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Crl.A.No. 526 OF 2001  
ITEM NO.101 (Part-Heard)

COURT NO.7

SECTION IIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.526 OF 2001@@  
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Prakash Kumar @ Prakash Bhutto Appellant(s)

VERSUS

State of Gujarat Respondent(s)

WITH

Crl.A.No.545/2001 (With appln. for exemption from filing O.T.  
and office report), Crl.A. No.665/2001

DATE : 24-09-2002: These matters were called on for hearing today.@@  
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CORAM:

HON'BLE MR. JUSTICE U.C. BANERJEE  
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant(s): Mr. Manish Singhvi, Adv.for  
Crl.A.526/2001 Mr. Ashok K. Mahajan, Adv.

Crl.A.545/2001 Mr. Sushil Kumar, Sr. Adv.  
Mr. Adolf Mathew, Adv.  
Mr. Sanjay Jain, Adv.

Crl.A.665/2001 Mr. Ranjit Kumar, Sr. Adv.  
Ms. Anu Mohla, Adv.

For Respondent(s): Mr. Yashank Adhyaru, Sr. Adv.  
Mrs. Anu Dubey, Adv.  
Ms. Hemantika Wahi, Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J.  
.SP2

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@@  
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253, in paragraphs 80 and 81 stated the law to be as  
below:-

.....L.....I.....T.....T.....T.....T...J.  
.SP1

"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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.SP2

The view expressed above stands in unison with view expressed in paragraphs 408 and 674 and same is noticed as below:

.....L.....I.....T.....T.....T.....T.....T...J.  
.SP1

"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 Ahmed@@  
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Kaloo Case contention of Mr. Natarajan is@@  
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rather correct. However, it appears to us that while holding the confession to be inadmissible in a trial when the accused is

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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:

.....L.....T..T.....T.....T.....T.....T...J.

"12. Power of Designated Courts with respect to other offences. - (1)  
When trying any offence, a Designated

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

(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 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."

.....L.....I.....T.....T.....T.....T...J.  
.SP1

"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."

.....L.....I.....T.....T.....T.....T.....T.....T.....J.  
.SP2

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).@@  
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The issue, therefore, is whether the confessional statement would continue to hold good even if the accused is acquitted under TADA offences and  
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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), however,@@  
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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 fair-ness: 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,@@  
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(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.

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(K.K. Chawla)  
Court Master

(Shelly Sengupta)  
Court Master