

(2010) 06 GUJ CK 0021

In the Gujarat High Court

Case No : Special Criminal Application No. 392 of 2010

Abid Hussen Abdulkarim Shaikh

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 17-06-2010

Acts Referred:

Bombay Police Act, 1951 — Section 135
Constitution of India, 1950 — Article 141, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 321, 4, 482
Evidence Act, 1872 — Section 10, 11, 12, 13, 136
Penal Code, 1860 (IPC) — Section 120B, 143, 147, 148, 149
Prevention of Damage to Public Property Act, 1984 — Section 3, 4
Prevention of Terrorism Act, 2002 — Section 25, 26, 29, 29(1), 32
Railways Act, 1989 — Section 141, 150, 152
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 12, 15, 15(1), 20A(2)

Citation : (2010) 3 GLH 386 : (2011) 52 GLR 341 : (2011) 8 RCR(Criminal) 2991

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : A.D. Shah, for the Appellant; Sushil Kumar and J.M. Panchal, Spl. P.P. for Respondent No. 1 and K.G. Menon and Ajay Kumar Choksi and Vaibhav A. Vyas, for the Respondent

Judgement

Anant S. Dave, J.—This petition under Articles 226 and 227 of the Constitution of India is preferred by the Petitioner/original accused with following prayers:

14. (i) That the Hon''ble Court may be pleased to issue a Writ of Certiorari and/or any other appropriate writ whereby the order of the learned Addl. Sessions Judge rejecting the application Exh. 1010 in Sessions Case Nos. 69 to 86 of 2009 is set aside and quashed dated 17-2-2010.

(ii) That the Hon''ble Court may be pleased to prevent the prosecution from adducing evidence of Police Officers who have purportedly recorded the confessional statements of the accused u/s 32 of the P.O.T.A. Act;

(iii) That the Hon"ble Court may be pleased to prevent the prosecution from producing the Sanction Orders as per the provisions of Section 50 of the P.O.T.A. Act during the pendency of trial of the accused under the offences other than P.O.T.A. Act;

(iv) That the Hon"ble Court may be pleased to stay the operation of the order on Exh. 1010 during pendency of the Petitioner.

2. By the above order dated 17-2-2010 passed below application Exh. 1010 in Sessions Case Nos. 69 to 86 of 2009 and 204 of 2009 by learned Additional Sessions Judge, Panchmahals, Camp at Ahmedabad, prayer of the accused-Petitioner to restrain the prosecution from producing any kind of evidence relating to the Prevention of Terrorism Act, 2002 (for short "P.O.T.A.") and another prayer to return the sanctioned orders passed by the competent authority of the Central Government under the P.O.T.A., came to be rejected.

3. So far as facts recorded in Para 3 of the above impugned order by learned Additional Sessions Judge are not in dispute as such and accepted as they are by learned Counsels appearing for the parties respectively. However, learned trial Judge has succinctly summarized the facts of the case and main contentions with regard to two relief clauses along with reasons for the conclusion drawn for rejecting prayers of the accused-Petitioner and for the sake of convenience the order impugned dated 17-2-2010 is produced herein below:

1. Heard learned Advocate Mr. A.D. Shah, and Mr. A.A. Hasan appearing for the accused persons, and learned Special Public Prosecutor Mr. J.M. Panchal for the State. Read this application and relevant papers on record.

2. The present application has been submitted by the accused persons on 2-2-2010 praying relief as under:

The prosecution be restrained from producing any kind of evidence relating to the P.O.T.A.

Return the Sanction Orders passed by the Government under the P.O.T.A. to the prosecution.

3. Having gone through the record, it appears that the following facts are not in much dispute:

* On 27-2-2002, the incident of alleged attack on Sabarmati Express train took place at Godhra Railway Station.

* F.I.R. being No. C.R.I-09 of 2002 came to be lodged with Railway Police Station for the offences under Sections 143, 147, 148, 149, 337, 338, 438, 302, 307, 120B and 153A of the I.P.C., Sections 141, 150 and 152 of the Railways Act, Sections 3 and 4 of the Prevention of Damages to Public Property Act and Section 135 of the Bombay Police Act.

* On 2-3-2002, the I.O. submitted a report requesting the Court to add the

provisions of the P.O.T.A.

* On 5-3-2002, the I.O. Mr. K.C. Bawa in his affidavit in Misc. Cri. Application No. 606 of 2003 declared that "there is no sufficient evidence and materials to attract the provisions of the P.O.T.A."

* On 25-3-2002, the I.O. made an application for dropping of the said provisions of P.O.T.A.

* On 22-5-2002, the first charge-sheet came to be filed for the offences punishable under the I.P.C. and others.

* On 29-9-2002, after nearly four months, supplementary charge-sheet was submitted for the offences under the P.O.T.A. and others, making mention of conspiracy hatched on the night previous to the date of incident.

* During the course of investigation, the confessional statements of the accused were recorded before the Magistrate u/s 164 of the I.P.C. and by the competent police officers u/s 32 of the P.O.T.A.

* On 19-2-2003, an application was submitted to the Sessions Court for addition of the provisions of the P.O.T.A.

* On 21-11-2002, the Hon"ble Supreme Court stayed the trial of the nine riots related cases including the present cases.

* The Prevention of Terrorism (Repeal) Act, 2004 came to be enacted having retrospective effect from 21-9-2004.

* The Central Government constituted Review Committees by Notification dated 4-11-2004 to review all the cases registered under the P.O.T.A.

* The Review Committee No. 2, after hearing the parties and considering the relevant records, submitted its Report dated 16-5-2005, holding in Para 40 that: "the incident had taken place on the date, time, and place as alleged by the prosecution, but certainly not as a part of conspiracy envisaged under the provisions of the P.O.T.A."

* One Sardarji Mangaji Waghela had challenged the opinion of the Review Committee before the Hon"ble High Court by filing Spl. Cri. Application No. 504 of 2008.

* On 21-10-2008, the Hon"ble Supreme Court vacated the stay and held that the procedure u/s 321 of the Code of Criminal Procedure is not required to be followed.

* Accordingly, the record and proceedings of all the P.O.T.A. cases were transferred to the Sessions Court, Panchmahals at Godhra by the P.O.T.A. Court which came to be renumbered as above.

* On 12-2-2009, the Hon"ble High Court dismissed the Spl. Cri. Application No.

504 of 2008 holding that, "a shocking incident as it is capable of being treated as a serious criminal act falls short of the requirement of an act of terror and there is no infirmity in the opinion of the Review Committee."

* The State of Gujarat has challenged that said judgment before the Hon''ble Supreme Court by filing SLP (Criminal) No. 1444 of 2009 and the same is still pending.

* In view of the directions given by the Hon''ble Supreme Court Special Court has been constituted for the expeditious trial of the present cases.

* On 25-6-2009, charges came to be framed in all the cases and after consolidation of cases, in all 208 prosecution witnesses have been examined so far.

* There is no charge against any of the accused persons for the offences punishable under the P.O.T.A.

4. As regards the second relief prayed in this application, for returning the sanction orders to the prosecution, the same is required to be rejected straightaway mainly on the following four grounds:

(A) There is no provision in the Code for granting such relief.

(B) The said request can be said to be premature.

(C) Certain sanction orders have been admitted partly and exhibited with the consent of the learned Advocates for the accused.

(D) SLP (Cri.) No. 1444 of 2009 is still pending before the Hon''ble Supreme Court.

5. Now, the question is as to whether the first prayer made in this application for restraining the prosecution from producing the evidence with regard to the confessional statements under the provisions of Section 32 of the P.O.T.A. can be accepted at this stage. In my view, such relief cannot be granted at this stage. The reasons for my such conclusion are as under:

Firstly, neither in the Code of Criminal Procedure nor in the Evidence Act, there is provision for granting such relief in favour of the accused.

Secondly, this is not the stage of consideration of the evidence i.e. confessional statements recorded u/s 32 of the P.O.T.A..

Thirdly, SLP (Criminal) No. 1444 of 2009 is still pending before the Hon''ble Supreme Court and the decision dated 12-2-2009 taken by the Hon''ble High Court in Spl. Cri. Application No. 504 of 2008 has not still attained the finality on merits. It is too early, to say anything about the final outcome of the said S.L.P.

Fourthly, the confessional statements u/s 32 of the P.O.T.A. were recorded by the competent police officers during the course of investigation at the time when the

P.O.T.A., 2002 was in force and made applicable in these matters.

Fifthly, the names of the said competent police officers have been shown in all the charge-sheets as witnesses. Not only that but, the copies of the confessional statements were also provided to all the accused persons before framing charges in the cases.

Sixthly, the dropping of charges under the P.O.T.A., as per the report of the Review Committee, at the most can be said to be discharge of the accused from the said charges during the joint trial of proceedings under the P.O.T.A. as well as other Acts i.e. I.P.C., Indian Railways Act etc.

Seventhly, in the case of Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat, cited by learned Spl. Public Prosecutor Mr. J.M. Panchal, the five-judge Bench of the Hon"ble Supreme Court, has held that-

The confessional statements duly recorded u/s 15 of the T.A.D.A. and the Rules framed thereunder would continue to remain admissible for the offences under any other law which were tried along with T.A.D.A. offences u/s 12 of the Act, notwithstanding that the accused was acquitted of the offences under T.A.D.A. in the same trial.

Eighthly, in the case of Bipin Shantilal Panchal v. State of Gujarat reported in 2001 (3) GLR 2024 (SC) : 2001 (3) SCC 1, cited by Mr. Panchal, the Hon"ble Supreme Court has held that:

Whenever an objection is raised during evidence taking stage, regarding the admissibility of any material or item of oral evidence, the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable, the Judge or Magistrate can keep such evidence excluded from consideration. There is no illegality in adopting such a course.

6. In that view of the matter, at present, as there is no substance in the present application, the same deserves to be rejected and hence, the following order.

This application is hereby rejected.

4. Initially, after recording preliminary contentions of learned Counsels appearing for the parties about the issues involved in this petition, on 5-3-2010, the impugned order dated 17-2-2010 was stayed and barring the above, proceedings of trial were not stayed. Later on, the writ petition came to be finally heard.

5. I have heard learned Counsels appearing for the parties.

6. Mr. Ashok D. Shah, learned Counsel for the Petitioner raised following main contentions with regard to applicability of provisions of P.O.T.A. in the facts and circumstances of the case on hand. It is contended that:

(I) Whether the provisions of Prevention of Terrorism Act, 2002, can be made applicable to the trial of accused under provisions of other statutes and Indian Penal Code in absence of any trial for the offence under P.O.T.A. Act?

(II) Whether confessional statements of accused recorded u/s 32 of "P.O.T.A." as well as sanction orders passed by competent authority u/s 50 of the P.O.T.A. Act for taking cognizance of the offences under P.O.T.A. can be produced as relevant and admissible evidence in trial for offences other than the offences under P.O.T.A. Act?

6.1. It is submitted by learned Counsel for the Petitioner that the confessional statement made by a person before a police officer not lower in rank than Superintendent of Police shall be admissible in the trial of such person for an offence under this Act or the rules made thereunder, and therefore, it is made admissible only qua the trial for an offence under the P.O.T.A. and Rules made thereunder. Since, there is no trial of a person confessing the offence under P.O.T.A. such confessional statement cannot be made admissible qua such persons in facts of this case. Thus, Special Law of P.O.T.A. for offences to be tried under that Act laid down the relevancy and admissibility of onfessional statement recorded by competent police officers will not be made applicable in trial for offences under other provisions of Indian Penal Code or any other statute. Learned Counsel further referred to Section 4 of Code of Criminal Procedure, 1973, which provides for trial of offences under the Indian Penal Code and other laws and submitted that consideration of trial not being Special Law of P.O.T.A., the provisions of P.O.T.A. will not be attracted and trial will be in accordance with Code of Criminal Procedure and Evidence Act only.

6.2. It is next contended that the question of admissibility and relevancy of evidence has to be determined as per the provisions of the Evidence Act and emphasized on Sections. 5, 6, 25 and 136 of the Evidence Act. So far as Section 5 which deals with "relevancy of facts" and explanation to the Section provided that Section shall not enable any persons to give evidence of an act which he is disentitled to prove by any provisions of the law for the time-being in force relating to Civil Procedure, and therefore, if there is statutory power preventing the party to prove any statement, then such a party will not be entitled to tender such evidence. Learned Counsel further referred to Section 25 of the Evidence Act, which prohibits confessional statement before the police officers to be admissible in the trial.

6.3. In support of the above contention learned Counsel referred to a decision in the case of AIR 1941 16 (Privy Council) and submitted that evidence excluded by the statute as inadmissible should not be admitted merely because it may be essential for ascertainment of truth. Another decision in the case of *Miyana Hasan Abdulla and Another Vs. State of Gujarat*, and submitted that the Evidence Act prohibits the employment of any kind of evidence not specifically authorized by the Evidence Act itself, and therefore, there must be a specific provision in the Evidence Act before facts can be treated as relevant and facts must also be

proved as laid down in the Evidence Act. Learned Counsel by placing reliance in case of Ram Bihari Yadav Vs. State of Bihar and Others, vehemently submitted that the expressions "relevancy" and "admissibility" are often used as synonyms, but their legal implications are distinct and different for more often facts which are relevant may not be admissible and the probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case.

6.4. Learned Counsel for the Petitioner distinguished the decision in the case of Bipin Shantilal Panchal Vs. State of Gujarat and Another, and submitted that the above case, would not be a binding precedent for this Court inasmuch as the above case-law was decided in context of different facts and particularly provisions of Sections 5 to 35 and Section 136 of Evidence Act were not considered at all. It is submitted that when there is a statutory provision in the Evidence Act, then the question of admissibility and relevancy has to be considered as per the provisions of the Act.

6.5. In addition to above, learned Counsel for the Petitioner referred to provisions of Section 15(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (now stands repealed) (in short "T.A.D.A.") and Section 32(1) of P.O.T.A. and submitted that certain confessions of co-accused, abettor or conspirator, which was admissible under T.A.D.A. are not made admissible under P.O.T.A. otherwise both the provisions make confessional statement made before a police officer admissible in the trial of such person for an offence under this Act. Learned Counsel also refer to Section 12 of T.A.D.A. and Section 26 of P.O.T.A. which empowers Special Court/Designated Court to try an offence under the special statute, and therefore, according to learned Counsel for the Petitioner, it is absolutely essential that for making confessional statement recorded by police officer admissible u/s 32 of the P.O.T.A. there must be trial under Special Court for the offence under P.O.T.A. Act. Learned Counsel further referred to Section 25 with regard to jurisdiction of Special Court and the trial under P.O.T.A. has to be conducted only by the Special Court and Section 29 of P.O.T.A. prescribes procedure and powers of Special Court.

6.6. Learned Counsel also distinguished the decision in the case of Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat, and submitted that it was a case, where the accused came to be tried before the Designated Court and during the course of trial the accused was also charged for offences punishable under other laws along with the offences under the T.A.D.A. and on completion of trial, the Designated Judge found that the prosecution failed to establish commission of offence under the T.A.D.A., and therefore, considering the provisions of Section 12 of T.A.D.A. which empowers the Designated Court to try and conduct the accused for the offence punishable under other laws and the confessional statement recorded u/s 15 of T.A.D.A. by a police officer were admitted in the evidence and the said confession was recorded by authorized officer under T.A.D.A., and therefore, obviously during the trial they are admissible against the

makers as well as against the co-accused. However, in the facts of the present case, when there is no trial under P.O.T.A. before a Special Court and the trial of the accused is under general law and before the Court of Sessions, the special procedure for trial of offence under P.O.T.A. is not applicable to the trial of the accused for other offences.

6.7. Learned Counsel for the Petitioner, therefore, submitted that when judgment of the Apex Court is not to be treated as precedent and a case is decided on its own facts as happened in the case of *Bipin Shantilal Panchal v. State of Gujarat* (supra) and *Prakash Bhutto v. State of Gujarat* (supra), ratio laid down thereunder is not applicable and in support of the above submissions learned Counsel placed reliance in the case of *Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another*, and *Girnar Traders Vs. State of Maharashtra and Others*,

6.8. Learned Counsel also placed reliance to the decision in the case of *Sunderlal Kanaiyalal Bhatija v. State of Maharashtra* JT 2010 (3) SC 616 and submitted that confessional statement made by the co-accused under the T.A.D.A. Act cannot be used or utilized by the prosecution, since charges were framed only for the offence under Indian Penal Code and not under P.O.T.A.

6.9. Learned Counsel also referred to provisions of Section 50 of P.O.T.A. and submitted that the above Section contemplates that the Court cannot take cognizance of an evidence under the Act, without previous sanction of the Central Government or the State Government, and therefore, learned trial Judge ought to have seen that the production of sanction of competent authority u/s 50 of P.O.T.A. was also not a relevant fact.

7. Learned Counsel and Special Public Prosecutor per contra, Mr. Sushil Kumar with Mr. J.M. Panchal and Mr. K.G. Menon, Sr. Advocate with Mr. Ajay Choksi, learned Counsel for S.I.T. jointly opposed any prayer of the Petitioner as prayed for in this petition being granted by this Court in exercise of powers under Articles 226 and 227 of the Constitution of India, where the challenge is to the interlocutory order passed by the trial Court.

7.1. Mr. Sushil Kumar, learned Counsel for the Respondents at the outset submitted that no error of jurisdiction or law is committed by learned Judge in rejecting prayers of the Petitioner-accused vide application Exh. 1010 by the impugned order and the petition deserves to be rejected when the trial Court is proceeding with the case on hand on day-to-day basis.

7.2. Learned Counsel relies on the decisions of the Apex Court in the case of *State through Superintendent of Police, CBI/SIT Vs. Nalini and Others*, *Bipin Shantilal Panchal v. State of Gujarat* 2001 (3) GLR 2024 (SC) : 2001 (3) SCC 1, *State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others*, *Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat*, *Mahmadhusen Abdulrahim Kalota Shaikh v. Union of India* 2009 (4) GLR 3054 (SC) : 2009 (2) SCC 1 and submitted that no illegality is committed by the learned Additional

Sessions Judge in rejecting the application at Exh. 1010 inasmuch as it is open for the learned Additional Sessions Judge as per his discretion and decision to consider a particular evidence at the proper stage of the trial. The above approach of the learned Judge to consider admissibility of any material or item of oral evidence and if any objection that may be decided at the last stage in the final judgment is in consonance of Bipin S. Panchal (supra), and therefore, all the submissions and objections if any on behalf of the accused can be considered by the learned Additional Sessions Judge in accordance with law. It is submitted that the petition is premature and devoid of any merit, deserves to be rejected.

7.3. Mr. Sushil Kumar, learned Counsel for the Respondents referred to facts of the case and submitted that in view of Section 29(1) read with Section 33 and Section 50 of P.O.T.A., no Court shall take cognizance of offence under P.O.T.A. when the previous sanction of the Central and State Government, as the case may be, is not granted and Section 29 comprises of a procedure and powers of Special Court which empowers a Special Court to take cognizance of any offence when the accused being committed to it for trial upon receiving a complaint of facts that constitute such offence or upon a police report of such facts, and therefore, taking cognizance of the offence by a Special Court of any other offence other than the P.O.T.A. cannot be said to be illegal. Learned Counsel also referred to provisions of Section 26 which empowers Special Court to try the accused of the offence other than the P.O.T.A. at the same trial, where the accused is also tried for offence under P.O.T.A. provided such offence is connected with other offence and in the facts of this case initially P.O.T.A. was made applicable to the accused along with I.P.C. and other offences under the Railway Act, and therefore, the order impugned cannot be said to be illegal.

7.4. Learned Counsel for the Respondents emphasized on provisions of Section 33 and submitted that where after taking cognizance of any offence, the Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that the Court has no jurisdiction to try such offence, will have to transfer the case for the trial of such offence to any Court having jurisdiction under the Code of Criminal Procedure and such Court to which the case if transferred may proceed with the trial of the offence as if it had taken cognizance of the offence. Therefore, when the cases have been transferred by the P.O.T.A. Court to the Sessions Court, Panchmahals at Godhra and pursuant to directions given by the Supreme Court to constitute Special Court for expeditious disposal of the trial, by virtue of portion of Section 33, the present Court has taken cognizance of the offences and charges came to be framed on 25-6-2009 in all the cases and about 208 prosecution witnesses have been examined so far. It is further submitted that no charge of any of the accused persons for the offences punishable under P.O.T.A. is framed. In view of the above, the decision of the learned Judge to treat the application Exh. 1010 filed by the accused has no legal basis and premature in view of the decision of Supreme Court in the case of Bipin S. Panchal v. State of Gujarat (supra) do not deserve any interference by this Court in exercise of powers under Articles 226 and 227 of the Constitution of

India.

7.5. It is further submitted that the impugned order against which the petition is preferred is virtually under Article 227 of the Constitution of India and as per S.I.T. parameters for exercising powers under Article 227 of the Constitution of India against interlocutory order, as held in the case of *State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others*, , in Para 28 it is held that the law is that, Article 227 of the Constitution of India which confers on High Court powers of superintendence over all Courts and Tribunals and such jurisdiction is to be exercised sparingly and to see that subordinate Courts/Tribunals exercise their jurisdiction in accordance with law. Since, there is no error even of law much less of jurisdiction, for this Court, at this stage no interference is called for. Learned Counsel for the Respondents relied on the above decision also for the purpose that in the above decision the Supreme Court reiterated law laid down in the case of *Bipin Shantilal Panchal v. State of Gujarat* (supra) with regard to a stage of considering objection with regard to admissibility of evidence.

7.6. Learned Counsel for the Respondents submitted that in the case of *Sunderlal Kanaiyalal Bhatija v. State of Maharashtra* JT 2010 (3) SC 616, referred to a confessional statement recorded under T.A.D.A. in a different case and not in the same case, and therefore, the Apex Court held that such a confessional statement recorded under T.A.D.A. in a different case cannot be relied on by the Court in a case arising out of offences under other law. The above decision is not applicable in the facts of this case.

8. In rejoinder to the above, Mr. A.D. Shah, learned Counsel for the Petitioner referred to the decisions in the cases of: (1) AIR 1936 199 (Privy Council) , and submitted that even in absence of objection by Counsel for accused with regard to admission of certain inadmissible documents and if real injury is done by the prosecution or by a Court to an accused by accepting such documents, the revisional Court will certainly interfere to set right the order passed by the lower Court, (2) *Dwijesh Chandra Roy v. Naresh Chandra Gupta* AIR 1946 Cal 492 and submitted that the question of relevancy of a document is a question of law and can be raised at any stage and it is the duty of the Court to exclude all irrelevant evidence, even if no objection is taken to its admissibility by the parties and, (3) *Harpal Singh Vs. State of Punjab*, and submitted that though the above decision was in the context of Section 12 read with Section 20A(2) of T.A.D.A. it is held that if the designated Court is not trying an offence under T.A.D.A. it will have no jurisdiction to try any other offence and a valid sanction is sine qua non for enabling the prosecuting agency to approach the Court in order to enable the Court to take cognizance of the offence under T.A.D.A.

9. Having heard learned Counsels appearing for the parties respectively, perusal of the record of the case, indisputably, the order dated 17-2-2010 passed below Exh. 1010 in Sessions Case Nos. 69 to 86 of 2009 and 204 of 2009, by learned trial Judge is interlocutory and contains tentative findings in the context of relief

claimed by the accused in the application.

10. On perusal of the above application Exh. 1010, which was sent through jail by accused persons was received by the learned Additional Sessions Judge on 2-2-2010, where a prayer was made to restrain the prosecution from producing any kind of evidence relating to the P.O.T.A. and to return orders of sanction given in P.O.T.A. at relevant point of time. However, from the order impugned, it appears that except the statement about hearing learned Advocates appearing for the parties respectively and reliefs claimed in the application, no other contention either on law or fact if canvassed, is recorded. Whether any contention canvassed before this Court was also raised before the trial Court is also not reflected from the order impugned. Therefore, it is not possible for this Court to arrive at specific conclusion about various contentions raised by learned Counsel for the parties in this petition under Articles 226 and 227 of the Constitution of India. However, with regard to the first prayer about application for restraining the prosecution from producing the evidence with regard to the confessional statement recorded under the provisions of Section 32 of the P.O.T.A., learned Judge has given eight reasons, by which, prima facie reliance is placed on two decisions of Apex Court in the case of Prakash Bhutto v. State of Gujarat (supra) with regard to admissibility of the confessional statements duly recorded u/s 15 of the T.A.D.A. and rules framed thereunder and its continuity to remain so for the offences under any other law which was tried along with T.A.D.A. offences u/s 12 of the Act, notwithstanding the fact that the accused was acquitted of the offences under T.A.D.A. in the same trial and in the case of Bipin Shantilal Panchal v. State of Gujarat (supra) with regard to the procedure to be adopted by the trial Court in case whenever an objection is raised during evidence-taking stage, regarding admissibility of any material or item of oral evidence, the trial Court will be justified in making a note of such objection and mark the objected documents tentatively as an exhibit in a case subject to such objection to be decided at the last stage in the final judgment. In case, if the Court finds at the final stage that the objections so raised is sustainable, the Judge can exclude such evidence from consideration and if such course is adopted no illegality can be alleged.

10.1. Thus, according to learned Judge a stage for consideration of the evidence namely confessional statement recorded in Section 32 of P.O.T.A. had not arrived, and therefore, learned Judge held that at present, as there is no substance in the application, the same deserves to be rejected.

10.2. If the above approach of the learned Judge is examined in the context of the decision of the Apex Court in the case of Bipin Shantilal Panchal v. State of Gujarat (supra) what is held in Paras 13, 14, 15 and 16 are as under:

13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence, the Court does not proceed further without passing order on such objection. But the fall-out of the above practice is this: Suppose the trial Court, in a case, upholds a

particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional Court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate Court would be deprived of the benefit of that evidence, because that was not put on record by the trial Court. In such a situation the higher Court may have to send the case back to the trial Court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realized through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence, the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view, there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections, the procedure suggested above can be followed.)

15. The above procedure, if followed, will have two advantages: First, is that the time in the trial Court, during evidence-taking stage, would not be wasted on account of raising such objections and the Court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior Court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial Court, can determine the correctness of the view taken by the trial Court regarding that objection, without bothering to remit the case to the trial Court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

16. We, therefore, make the above as a procedure to be followed by the trial Courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.

11. The above case of Bipin Shantilal Panchal v. State of Gujarat (supra) was again referred to in the case of State through Special Cell, New Delhi v. Navjot Sandhu (supra) and in the context of the factual scenario of the case, where the objection raised about admissibility of evidence collected during course of investigation came to be rejected and entertaining a writ petition purportedly under Article 227 of the Constitution of India and Section 482 of the Code of

Criminal Procedure, 1973, by the High Court, the Apex Court held that the objection should have been decided by the trial Court at the stage of final hearing as decided in the case of *Bipin Shantilal Panchal v. State of Gujarat* (supra). Therefore, the above two decisions of the Apex Court prescribed a procedure to be adopted by the trial Court of such an eventuality when the objection is raised with regard to admissibility of the evidence.

12. The contention of learned Counsel for the Petitioner that law laid down by the Apex Court in the case of *Bipin Shantilal Panchal v. State of Gujarat* (supra) cannot be made applicable in the facts of the case inasmuch as Sections 5, 6, 25 and 136 of the Evidence Act were not considered by the Apex Court and same will have no binding force as it is not a law declared by the Supreme Court under Article 141 of the Constitution of India and even facts are also different in the present case. In support of above submissions, a decision in the case of *Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another*, was relied on. However, in the above judgment, after taking note of earlier decisions on the issue, the Apex Court observed that a judgment of the Court has to be read in the context of question which arises for consideration in the case in which the judgment is delivered. The Apex Court further observed that the decision in the judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court and when Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court. Since, in the case of *Bipin Shantilal Panchal v. State of Gujarat* (supra) in no uncertain terms the Apex Court directed the trial Court to follow the procedure whenever an objection is raised regarding the admissibility of any material or any item of oral evidence by considering pros and cons and advisability to do so, in Paras 13, 14 and 15. The approach of the learned Judge based on law as above, while considering the application Exh. 1010 and order passed thereunder cannot be said to be in any manner contrary to law or against any provisions of the Evidence Act.

12.1. So far as decision in the case of *Girnar Traders Vs. State of Maharashtra and Others*, is concerned, proposition of law with regard to interpretation of the statute in case if any interpretation, which leads to ultimate absurdity, such interpretation should be avoided, has no applicability in the facts of this case.

13. That various contentions about relevancy and admissibility of evidence and decisions relied on by learned Counsel for the Petitioner, this Court is of the opinion that so far as proposition of law is concerned there cannot be any other view possible but while exercising powers under Article 227 of the Constitution of India, this Court will not consider the same when the challenge is to the interlocutory order passed by the trial Court and no contentions in this regard ever raised before the trial Court.

14. That reliance placed in the case of *Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Others*, about admissibility of exhibits before the Consumer

Court, where earlier decision in *R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another*, was considered. So far as law laid down by the Apex Court where a reference is made to a decision of *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple* (supra) no doubt the Apex Court said that ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently and the objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. Their lordships farther held that in the first case merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the later case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. Then, the Apex Court considered consequences of raising objection at the earlier stage and in case of first type of objection about inadmissibility of the document which is sought to be proved, the Apex Court held that acquiescence would be no bar to raising the objection in a superior Court also.

15. The above view of the Apex Court echos the decision in the case of AIR 1936 199 (Privy Council)

15.1. Therefore, even as per the above decision there is no bar for the Court concerned to consider objection with regard to admissibility of document which is sought to be proved at a later stage. In the trial during evidence-taking stage, a sound judicial discretion can be exercised by the trial Court about the stage for considering of exclusion or preservation of any material or item of oral evidence keeping in mind nature of the document/materials etc. sought to be proved and statutory provision for considering such evidence if barred by any law and as per Evidence Act. Considering the above aspect and the law laid down by *Bipin Shantilal Panchal v. State of Gujarat* (supra), the course adopted by the learned trial Judge in deferring the issue and to consider the objection at a later stage cannot be said to be illegal.

16. The contentions raised by learned Counsels for the parties on the decision in the case of *State through Superintendent of Police, CBI/SIT Vs. Nalini and Others*, have already been answered by the Constitution Bench in the case of *Prakash Bhutto v. State of Gujarat* (supra), where the Apex Court held in the

context of T.A.D.A. that the confessional statement duly recorded u/s 15 of the T.A.D.A. and the rules framed thereunder would continue to remain admissible for the offences under any other law which were tried along with T.A.D.A. offences u/s 12 of the Act, notwithstanding that the accused was acquitted of the offences under T.A.D.A. in the same trial.

17. However, tentative expression by the learned trial Judge about admissibility of confessional statements on the basis of a case law decided in the context of provisions of Sections 12 and 15 of erstwhile T.A.D.A. in the case of Prakash Bhutto v. State of Gujarat (supra) cannot be countenanced by this Court, and it deserves to be considered afresh by the trial Court keeping in mind provisions of P.O.T.A. and subsequent decisions of the Apex Court as relied on by learned Counsel for the Petitioner before this Court, in case if the learned Judge decides to take into consideration objected evidence by the accused at the penultimate stage of the trial.

18. In view of the above discussion and findings, the order impugned in this petition do not deserve any interference while exercising extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India barring what is observed in Para 17 of this judgment.

19. This petition stands disposed of in the above terms. Rule stands discharged.

At this stage, learned Counsel appearing for the Petitioner, prays that direction contained in the order dated 5-3-2010 passed by this Court may be continued as they would like to approach the higher forum against the order passed by this Court, today.

Learned Counsel appearing for the S.I.T. and State authorities oppose the same on the ground that the Apex Court has directed the Court concerned not to pronounce the final judgment.

However, considering the facts and circumstances of the case and what is already observed in Para 17 of the judgment, this Court do not find any justification to continue the arrangement worked out vide order dated 5-3-2010. Accordingly, the request is rejected.