

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL (NO.)1714/2009**  
**(@ SPECIAL LEAVE PETITION (CRIMINAL) NO.5052/2009**

**RAJKUMAR HARIRAM GAMETI**

**APPELLANT(S)**

**VERSUS**

**STATE OF GUJARAT & ANR.**

**RESPONDENT(S)**

**O R D E R**

1. This appeal is at the instance of a convict accused (original accused no.2) and is directed against the judgment and order passed by the High Court of Gujarat at Ahmedabad dated 30.09.2008, in Criminal Appeal No. 90/2004, by which the High Court dismissed the appeal filed by the appellant herein and thereby affirmed the judgment and order of conviction dated 21.06.2003 passed by the Additional Sessions Judge and Fast Track Judge Court, Sabarkantha at Modasa in NDPS Case No. 02/2000 holding the appellant herein guilty of the offences punishable under Sections 8(c),21(c) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act,1985 (for short 'the NDPS Act').

2. The short facts necessary to be narrated for disposal of this appeal are as under:-

2.1 It appears from the materials on record that five individuals, including the appellant herein, were put to trial in the Court of

Additional Sessions Judge and Fast Track Judge Court, Sabarkantha at Modasa, for the offences as enumerated above.

2.2 The case of the prosecution is that the original accused no.1, namely, Kantilal Fulaji Rangot, was found to be in conscious possession of 624 grams of brown sugar. The search was carried out on the strength of the information which the Narcotics Control Bureau officials had with them.

2.3 In response to the summons issued to the original accused no.1, Kantilal Fulaji Rangot, he appeared before the Narcotics Control Bureau officials and in the course of his interrogation, his statement in the form of confession was recorded under Section 67 of the NDPS Act. The statement of Kantilal Fulaji Rangot not only incriminated himself but also involved the appellant herein. In the same manner, the statement of the appellant herein was also recorded under Section 67 of the NDPS Act, which was incriminating.

2.4 In the course of the trial, so far as the appellant herein is concerned, his own statement recorded under Section 67 of the NDPS Act was read into evidence and accordingly, he was held guilty for the alleged offences. His appeal before the High Court also came to be dismissed. In such circumstances, the present appeal has come up before us.

2.5 At this stage, it may not be out of place to state that the trial of the appellant herein was separated. The original accused

nos. 3,4 and 5 respectively, are still absconding. Kantilal Fulaji Rangot was also tried separately and held guilty.

3. We have heard Mr. Rahul Narayan, the learned counsel appearing for the appellant-convict and Ms. Aishwarya Bhati, the learned Additional Solicitor General, appearing for the Narcotics Control Bureau.

4. It is evident on plain reading of the impugned judgment of the High Court that the entire conviction of the appellant herein is based on his confessional statement recorded under Section 67 of the NDPS Act. The law prevailing at the relevant point of time made the statements recorded by the Narcotics Control Bureau officials under Section 67 of the NDPS Act, admissible in evidence.

5. In such circumstances, the Trial Court as well as the High Court held the appellant guilty of the offence.

6. The position of law over a period of time has changed. In the year 2020, a three-Judge Bench of this Court answered a Reference Order of a Division Bench in *Tofan Singh Vs. State of Tamil Nadu* [(2013) 16 SCC 31] and re-examined the ratio in the case of *Kanhaiyalal vs. Union of India* [(2008) 4 SCC 668] and *Raj Kumar Karwal Vs. Union of India* [(1990) 2 SCC 409], to decide as to whether the officer investigating a matter under the NDPS Act would qualify as a 'Police Officer' or not. The other related issue which was examined by the larger Bench in *Tofan Singh* [(2021) 4 SCC 1)

was whether the statement recorded by the investigating officer under section 67 of the NDPS Act can be treated as a confessional statement or not even if the offender is not treated as a 'Police Officer' or not.

7. The reference came to be answered in paras 158.1 and 158.2 respectively, of the decision in *Tofan Singh (Supra)*, as under:-

8. Para 158.1 reads thus :-

*"158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.*

9. Para 158.2 reads thus:-

*"158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."*

10. Thus, the position of law, as on date, is that any confessional statement made by an accused to an officer invested with the powers under Section 53 of the NDPS Act, is barred for the reason that such officers are 'police officers' within the meaning of Section 25 of the Evidence Act, a statement made by an accused and recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

11. In view of the aforesaid and in the absence of any evidence other than the confessional statement, we are left with no other option but to allow this appeal and set aside the conviction.

12. In the result, the appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court is, hereby, set aside.

....., J.  
[J.B.PARDIWALA]

....., J.  
[MANOJ MISRA]

NEW DELHI;  
22ND FEBRUARY, 2024

ITEM NO.103

COURT NO.10

SECTION II-B

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

Criminal Appeal No(s). 1714/2009

RAJKUMAR HARIRAM GAMETI

Appellant(s)

VERSUS

STATE OF GUJARAT &amp; ANR.

Respondent(s)

Date : 22-02-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA  
HON'BLE MR. JUSTICE MANOJ MISRAFor Appellant(s) Mr. Rahul Narayan, AOR  
Ms. Harshita Malik, Adv.For Respondent(s) Ms. Aishwarya Bhati, Ld.ASG  
Mr. Abhijeet Singh, Adv.  
Mr. Akshaja Singh, Adv.  
Ms. Shreya Jain, Adv.  
Mr. A.K.Sharma, AORMs. Swati Ghildiyal, AOR  
Ms. Devyani Bhatt, Adv.

Mr. Arvind Kumar Sharma, AOR

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

The Criminal Appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(VARSHA MENDIRATTA)  
COURT MASTER (SH)(POOJA SHARMA)  
COURT MASTER (NSH)

(Signed order is placed on the file)