against the acquittal of Ram Prasad and Kanhaiyalal upon holding that the statement made by Ram Prasad and the appellant herein under Section 67 of the NDPS Act did not require any corroboration and were sufficient in themselves to convict the said two accused.

20. Mr. S.K. Gambhir, learned Senior Advocate, contended on behalf of the appellant, Kanhaiyalal, that the High Court had incorrectly stated the law regarding statements made under Section 67 of the NDPS Act before officers empowered under Section 42 thereunder. It was his specific case that once the appellant had been summoned in an inquiry under Section 67 of the aforesaid Act and was placed under arrest, any statement made by him thereafter would be hit by the provisions of Sections 24 to 27 of the Indian Evidence Act, 1872. Apart from the above, Mr. Gambhir also submitted that after making the statement in

terms of Section 67 of the NDPS Act the appellant had retracted such statement and in the absence of corroborative evidence, the said retracted statement/confession could not be relied upon in order to convict the appellant. Furthermore, there was no independent evidence to corroborate the retracted confession, which fact had weighed with the trial court in acquitting the appellant.

21. Mr. Gambhir submitted that although from the arrest Memo it would be clear that Kanhaiyalal was arrested on 8.6.1997 at 5.30 p.m., he was produced before the Magistrate on 9th June, 1997, and on the same day he made an application in writing to the Court that his signature had been forcibly obtained on blank papers under threat that if he did not sign he would be involved in other serious cases and the same were subsequently used for preparing statements under Section 67 of the aforesaid Act as if the same had been voluntarily made by him. Mr. Gambhir submitted that the appellant had already been arrested and detained in custody when the statement under Section 67 of the NDPS Act was recorded and, accordingly the same came within the mischief of Sections 24 to 27 of the Evidence Act. Mr. Gambhir pointed out that since the Trial Court had taken cognizance of the said application and recorded a finding in the judgment itself that Kanhaiyalal had retracted his confession, it would be incorrect to say that the said application made by Kanhaiyalal had not been considered by the Court. It was also pointed out by Mr. Gambhir that although on behalf of the prosecution it had been submitted that Kanhaiyalal in his statement under Section 313 of the Criminal Procedure Code had stated that he had been compelled to sign on blank papers under threat, the truth was otherwise since in his statement under Section 313 Kanhaiyalal answered "galat hai" which had to be taken as a denial that he had given such statement. Mr. Gambhir submitted that the appellants positive response had to be read along with his application dated 9.6.1997 retracting his confessional statement.

A 22. Mr. Gambhir submitted that the High Court had erred in relying upon the appellant's statement made under Section 67 of the NDPS Act, although, not only had the same been retracted immediately thereafter before the learned Magistrate, but the same was not admissible under the above-mentioned provisions of the Evidence Act. It was submitted that since apart from the above statement there was no other evidence, which linked the appellant with the alleged offence, the High Court should have maintained the judgment of the acquittal passed by the learned trial court.

C 23. In support of his aforesaid submission that in the absence of other corroborating evidence the retracted confession had been wrongly relied upon by the High Court to convict the appellant, Mr. Gambhir referred to the three Judge Bench decision of this Court in *Muthuswami vs. State of Madras* (AIR 1954 SC 4) in which, it was indicated that no hard and fast rule could be laid down regarding the necessity of corroboration in the case of a retracted confession in order to base conviction thereupon. But apart from the general rule of prudence, if the circumstances of a particular case raised doubts as to the genuineness of a confession, it would be sufficient to require corroboration of a retracted confession.

24. In *Puran vs. State of Punjab* (AIR 1953 SC 459) the same view has been expressed as follows:-

F "It is a settled rule of evidence that unless a retracted confession is corroborated in material particulars, it is not prudent to base a conviction in a criminal case on its strength alone."

G 25. The same view was also expressed by this Court in *Parmananda Pegu vs. State of Assam* (2004 (7) SCC 779), which involved a conviction made on the basis of a confession made before a Judicial Magistrate in accordance with Section 164 of the Code of Criminal Procedure.

H 26. In the same context Mr. Cambhir strongly relied on the

decision of this Court in *State (NCT of Delhi) vs. Navjot Sandhu* (2005 11 SCC 600) (commonly known as the Parliament Attack case) wherein while hearing several appeals, this Court had occasion to go into the question of confessions and retracted confessions in some detail. Referring to confessions in general, this Court made a distinction between "confession" and "admission". It observed that "an admission is a statement oral or documentary which enables the Court to draw an inference as to any fact in issue or relevant fact. It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession." This Court also cautioned that before acting upon a confession, the Court has to satisfy itself that it was freely and voluntarily made, having regard to the language of Section 24 of the Evidence Act. However, while examining the evidentiary value of a retracted confession against the confessor, the learned Judges had occasion to consider three previous decisions of this Court in *Bharat vs. State of U.P.* (1971 3 SCC 950) and *Haroon Hazi Abdulla vs. State of Maharashtra* (1968 2 SCR 641) and *Pyare Lal Bhargava vs. State of Rajasthan* (1963 Suppl.1 SCR 689). The learned Judges extracted paragraph 7 of the judgment in *Bharat vs. State of U.P.* (supra) wherein a comparison has been made between "confession" and "retracted confession". While in the former case, it was observed that confessions could be acted upon, if the Court was satisfied that they were voluntarily made and they were true, retracted confessions, stood on a slightly different footing. In that context, it was observed that "a Court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two, to determine whether the retraction affects the voluntary nature of the confession or not." The learned Judges of the three Judge Bench went on to observe that upon being satisfied, it was for the court to decide whether to use the retracted confession or not, but all the same, the courts did not normally act upon a retracted confession without finding some other evidence as to the guilt of the accused. The learned Judges concluded that a true confession

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A voluntarily made could be acted upon with slight evidence to corroborate the same, but a retracted confession requires the Court to be assured that the retraction was an after-thought and that the earlier statement was true.

B 27. Similar views were expressed in the other two cases referred to hereinabove, but it would be profitable to reproduce the views of the four Judge Bench in Pyare Lal Bharagava's case (supra) which has been reproduced in Navjot Sandhu's case, in the following terms :-

C "A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a Court shall not base a conviction on such a conviction without corroboration. It is not a rule of law, but is only rule of
D Prudence. It cannot even be laid down as an inflexible rule of practice of prudence that under no circumstances can such a conviction be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without
E corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntary made and has been corroborated in material particulars."

F 28. While the above mentioned decisions dealt with other criminal enactments, the next case referred to by Mr. Gambhir, namely, A.K. Mehaboob vs. Intelligence Officer, Narcotics Control Bureau, (2001 10 SCC 203) is a decision under the NDPS Act with due regard to the provisions of Sections 42 and
G 67 thereof. The criminal appeal of Shri A.K. Mehaboob was heard alongwith the appeal filed by Shri P.K. Naushad, who were the second and third accused facing charges for having committed an offence under Sections 21 and 29 of the NDPS Ac. While the first accused, Divakaran, was found guilty and
H convicted on the strength of recovery of brown sugar from him,

the two appellants before this Court were acquitted by the trial court but were convicted by the High Court in appeal preferred by the Narcotics Control Bureau. From the facts of the said case, it appears that apart from the statement made by Naushad under Section 67 of the NDPS Act there was other evidence to indicate that business in Narcotic drugs was being transacted from his house. His appeal was therefore rejected. As far as Mehaboob was concerned, his statement did not contain any statement, which could involve him in the offence. The High Court, therefore, allowed the appeal filed by Mehaboob and set aside his conviction.

29. On this line of decisions, Mr. Gambhir lastly referred to a decision of this Court in Pon Adhithan vs. Deputy Director, Narcotics Control Bureau, Madras (1999 6 SCC 1) wherein, in fact, the confessional statement made by the accused-appellant while in custody of the Intelligence Officer, Narcotics Intelligence Bureau, was relied upon to convict the said accused, on it being held that the said statement had been voluntarily made as no complaint of threat or pressure had been made by the accused when he was produced before the Magistrate. Mr. Gambhir sought to distinguish the said decision on the ground that while in Pon Adhithan's case, no complaint had been made by the accused of any threat or compulsion for making such statement, in the present case the confession made by the appellant herein was immediately retracted on the very next date when the appellant was produced before the Magistrate and that, too, in writing by way of an application. Mr. Gambhir reiterated that the said application was referred to by the learned trial court in its judgment. Mr. Gambhir also submitted that since the trial court had chosen not to rely on the statement made by the appellant under Section 67 of the NDPS Act, in the absence of any corroborating evidence, the evidentiary value of the retracted confession had not been gone into by the learned trial court.

30. Reliance was also placed by Mr. Gambhir on the Constitution Bench decision in Haricharan Kurmi vs. State of Bihar (1964 6 SCR 623) in support of his submission that apart

A from the statement of Phoolchand, the main accused, there was
no other evidence to connect the appellant with the alleged
offence under the NDPS Act. In the said case, the Constitution
B Bench, held that though a confession within the meaning of
Section 30 of the Indian Evidence Act, cannot strictly speaking
be treated as evidence as defined in Section 3, it is an element
which may be taken into consideration by the criminal courts
but the court cannot start with the confession of a co-accused
person, but must begin with other evidence adduced by the
prosecution before relying on the confession of the co-accused.

C 31. On behalf of the Union of India, Mr. B.B. Singh, learned
Advocate, submitted that having regard to the decisions of this
Court in Pon Adithan vs. Dy. Director Narcotics Bureau, (supra),
A.K. Mehaboob vs. Intelligence Officer, Narcotics, (supra) and
M.Prabhulal vs. The Assistant Director, Directorate of Revenue
D Intelligence (2003) 8 SCC 449, the appellant had been rightly
convicted on his confessional statement made under Section
67 of the NDPS Act alongwith the evidence of PW 9 Suresh
Badlani, Inspector in the office of the Deputy Narcotics
Commissioner, Lucknow, U.P., before whom such statement had
E been made. Mr. Singh also submitted that even if the person
was in custody at the time when he made such confessional
statement, the same would not attract the bar under Article 20(3)
of the Constitution, if it was made voluntarily. Mr. Singh also
emphasised that in all the three cases referred to hereinabove
F the accused were in custody when their confessional statements
were recorded under Section 67 of the NDPS Act.

32. Mr. Singh further submitted that although PW 9 had
deposed that the confessional statement had been made by
the appellant on 8.6.97 before him in the office of the Deputy
G Commissioner, there was no cross-examination on this point
on behalf of the appellant and consequently the confessional
statement of the appellant had to be accepted.

33. On the issue involving retraction by the appellant of his
statement made before the Inspector under Section 67 of the
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NDPS Act, Mr. Singh submitted that the application which the appellant is said to have filed before the Magistrate was never proved or exhibited in the Trial Court and did not form part of the evidence on record. He submitted that the same could not, therefore, be taken note of or be relied upon in support of the appellant's case of retracted confession.

34. In support of his aforesaid submission Mr. Singh referred to the decision of the eleven Judge Bench of this Court in State of Bombay vs. Kathi Kalu Oghad and others (1962) 3 SCR 10) wherein it was, inter alia, concluded that the accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, just being in Police custody when the statement was made would not, by itself, give rise to an inference that the accused had been compelled to make such statement. It was also held that to bring the statement within the prescription of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused any time after the statement had been made.

35. From the facts of the case and the submissions made on behalf of the respective parties the point which emerges for determination is upto what extent can a statement under Section 67 of the NDPS Act be relied upon for convicting a person accused of having committed an offence under the provisions of the said Act. In order to arrive at a decision in regard to the above, it will also have to be considered whether such a statement would attract the bar both of Sections 24 to 27 of the Indian Evidence Act as also Article 20(3) of the Constitution of India. For the aforesaid purpose, the provisions of Section 67 of the N.D.P.S. Act are reproduced hereinbelow:-

"67. Power to call for information, etc. – Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a State Government may,

- A during the course of any enquiry in connection with the
contravention of any provisions of this Act,-
- (a) call for information from any person for the purpose
of satisfying himself whether there has been any
B contravention of the provisions of this Act or any rule
or order made thereunder;
- (b) require any person to produce or deliver any
document or thing useful or relevant to the enquiry;
- C (c) examine any person acquainted with the facts and
circumstances of the case.”

36. A parallel may be drawn between the provisions of
Section 67 of the NDPS Act and Sections 107 and 108 of the
Customs Act and to a large extent Section 32 of the Prevention
D of Terrorism Act, 2002 and Section 15 of the Terrorist and
Disruptive Activities (Prevention) Act, 1987. These are all special
Acts meant to deal with special situations and circumstances.
While the provisions of the Prevention of Terrorism Act, 2002,
and TADA Act, 1987, are much more stringent and excludes
E from its purview the provisions of Sections 24 to 27 of the
Evidence Act with regard to confession made before a police
officer, the provisions relating to statements made during inquiry
under the Customs Act and under the NDPS Act are less
stringent and continues to attract the provisions of the Evidence
F Act. In the case of both the latter enactments, initially an inquiry
is contemplated during which a person may be called upon to
provide any information relevant to the inquiry as to whether there
has been any contravention of the provisions of the Act or any
Rule or Order made thereunder. At that stage the person
concerned is not an accused although he may be said to be in
G custody. But on the basis of the statements made by him he
could be made an accused subsequently. What is important is
whether the statement made by the person concerned is made
during inquiry prior to his arrest or after he had been formally
charged with the offence and made an accused in respect
H thereof. As long as such statement was made by the accused

at a time when he was not under arrest, the bar under Sections 24 to 27 of the Evidence Act would not operate nor would the provisions of Article 20(3) of the Constitution be attracted. It is only after a person is placed in the position of an accused that the bar imposed under the aforesaid provision will come into play. Of course, this Court has also held in *Pon Adithan's case* (supra) that even if a person is placed under arrest and thereafter makes a statement which seeks to incriminate him, the bar under Article 20(3) of the Constitution would not operate against him if such statement was given voluntarily and without any threat or compulsion and if supported by corroborating evidence.

37. The law involved in deciding this appeal has been considered by this Court from as far back as in 1963 in *Pyare Lal Bhargava's case* (supra). The consistent view which has been taken with regard to confessions made under provisions of Section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Evidence Act, but with the caution that the Court should satisfy itself that such statements had been made voluntarily and at a time when the person making such statement had not been made an accused in connection with the alleged offence. In addition to the above, in the case of *Raj Kumar Karwal v. Union of India and others* (1990) 2 SCC 409, this Court held that officers of the Department of Revenue Intelligence who have been vested with powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not "police officers" within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him. It was also held that power conferred on officers under the NDPS Act in relation to arrest, search and seizure were similar to powers vested on officers under the Customs Act. Nothing new has been submitted which can persuade us to take a different view.

A 38. Considering the provisions of Section 67 of the
N.D.P.S. Act and the views expressed by this Court in *Raj Kumar*
B *Karwal's* case (supra), with which we agree, that an officer vested
with the powers of an Officer-in-Charge of a Police Station under
Section 53 of the above Act is not a "Police Officer" within the
C meaning of Section 25 of the Evidence Act, it is clear that a
statement made under Section 67 of the N.D.P.S. Act is not the
same as a statement made under Section 161 of the Code,
unless made under threat or coercion. It is this vital difference,
which allows a statement made under Section 67 of the N.D.P.S.
D Act to be used as a confession against the person making it
and excludes it from the operation of Sections 24 to 27 of the
Evidence Act.

39. There is nothing on record to suggest that the appellant
was compelled under threat to make the statement after he had
D been placed under arrest which renders such statement
inadmissible and not capable of being relied upon in order to
convict him. On the other hand, there is the evidence of PW9
upon which the High Court has relied in convicting the appellant.
It may once again be mentioned that no question in cross-
E examination had been put to PW9 in this regard and the version
of the said witness must be accepted as corroborative of the
statement made by the accused.

40. It may also be recalled that though an application was
made for retracting the confession made by the appellant, neither
F was any order passed on the said application nor was the same
proved during the trial so as to water down the evidentiary value
of the said statement. On the other hand, in the absence of such
evidence on record, the High Court had no option but to proceed
on the basis of the confession as made by the appellant under
G Section 67 of the NDPS Act. Since it has been held by this
Court that an officer for the purposes of Section 67 of the NDPS
Act read with Section 42 thereof, is not a police officer, the bar
under Sections 24 and 27 of the Evidence Act cannot be
attracted and the statement made by a person directed to
H appear before the officer concerned may be relied upon as a

confessional statement against such person. Since a conviction can be maintained solely on the basis of a confession made under Section 67 of the NDPS Act, we see no reason to interfere with the conclusion of the High Court convicting the appellant. A

41. We, accordingly, dismiss the appeal and maintain the order of conviction and sentence passed against the appellant by the High Court. B

B.B.B.

Appeal dismissed.