

(2003) 05 GUJ CK 0030
In the Gujarat High Court
Case No : Criminal Appeal No. 1023 of 1997

Usmanbhai Chandbhai Mansuri

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 08-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Evidence Act, 1872 — Section 24

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 29, 42, 53A, 67

Citation : (2003) 3 GLR 1982

Hon'ble Judges : H.H. Mehta, J; D.P. Buch, J

Bench : Division Bench

Advocate : E.E. Saiyed, for the Appellant; B.D. Desai, Assistant Public Prosecutor for respondent No. 1 and Asim J. Pandya, for the Respondent

Final Decision : Dismissed

Judgement

H. H. MEHTA, J.

1. The appellant who was an accused in Sessions Case No. 358 of 1995 before the learned Additional City Sessions Judge, Court No. 9, Ahmedabad, has, by preferring this appeal u/s 374(2) of the Criminal Procedure Code, 1973 (for short "Cr.P.C.") read with Section 36B of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short the "N.D.P.S. Act"), challenged the correctness and legality and validity of judgment Exh. 52 dated 11th September, 1997 rendered in Sessions Case No. 358 of 1995 by which the appellant has been convicted of the offences punishable u/s 120B of the Indian Penal Code and also u/s 20(b)(ii) read with Section 29 of the N.D.P.S. Act and sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 1 lac and in default of payment of fine, to undergo further Rigorous Imprisonment for one year for the offence committed by him u/s 2Q(b) of the N.D.P.S. Act. The learned Judge of the trial Court has not inflicted any separate sentence for the offences punishable u/s 120B of the Indian Penal Code and u/s 29 of the N.D.P.S. Act.

2. The facts leading to the present appeal in a nutshell are as follows :-

2.1 In the month of July, 1995, P.W.I Omprakash Nankaram Khober, a Senior Intelligence Officer, was performing his duties in the Directorate of Revenue Intelligence, Delhi Zonal Unit, New Delhi, (for short "D.R.I."). On or about 10th July, 1995 at about 11-00 a.m., he was present and on duty in his office, and at that time, he was doing his office work. One person from public came, to him and gave an information. He reduced that information into writing in one prescribed form D.R.I.-I. Thereafter, first he contacted his Senior Officer, Mr. Amitabh, Assistant Director, D.R.I. and informed him about the information which he received. In token of information for which his Senior Officer was informed, Mr. Amitabh signed that information which was reduced into writing. On the basis of information which Mr. Omprakash received and which he reduced into writing, his Superior Officer gave certain directions. Mr. Omprakash left Delhi for Ahmedabad for making an inquiry in connection with that information. He arrived at Ahmedabad in the evening on 11-7-1995. He started making inquiry in connection with that information. He organized a watch of persons of his department, on the house situated in Mirzapur, Ahmedabad. On 17-7-1995, he came to know that delivery of Charas had already been effected and that contraband article has now been kept somewhere in Juhapura area, Ahmedabad. Thereafter, he informed Mr. R. K. Singla, Deputy Director of D.R.I. Ahmedabad Zone, Ahmedabad. Mr. Singla informed him to come at his office on 18-7-1995.

2.2 At about 8-00 a.m. on 18-7-1995, Mr. Omprakash in company of Officers of his Department went to the Office of Mr. Singla. Mr. Singla called one Mr. Rao, Assistant Director and asked him to proceed further in connection with the information which has been brought by Mr. Omprakash that Charas has been kept in the house of Usmanbhai (present appellant) in Juhapura area, Ahmedabad. Mr. Omprakash in company of P.W.3 Baljitsing Bakshi, Senior Intelligence Officer of D.R.I. Ahmedabad Office and other Officers of D.R.I. of Ahmedabad Office went to Juhapura area. They also took with them police personnel of local police. They went to House Nos. J-186 and J-187 of Sanklit Nagar, Juhapura, Ahmedabad. Mr. Bakshi was a leading officer of the raiding party. He had called two independent persons who can act as panch witnesses. Mr. Bakshi informed panch witnesses that he had a reliable information that Charas was stored in said two houses. He also told that he was a Gazetted Officer of the Department. He requested that two persons to witness the search in the aforesaid two houses. They agreed and accompanied them.

2.3 Keeping the police officers out of the compound, the officers of D.I.R. Department opened the gate and entered into the compound of house No. J-187 and knocked the door. The person opened the door from inside and came out. On asking his name by Mr. Bakshi, that person gave his name as Akbarbhai Usmanbhai (son of the appellant). He also said that he was also known as Babubhai. Mr. Bakshi disclosed his identity to Akbarbhai and appraised him of the purpose for their visit. When Mr. Bakshi and other members of the raiding party

entered in the house, there were other members of the family inside the room. One of them was Kulsumben Usmanbhai-the wife of the appellant. Other children of the appellant were also present.

2.4 In presence of panch witnesses, Akbarbhai and Kulsumben Mr. Bakshi raided and searched the house and on making search, when they entered into Second room which was a bed-room, they found that three gunny bags were lying there. That gunny bags were found stitched with jute thread (sutali). They opened that three gunny bags one after another and found that each bag was having a plastic bag. Each plastic bag was tied with jute thread (sutali). First, they opened one gunny bag and found 16 rectangular slabs. Each rectangular slab was packed with adhesive tape and on opening it, it was found that it was wrapped by one plastic paper and on opening that plastic wrapper, they found one almond coloured paper and from that paper, they found coffee coloured cakes. According to the prosecution, from first gunny bag, they found 16 rectangular slabs and out of 16 rectangular slabs, from each of 15 rectangular slabs, 4 cakes were found and from 16th rectangular slab, they found only one cake and thus there were 61 cakes of Charas in first gunny bag. They tested one of the cakes found from the gunny bag by making use of Test Kit and they found positive result of Hasish (Charas).

2.5 Thereafter, they opened Second gunny bag and from that they found 13 rectangular slabs total containing 46 cakes. Similarly, they found 13 rectangular slabs from third gunny bag, from which in all 40 cakes were found. All these cakes were weighed and it was found that 61 cakes which were found from first gunny bag were weighing 31 kgs., 46 cakes found from second gunny bag were weighing 24 kgs. and 40 cakes found from third gunny bag were total weighing 40 kgs. Thus in all 95 kgs. of Charas was found from in all three gunny bags.

2.6 Thereafter, first for sample 5 gms. of substance from each cake out of 61 cakes found from first gunny bag was separately taken. That substance was mixed up and from that mixture, substance of one sample of 30 gms. was taken and in this manner, three samples each of 30 gms. were taken from first gunny bag. In similar manner, three samples of cakes found from second and third gunny bags were taken. In all 9 samples were prepared and taken from three gunny bags. All the articles and 9 muddamal samples which were prepared, were properly packed, duly sealed and seized under panchnama in presence of panch witnesses, Akbarali son of accused and Kulsumben wife of accused.

2.7 It is the case of the prosecution that during the search of the house, from that very bed-room in all 91 documents were found from one safe. All these documents were also attached and seized under that very common panchnama. It is the case of the prosecution that all those 91 documents and panchnama were signed by Akbarali and Kulsumben along with the panch witnesses. Thus, according to the case of the prosecution, 95 kgs. of Charas of estimated value of Rs. 9,50,000/- was recovered from the house. On asking for pass or permit for Charas, Mr. Akbarali and Kulsumben could not produce any document. It is the

case of the prosecution that appellant was occupant and person in possession of that house, and therefore, aforesaid contraband article was found from the possession of the appellant. Copy of panchnama was given to Mr. Akbarali. Details of articles found from said three gunny bags were given mark as Annexure A-1, A-2 and A-3 which are part and parcel of the said panchnama.

2.8 On that very day, summons u/s 67 of the N.D.P.S. Act addressed to the appellant was served on his wife Kulsumbib, directing the appellant to appear before Mr. B. S. Bakshi on 18-7-1995 at 11-00 a.m. On next day, similar types of summons u/s 67 of the N.D.P.S. Act were served on Kulsumbib and Akbarali @ Babubhai by which they were directed to appear before Mr. B. S. Bakshi under whose leadership and supervision entire raid was arranged in his office on 19-7-1995 at 12-00 p.m.

2.9 On 19-7-1995, the appellant did not appear before Mr. B. S. Bakshi but on his own he appeared before Mr. B. S. Bakshi on 20-7-1995. He gave his statement to Mr. Bakshi. That statement was recorded u/s 67 of the N.D.P.S. Act. The appellant gave his such statement in his own hand-writing. That statement was inculpatory statement for him.

2.10 It is the case of the prosecution that muddamal sample articles under forwarding letter dated 19-7-1995 were sent to the Central Revenues Control Laboratory, New Delhi (for short "C.R.C.L.") for the purpose of analysis of the substance recovered and seized under panchnama.

2.10 It is the case of the prosecution that on or about 6-10-1995 one motor vehicle (mini Swaraj Mazda truck) bearing R.T.O. registration No. GJ-1T-4797) was attached and seized by P.W.4 D.R.I. Officer, Mr. R. J. Thakkar in presence of panch witnesses. It is the case of the prosecution that this is a very vehicle through which said 95 kgs. of Charas was transported from the place near Rajasthan Hotel, near Railway Crossing, Kalol Road and unloaded in the house of accused-appellant situated in Juhapura, five days before aforesaid raid. The appellant had made a reference of these facts in his statement recorded u/s 67 of the N.D.P.S. Act. It is also the case of the prosecution that when the said motor vehicle was attached, along with it, Goods Tax Book and R.C.A.Book issued by the R.T.O. authority were also seized under the same panchnama. It is the case of the prosecution that on receipt of a report of analysis of substance from "C.R.C.L.", Mr, B. S. Bakshi lodged his complaint against the appellant in the City Sessions Court at Ahmedabad on 17-10-1995.

3. The learned Additional City Sessions Judge, Court No. 3, Ahmedabad took cognizance of the offence on said complaint, as a result of which the said complaint came to be registered as Sessions Case No. 358 of 1995 and summons was served on the appellant. The appellant appeared before the learned Additional City Sessions Judge, Court No. 3, Ahmedabad with his Advocate on 15-11-1995. The learned Additional City Sessions Judge, Court No. 3, Ahmedabad, on the basis of material on record, framed charge Exh. 6 on

7-2-1996 for offences punishable under Sections 120B, I.P.C. and also u/s 20(b) (ii) read with Section 29 of the N.D.P.S. Act. On recording plea of the appellant, he pleaded not guilty to the charge and claimed to be tried.

4. From record, it appears that thereafter, Sessions Case No. 358 of 1995 was assigned to the learned Additional City Sessions Judge, Court No. 9, Ahmedabad for further trial of the case.

5. In order to prove the case against the appellant, the prosecution examined following six witnesses :-

(1)

P.W. 1-Omprakash Nankarara (Senior Intelligence Officer of D.R.I. at New Delhi who received "the information)

Exh. 11

(2)

P.W. 2-Harikrishna Keshav Reddy (Intelligence Officer of D.R.I., New Delhi who accompanied P.W. 1 Omprakash at Ahmedabad and with whom muddamal articles were sent for analysis to C.R.C.L.)

Exh. 14

(3)

P.W. 3-Paljitsingh Bakshi [by typographical error, instead of Baljitsingh, name Paljitsingh is typed in deposition] (Raiding and Seizing Officer and complainant also.)

Exh. 17

(4)

P.W.4-Rameshkumar Jagjivandas Thakkar (Intelligence Officer of D.R.I., Ahmedabad who attached the motor vehicle bearing No. GMT-4797)

Exh. 35

(5)

P.W.5-Rahimbhai Usmanbhai Mansuri (panch witness for the house raided).

Exh. 37

(6)

P.W.6-Natwarbhai Dajibhai (Panch witness for attachment and seizure of motor vehicle No. GMT-4797).

Exh. 40

6. In order to support the case of the prosecution, the prosecution also produced

and proved documentary evidence, out of which following documents are mainly relied on by it :-

- (1) Secret information which was reduced into writing at Exh. 13.
- (2) Forwarding letter with which muddamal sample articles were sent to the Chief Chemist of C.R.C.L. at Exh. 15.
- (3) Receipt issued by the Officer of C.R.C.L. for having received muddamal articles at Exh. 16.
- (4) 91 documents which were found from safe kept in bed-room of the house raided (All these documents were exhibited as per Section 66 of the N.D.P.S. Act) at Exhs. 18 to 26.
- (5) Office copy of summons issued u/s 67 of the N.D.P.S. Act against the appellant at Exh. 27.
- (6) A report dated 19-7-1995 made by Mr. B. S. Bakshi addressed to the Assistant Director, D.R.I. Ahmedabad by which the information was given with regard to seizure of 95 kgs. of Hashish (Charas) under panchnama dated 18-7-1995 under the provisions of the N.D.P.S. Act at Exh. 30.
- (7) Authority letter dated 20-7-1995 issued by Mr. B. S. Bakshi authorising Mr. Chetan S. Patel, Intelligence Officer, D.R.I. Ahmedabad to arrest the appellant at Exh. 31.
- (8) Report of analysis of substance issued by the Assistant Chemical Analyzer, C.R.C.L. at Exh. 32.
- (9) Complaint Exh. 33.
- (10) Two different Notifications issued by Ministry of Finance, Department of Revenue, collectively at Exh. 34.
- (11) Panchnama for attachment of seizure of motor vehicle No. GJ-1T-4797 at Exh. 36.
- (11-A) Goods Tax Book for aforesaid vehicle Exh. 36-A. (11-B) R.T.O. book for said vehicle at Exh. 36-B.
- (12) Panchnama of house raided and articles recovered and seized in presence of panch witnesses at Exh. 38.
- (13) Statement of appellant recorded u/s 67 of the N.D.P.S. Act at Exh. 41.

7. On recording of evidence of prosecution witnesses was over, the circumstances appearing against the appellant were brought to the notice of and explained to the appellant. Whatever questions were put to the appellant in his further statement, were answered by the appellant which were recorded below Exh. 7, as a result of which statement u/s 313, Cr.P.C. of accused came to be recorded by the learned Judge of the trial Court.

8. With regard to question relating to summons issued against the appellant, directing him to appear before the Officer of D.I.R. on 19-7-1995 and his failure to appear before him on 19-7-1995, he has replied that he had appeared before the Officer on 19-7-1995 on his own. For statement recorded u/s 67 of the N.D.P.S. Act, he has stated that his statement was got written from him by exercising mental and physical torture on him. In reply to last question, he has stated that a false case has been lodged against him. He has further stated that on 18th July, 1995, his wife and his three sons were taken to the office of D.I.R. On 19th, he went to the Office on his own. He is residing in Mirzapur. He further stated that he would file a written reply.

9. That written reply is on Page 211 which ends at Page. 221, This written reply is in the form of some arguments. In Para 9 of his written reply, he has stated that he has already stated in his further statement with regard to his statement recorded on 20-7-1995, and that no exhibit number has been given to that statement, and therefore, that statement cannot be taken into consideration as evidence. In Para 11 of his written reply, he has stated that panch witness Rahimbhai Usmanbhai is his neighbour. That panch has not stated as to what was the nexus of the appellant with the house raided. In Para 13 of his written reply, on page 219, he has stated his own case. He has stated that according to the Officers of D.R.I. Delhi, the information was with regard to house situated in Mirzapur and they had kept a watch on that house upto 17th July, 1995. He has further stated that on 18th July, 1995, the Officer arrested his wife Kunverben and three sons namely Babubhai Usmanbhai, Mahebubhai Usmanbhai and Yasinbhai Usmanbhai and they were detained in the office. He has further stated that on 18th July, 1995, he had been to place outside Ahmedabad. He returned to Ahmedabad on 19th and appeared before the officer. He has further stated that only his signature was taken on the statement and he knows nothing about the contents of the statement.

10. After hearing, the arguments of the learned Advocates for both the parties and after making indepth scrutiny, thorough examination and critical analysis and appreciation of evidence on record, the learned Judge of the trial Court came to a conclusion that in the beginning of 1995 at any place, at any time, accused-appellant hatched conspiracy along with absconding accused Arjunsinh of Samer and Lala of Bombay for procuring Charas and selling of the same. He has further come to a conclusion that the accused-appellant received Charas from the absconding accused Arjunsinh and others near Hotel Janpath on Kalol Highway in the month of April, 1995 and said Charas was transported through his truck bearing Registration No. GJ-1T-4797 and was brought at Juhapura, Ahmedabad at his residence and received the commission. He has also come to a conclusion that on 18-7-1995, the accused was found in possession of 95 kgs. of Charas from the house bearing No. J-187 and J-188, Sanklitnagar, Juhapura, Ahmedabad. On the basis of such conclusions for which he has answered Point Nos. 1 to 3 which he framed, in the affirmative, he accepted the case of the prosecution and by rendering judgment Exh. 44 on 11th September, 1997,

convicted the accused-appellant u/s 235(2) of Cr.P.C. for offences punishable under Sections 120B of the Indian Penal Code, and u/s 20(b)(ii) of the N.D.P.S. Act read with Section 29 of the N.D.P.S. Act. After hearing the accused-appellant on the point of quantum of sentence, he inflicted the sentence as stated earlier only for offence punishable u/s 20(b)(ii) of the N.D.P.S. Act by observing that he did not find any necessity to impose separate sentence for offence punishable under Sections 120B of the I.P.Code and u/s 29 of the N.D.P.S. Act.

11. Being aggrieved against and dissatisfied with the said judgment of conviction and sentence, the accused-appellant has preferred this appeal.

12. We have heard Mr. E. E. Saiyed, learned Advocate for the appellant, Mr. B. D. Desai, learned A.P.P. for the respondent No. 1 - State of Gujarat and Mr. Asim Pandya, learned Advocate for the respondent No. 2 - the original complainant, in detail, at length. Mr. Asim Pandya has also submitted his written submissions for and on behalf of respondent No. 2 which we have taken on record.

13. Mr. B. D. Desai and Mr. E. E. Saiyed have taken us through the entire evidence on record. They have also taken us through the impugned judgment.

14. Mr. E. E. Saiyed has assailed the impugned judgment on following points :-

(1) According to the information which was reduced into writing by P.W.I- Omprakash, in the fields of one Durjansing resident of village Jhinjiniyali, Dist. Jesalmer, Rajasthan, and Arjunsinh of Jalor District, narcotic substance Charas weighing about 200 kgs. of Indian market value of Rs. 20 Lacs had been concealed and that contraband article was expected to be exported by truck to Ahmedabad. As per information, the informant had informed Mr. Omprakash that exact number of truck and date and time would be intimated. Mr. E. E. Saiyed has argued that if the contraband article was kept in the field of Durjansinh in Rajasthan, D.R.I. Officers of Delhi could have gone to Jaipur first and there is no logic for Mr. Omprakash to come to Ahmedabad. He has further argued that if contraband article was kept in Rajasthan, the informant would not have gone to Delhi to give that information. He has further argued that as per evidence of Mr. Omprakash, pursuant to the information which he received, he immediately informed his Senior Officer i.e. Assistant Director of D.R.I., New Delhi. Mr. Omprakash had discussion with that Senior Officer of D.R.I., New Delhi. He also informed of the Assistant Director of D.R.I. for information in writing. He, thereafter, discussed with him and as per the directions given to him, Mr. Omprakash came to Ahmedabad on 11-7-1995. He has further argued that after arriving at Ahmedabad, he did not inform the Officers of D.R.I. at Ahmedabad till last moment.

(2) At the time of raid of the house situated at Juhapura, Ahmedabad, the appellant-accused was not present throughout. Mr. E. E. Saiyed has argued that the information which Mr. Omprakash received at New Delhi was with regard to contraband article kept in Rajasthan. The prosecution has come with a case that while Mr. Omprakash was keeping a watch over the house at Mirzapur at

Ahmedabad on 17-7-1995, he came to know that contraband article had already been transported to the house situated in Juhapura, Ahmedabad. He has argued that the information what he received with regard to transportation of contraband article at the house situated at Juhapura area, Ahmedabad, was not reduced into writing, and therefore, provisions of Section 42 of the N.D.P.S. Act are not complied with and as mandatory provisions of Section 42 are not complied with, the entire raid and trial stand vitiated and on this only ground, the accused should be acquitted.

(3) The complaint Exh. 33 has. been lodged by P.W.3 Mr. Bakshi. He had no information as to What happened prior to 18-7-1995. As per his information, on 18-7-1995, his Senior Officer, Deputy Director, Mr. Singla called him and other officers. Mr. Singla informed them that Hashish (Charas) was concealed in the house No. J-187, Sanklitnagar, Juhapura and the house belonged to Usmanbhai Chandbhai. In view of evidence of Mr. Bakshi, he received information from Mr. Singla, but Mr. Singla is not examined in this case, and therefore, whatever information passed on by Mr. Singla to him is a hearsay evidence, and therefore, evidence of Mr. Bakshi should be discarded, He has further argued that Mr. Omprakash ought to have filed the complaint.

(4) On the point of the statement of the accused-appellant recorded u/s 67 of the N.D.P.S. Act, he has attacked on more than one points as follows :-

(a) This statement is a confessional statement recorded in the office of the Investigating Officer, and therefore, it was not a free environment for the appellant to give that statement.

(b) It was not recorded in presence of any independent witness.

(c) Before recording the statement, no reasonable breathing period was given to the appellant.

(d) Provisions of Sub-section (2) of Section 164, Cr.P.C. were not complied with before recording the said statement u/s 67 of the N.D.P.S. Act.

(e) Statement was recorded by interested officer, because he was interested in the result of the case.

(f) Before recording the statement, no warning was given to the accused.

(5) By making above submissions, Mr. Saiyed has argued that the statement of the appellant on which the prosecution mainly relies on is not a voluntary statement. It was recorded under threats, duress and compulsion, and therefore, it cannot be said that the said statement was a free statement, and therefore, that piece of evidence in form of the statement should be discarded.

(6) The prosecution has not led any evidence to show that the accused was residing in the house raided by D.R.I. officers. A defence of accused is that he is residing in the house situated at Mirzapur, Ahmedabad.

- (7) The prosecution has not proved the fact that Kulsumben is his wife.
- (8) The house raided by D.R.I. officers belongs to Kulsumben and there is no evidence on record to connect the accused with that house.
- (9) The prosecution has not examined Kulsumben and Akbarali @ Babubhai Usmanbhai, though their statements were recorded.
- (10) Panch has inimical relation with the appellant.
- (11) Looking to the information, Durjansinh and Arjunsinh are involved in the case but they are not arrested and no attempt has been made to trace out them, and therefore, the conduct of the officer of D.R.I. should be taken into consideration, while appreciating the evidence of statement Exh. 41.

15. In short, Mr. Saiyed has taken the following main points :-

- (1) The information with regard to transportation of goods to the house situated in Juhapura which was received by Mr. Omprakash was not reduced into writing and copy of it was not sent to his Superior Officer.
- (2) Kulsumben is an owner of the house and the appellant has no connection whatsoever either with Kulsumben or with the house raided.
- (3) The statement of accused recorded u/s 67 of the N.D.P.S. Act is not free and voluntary statement and it was recorded under duress, threats and coercion, and hence, the statement cannot be used as evidence.
- (4) Mr. Bakshi who conducted inquiry before lodging complaint, did not record statements of witnesses, and therefore, defence of the accused has been prejudiced as the accused could not know as to what would be deposed to by the witnesses in Court.

16. Mr. Asim Pandya, learned Advocate for the respondent No. 2-original complainant has argued that in this case, all necessary provisions of Sections 42, 57 and 67 of the N.D.P.S. Act are fully complied with. He has argued that there is an ample evidence to connect the accused with the crime. He has supported the impugned judgment throughout. He has further argued that the statement u/s 67 of the N.D.P.S. Act is sufficient for prosecution to prove the case against the accused. He has further argued that the appellant-accused did not retract his statement at the earliest point of time, when he was produced before the learned Metropolitan Magistrate. For the first time, when his further statement u/s 313, Cr.P.C. was recorded, he retracted that statement, and therefore, this retraction is an after-thought to get out from the clutches of the statement. His further statement was recorded on 8-5-1997, and therefore, for the first time, he retracted the statement after about one year and nine months. If really, his statement was recorded under threats, duress, pressure or coercion, he could have made a complaint with regard to it when he was produced before the learned Metropolitan Magistrate. He has further argued that Mr. Bakshi who recorded the statement, has proved the said statement Exh. 41 and before

recording the statement, he cautioned the accused that he (accused) had to tell the truth and the statement could be used against him, in any case which might be filed against him under the Act. He has argued that looking to the Goods Tax Book Exh. 36A and R.C.A. Book Exh. 36B which are for motor vehicle No. GJ-IT-4797, the appellant is residing in the house which was raided and with the help of these important two documents, the prosecution has ably proved that the appellant accused was the occupant of that house. The prosecution has further proved that he was found with possession of 95 kgs. of Charas.

17. Lastly, he has submitted that the learned Judge of the trial Court has rightly and correctly appreciated the evidence on record and has come to a right conclusion. The accused has been rightly convicted on an ample legal evidence, and therefore, this appeal lacks merits, and therefore, it be dismissed.

18. In support of arguments of Mr. Asim Pandya, he has relied on the following authorities :-

(1) Raj Kumar Karwal v. Union of India & Ors., reported in AIR 1991 SC 45.

(2) Poolpandi v. Superintendent, Central Excise & Ors., reported in AIR 1992 SC 1795.

(3) K. I, Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin, reported in 1997 SCC (Cri) 444.

(4) Bipinbhai A. Patel v. State of Gujarat, reported in 1998 (1) GLR 589.

(5) The Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro Industries Ltd. and Others, .

(6) Gulam Hussain Shaikh Chougule Vs. S. Reynolds, Suptd. of Customs, Mormogoa, .

(7) T. Thomson v. State of Kerala & Anr., reported in 2002 (9) SCC 618.

(8) Unreported Judgment of Division Bench of this Court rendered in Criminal Appeal No; 193 of 1997 on 26-2-2003 (Parties name: Husen Bhenu Malad v. State of Gujarat 2003 (2) GLH 705).

(9) Unreported Judgment delivered by Division Bench of this Court in Criminal Appeal No. 610 of 1998 and other cognate appeals rendered on 20-2-2003 (Parties name : Surendra Kathadbhai Jebalia v. State of Gujarat).

19. Shri B. D, Desai, the learned A.P.P. appearing for respondent No. 1-State has adopted the arguments of Shri Asim Pandya.

20. Learned Judge of the trial Court has discussed the evidence of witnesses in detail in his judgment. For the purpose of brevity, said evidence is not discussed by us, but we may state as to where that evidence has been discussed in his judgment :

P.W. No

Name

Paragraph No. in judgment.

P.W. 1

Omprakash

Paras 5 & 6

P.W. 2

Baljitsinh Bakshi

Paras 7, 8 & 9.

P.W. 3

Harikrishna Keshav Reddy

Paras 10 & 11.

P.W. 4

Rameshkumar

Para 12.

P.W. 5

Rahimbhai Usmanbhai(Panch Witness)

Para 13.

P.W. 6

Natwarbhai (Panch Witness)

Para 14.

21. We have dispassionately considered the submissions of the learned Advocates for both the parties. We have carefully examined the evidence on record. We have re-appreciated the evidence on record to come to our own conclusions. We have also perused the impugned judgment which is challenged in this appeal. We have also examined Record and Proceedings of the case which have been called for from the trial Court.

22. As per the case of the prosecution, P.W. 2-Omprakash is a Senior Intelligence Officer working in the Office of D.R.I, at New Delhi, While he was on duty in his office on 10-7-1995 at about 11-00 a.m. he received an information through the informant. From cross-examination of this witness, it has come on record that said information was to the effect that goods of contraband article was kept in the fields of Arjunsinh and Durjansinh and that goods were likely to be

transported to Ahmedabad. The information which Mr. Omprakash received was reduced into writing by him. That information in writing, is on record at Exh. 13. As per his evidence, he immediately gave information in writing relating to Exh. 13 to his immediate superior officer Mr. Amitabh, Assistant Director of Directorate of Revenue Intelligence. If we peruse Exh. 13, we find that there is an endorsement of Assistant Director, D.R.I. New Delhi, Unit. It is signed on 10th July, 1995. So, without any delay, copy of Exh. 13 was given to Mr. Omprakash to his immediate superior officer.

23. At this stage, it is required to know as to which type of officer, he was, when he received an information. For this purpose, the prosecution has produced two notification at Exh. 34. As per first part of Exh. 34, Officers of and above the rank of Inspector in Department of Revenue Intelligence have been empowered by the Central Government under Sections 42 and 67 of the N.D.P.S." Act. As per second part of Exh. 34, Officers of and above the rank of Inspector in the Department of Revenue Intelligence have been conferred with the powers specified in Sub-section (1) of Section 53 of the N.D.P.S. Act, and therefore, being a Senior Intelligence Officer, he was an officer u/s 42(!) of the N.D.P.S. Act. As discussed earlier, Mr. Omprakash had complied with the provision of Section 42(1) of the N.D.P.S. Act by reducing that information into writing vide Exh. 13. He had also complied with the requirements of Section 42(2) of the N.D.P.S. Act by sending the copy of Exh. 13 to his immediate Official Superior i.e. Assistant Director of D.R.I. Mr. Amitabh.

24. On the basis of information Exh. 13, Mr. Omprakash was directed to go to Ahmedabad and accordingly, Mr. Omprakash reached Ahmedabad in the evening of 11-7-1995. As per his evidence, he kept a watch and surveillance on the house situated at Mirzapur by taking help of officers who had accompanied him from New Delhi. This was the house wherefrom delivery of contraband articles was likely to be effected. While that watch was continued to be kept at the house situated at Mirzapur, he came to know that delivery of goods of contraband articles had already been effected in one house at Juhapura on 17-7-1995, and therefore, he informed the Deputy Director, Mr. R. K. Singla of D.R.I. Office at Ahmedabad. As per his evidence, he went at the residence of Mr. Singla on 17-7-1995 and informed him that goods of contraband articles have been unloaded in the house of Usmanbhai in Juhapura area. Thereupon, Mr. Singla asked Mr. Omprakash to contact him in his office at 8-00 a.m. on 18-7-1995. Accordingly at 8-00 a.m. on 18-7-1995, Mr. Omprakash with the members of his team reached to the office of Mr. Singla. Mr. Singla called Assistant Director, Mr. Rao of D.R.I. office at Ahmedabad and informed Mr. Rao that these people (Mr. Omprakash and his team) had brought information that Charas was lying in the house of Usmanbhai in Juhapura area. Mr. Singla also informed Mr. Rao that these people had seen the house of Usmanbhai and in continuation of that Meeting of Mr. Omprakash with Mr. Singla, members of the office of D.R.I. at Ahmedabad and members of D.R.I. of New Delhi went to the house No. J-187, Sanklitnagar, Juhapura, Ahmedabad. As per evidence of this witness, that house

was raided and searched by the officers of D.R.I. at Ahmedabad as well as D.R.I. officers of New Delhi and other staff members of the office of D.R.I. Ahmedabad under leadership of P.W.4 Mr. B. S. Bakshi, Senior Intelligence officer of D.R.I. Ahmedabad. That raid and search were carried out in the presence of two panch witnesses, one of them was Mr. Rahimbhai Usmanbhai Mansoori who is examined as P.W.5 at Exh. 37 and Kulsumben second wife of accused and Akbarali @ Babubhai-son of present appellant. As per the evidence of Mr. Bakshi, while carrying out the raid and search, three gunny bags were found from the bed-room of the house and from those three gunny bags, Charas total weighing 95 kgs. was recovered. As per his evidence, homogeneous samples were taken from all the rectangular 42 slabs found from three gunny bags and that muddamal sample articles were properly packed and duly sealed in the presence of panch witnesses under a panchnama. That panchnama at Exh. 38 is proved by the panch witness P.W.5 Rahimbhai Usmanbhai Mansoori.

25. During the course of arguments, Mr. E. E. Saiyed has not argued anything about the search and raid carried out in the house No. J-187 of Sanklitnagar, Juhapura, Ahmedabad. It is his main argument that the appellant is not connected any way with the house raided. When the house was raided and searched, about 91 documents were recovered from the safe from the bed-room of that very house. That documents are produced with list Exh. 10. That documents are given Exhibit Numbers with the aid of Section 66 of the N.D.P.S. Act. That documents are on record at Exhs.18 to 26. Certain documents collectively are given one exhibit e.g. Exh. 24, Exh. 25 and Exh. 26. Mr. E. E. Saiyed has vehemently argued that Kulsumben is an owner of the house. Electricity Bill Exh. 21 is in the name of Kulsumben. Most of the documents are in name of Kulsumben. Mr. E. E. Saiyed has argued that the prosecution has not proved the fact that this Kulsumben is the wife of accused and that accused was residing with Kulsumben in that very house, and therefore, nexus between this house and the accused is not proved, and therefore, in no case, the accused can be held guilty for an offence of keeping 95 kgs. of Charas in said house. One of the documents found from the house of Kulsumben is at Exh. 22. It is a letter dated 5-5-1995 addressed by Officer of United India Insurance Co. Ltd. to M/s. Paramount Transport, Usmanbhai Mansoori. It is with regard to vehicle No. GJ-1T-4797. In this letter Exh. 22 address of Usmanbhai Mansoori is shown as Sanklitnagar, Sarkhej Road, Ahmedabad. And therefore, nexus between the house raided and accused is duly proved. In view of this, the contention of Shri Saiyed is rejected.

26. During the course of recording the evidence, prosecution examined P.W.4-Rameshkumar Jagjivandas Thakkar Exh. 35. About three months after the house was raided, P.W.4 Rameshkumar Jagjivandas Thakkar who is an Intelligence Officer of D.R.I., Ahmedabad attached the motor vehicle bearing No. GJ-1T-4797 of ownership of Usmanbhai from the place just opposite to the house of accused situated in Mirzapur area of Ahmedabad under the panchnama Exh. 36. The prosecution examined one of the panch witnesses Natvarbhai Dajibhai at Exh.

40. As per an evidence of P.W.6 Natvarbhai, two books issued by R.T.O. Authority were found and attached from the dicky of the very vehicle. That two books are on record at Exhs. 36-A and 36-B. Exh. 36-A is a Goods Tax Book, while Exh. 36-B is R.C.A. Book for said vehicle. These two books are in the name of Usmanbhai, i.e. M/s. Paramount Transport, Proprietor, Usmanbhai C. Mansuri and his address is shown as Sanklitnagar, Sarkhej Road, Ahmedabad. In Exh. 36-B even the house No. J-188 of Sanklitnagar is shown. On taking into consideration these two books Exh. 36-A, 36-B and letter Exh. 22 which were found from the house of Kulsumben, it is proved to the satisfaction of the Court that present accused-Usmanbhai Mansuri is a proprietor of M/s. Paramount Transport and he is residing in Sanklitnagar, Sarkhej Road, Ahmedabad. This evidence is sufficient to prove that the accused was residing with Kulsumben in the house raided by D.R.I. Officers. If we read written reply of the accused which he filed in his further statement, he has not specifically denied that Kulsumben is his wife. It is not his say that Akbarali @ Babubhai is not his son. He has kept mum for the documents Exh. 22, Exh. 36-A and Exh. 36-B. He was required to explain as to how letter Exh. 22 addressed to him was found from the safe kept in the house raided. He has not explained as to how his name appears in R.T.O. books Exhs. 36-A and 36-B with address of Sanklitnagar, Juhapura, Ahmedabad. Thus, the prosecution has ably proved that Kulsumben is his wife and Akbarali alias Babubhai is his son and these two persons were admittedly present throughout the raid carried out by D.R.I. Officers on 18-7-1995.

27. To substantiate aforesaid evidence, the prosecution also relies on the statement of accused Exh. 41 recorded u/s 67 of the N.D.P.S. Act. At this juncture, it is required to know as to what is text of Section 67 of the N.D.P.S. Act. For this purpose, we may reproduce the text of Section 67 of the N.D.P.S. Act. It reads as follows :-

"Section 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, during the course of any enquiry in connection with the contravention of any provision of this Act -

(a) call for information from any person for the purpose of satisfying himself whether there has been any 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) examine any person acquainted with the facts and circumstances of the case."

28. As per Section 67 of the N.D.P.S. Act, any officer referred to in Section 42 who is authorised in this behalf (power to call for information etc.) by the Central Government or State Government, during the course of enquiry in connection with the contravention of any of the provisions of" the Act, can call for information from any person, or require any person to produce or deliver any

document or examine any person acquainted with the facts and circumstances of the case. It is not the case of the accused that statement Exh. 41 is not his statement. In view of Section 53A read with Section 67 of the N.D.P.S. Act, statement recorded u/s 67 is admissible in evidence. Our view is fortified by decision of this Court in case of Gomaram Somaram Jat v. U. H. Patel & Anr., reported in 2000 (1) GLR 99.

29. Section 67 of the N.D.P.S. Act is analogous to Section 107 of the Customs Act, 1962 and Section 39 of the Foreign Exchange Regulation Act, 1973. Section 107 of the Customs Act, 1962 reads as follows:-

"Section 107 Power to examine persons :- Any officer of customs empowered in this behalf by general or special order of the Collector of Customs may, during the course of any enquiry in connection with the smuggling of any goods,-

(a) require any person to produce or deliver any document or thing relevant to the enquiry;

(b) examine any person acquainted with the facts and circumstances of the case."

Section 39 of the Foreign Exchange Regulation Act, 1973 reads as follows :-

"Section 39 Power to examine persons :- The Director of Enforcement or any other officer of Enforcement authorised in this behalf by the Central Government by general or special order may, during the course of any investigation or proceeding under this Act, -

(a) require any person to produce or deliver any document relevant to the investigation or proceedings;

(b) examine any person acquainted with the facts and circumstances of the case."

30. Looking to Section 67 of the N.D.P.S. Act, officer must be authorised u/s 67 of the N.D.P.S. Act. As discussed earlier, first part of Exh. 34, officers of and the above rank of Inspector in the Department of Revenue Intelligence are empowered to exercise the powers to perform duties specified in Section 42 and also u/s 67 of the N.D.P.S. Act. During the enquiry, and before lodging of the complaint and before arresting the appellant-accused, Mr. B. S. Bakshi recorded such statement of accused u/s 67 of the N.D.P.S. Act which is on record at Exh. 41. As per the evidence of Mr. B. S. Bakshi, he started to record statement of accused Exh. 41 after 11-00 a.m. and it lasted for about five to six hours for recording the statement on 20-7-1995. Meaning thereby, the statement was recorded and completed at about 5-00 p.m. Thereafter, Mr. Bakshi gave an authority letter Exh. 31 to Mr. Chetan S. Patel, Intelligence Officer of D.R.I. to arrest this present accused. On making arrest of the accused, Mr. Chetan S. Patel produced the accused before the learned Metropolitan Magistrate, Court No. 10, Ahmedabad along with his detailed report. That report is at Page No. 7 and it ends at Page 11 in File No. 3 of R & P of the case. As per this report, present accused was arrested at 18-30 hours on 20-7-1995. Thus, the statement Exh. 41

was recorded before the arrest of the accused.

31. To prove this statement Exh. 41, the prosecution has examined Mr. Bakshi at Exh. 17. He has deposed that on 20-7-1995 Usmanbhai came to his office and he recorded his statement u/s 67 of the N.D.P.S. Act. He has further deposed that prior to the recording of the statement, he cautioned him that he had to tell the truth and that statement could be utilised against him (accused) in any case that might be filed against him under the Act. He has further deposed that he was putting the questions to him and he (accused) was writing the answers in his own hand-writing. That is how he recorded his statement. He has further deposed that after recording his statement, he took the signature at the end and he also put his signature and on each page of the statement, he had taken his (accused's) signature and had also signed personally.

32. On the point with regard to statement Exh. 67 of the N.D.P.S. Act, the learned Advocate of the accused who appeared in the trial Court had cross-examined Mr. Bakshi in detail at length. In cross-examination at page 137, Mr. Bakshi has deposed as follows :-

Question: "Is it true that Usmanbhai was not issued any summons for recording statement on 20-7-1995?

Answer : It is true that no summons was issued to Usmanbhai to appear in my office for recording summons (it ought to be statement) on 20-7-1995, but he was issued summons to appear for recording summons (it ought to be statement) on 19-7-1995 but he had come on 20-7-1995.

He has further deposed that Usmanbhai voluntarily appeared and introduced himself to him on that day. He has further deposed (Page 141) that the statement of Usmanbhai was recorded in his Chamber and not in the Office. Recording of statement of Usmanbhai was lasted for five to six hours. He has deposed that he knew that after he (accused) admitted the offence, his statement would be a confessional statement. He has further deposed that when he told him to give true and correct statement he gave him time to think over. It was suggested by the defence lawyer and Mr. Bakshi has deposed that it was not true that whatever caution that he gave to him was in a way of threats to him. He has also deposed that it is true that he recorded the statement of Usmanbhai u/s 67 of the N.D.P.S. Act and that no other person was present in his Chamber at the time when the statement of Usmanbhai was being recorded. He has also deposed that while recording the statement, he was putting the questions and he was replying the same, He has also deposed that during that time, he informed him that 95 kgs. of Charas was found from his (accused) place and he did not challenge that fact and it was true that prior to the recording of statement, he was given the panchnama and he read it.

33. To challenge the statement Exh. 41, the defence lawyer put his suggestions which Mr. Bakshi denied. Mr. Bakshi has deposed that it was not true that a statement in writing was given to the accused to rewrite the same in his own

hand-writing and that it was not true that accused was threatened that if he did not give his confessional statement, his wife and son would be prosecuted. In cross-examination, a question was put by the defence lawyer to Mr. Bakshi and Mr. Bakshi has deposed that it was true that after the statement of the accused (was) completed, the statement of Babubhai was recorded as witness. Thus, looking to the evidence of Mr. Bakshi and suggestions put by the defence lawyer, one thing is certain that the accused admitted that his statement was recorded by Mr. Bakshi on 20-7-1995 and that statement is at Exh. 41. The only defence taken by the accused is to the effect that Mr. Bakshi had prepared a statement in advance and that statement was given to the accused to re-write the same in his own hand-writing. As per the case put by the defence lawyer, a threat was given to him that if the accused did not give confessional statement, his wife and son would be prosecuted. Another defence put by the defence lawyer is to the effect that whatever caution Mr. Bakshi had given to the accused, was in a way of threat to the accused.

34. We will discuss the evidence to come to a conclusion whether the statement Exh. 41 was a free and voluntary statement given by the accused or not. But before this, it would be appropriate to discuss the legal position with regard to such statement recorded u/s 67 of the N.D.P.S. Act. Mr. Asim Pandya has cited an authority in the case of T. Thomson Vs. State of Kerala and Another, on the point of such statement recorded u/s 67 of the N.D.P.S. Act. In Paras 3, 4 and 5, the Hon'ble Supreme Court has observed with regard to statement u/s 67 of the N.D.P.S. Act :

"3. The evidence mainly rests on the statements recorded from the three appellants separately u/s 67 of the Act. Exh. P-2 is a statement attributed to the first accused, Exh. P-3 is attributed to the second accused while Exh. P-4 is said to have been given by the third accused.

4. Though, arguments have been addressed by Shri U. R. Latit, learned Senior Counsel who is appearing for the second accused regarding the voluntary nature of the statement, we are not persuaded to find anything which would affect the voluntariness of those statements. Learned Counsel argued that it was the duty of the prosecution to give evidence in support of the voluntary nature of the statement. The Court, before which the statement was tendered has considered the evidence after cross-examination of the witnesses responsible for the same and reached the conclusion that the statements were made voluntarily. We are not told of any special reason to take a different view.

5. Learned Senior Counsel further argued that the record alleged to have been prepared by P.W. 1 on getting information regarding the movement of the appellants had not been produced in Court. But he conceded that no motion was made on behalf of the appellants to call for the said record. There is no statutory requirement that such a record should be produced in the Court as a matter of course. We are, therefore, not disposed to upset the finding on that score either."

35. The Division Bench of this Court examined the provisions of Section 67 of the N.D.P.S. Act in case of Bipinbhai A. Patel Vs. State of Gujarat, , wherein it has been observed by the Division Bench of this Court in Para 9 as follows :

"9. It is not every threat, inducement or promise even emanating from the person in authority that is hit by Section 24 of the Evidence Act. In order to attract the bar, it has to be such an inducement, threat or promise, which should lead the accused to suppose that "by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceedings against him". In the case before us, what is it that the appellant has been told? He has been told that the law requires him to tell the truth and if he does not tell the truth, he may be prosecuted u/s 193. I.P.C. for giving false evidence."

36. There is no doubt and it is true that in the present case, a reference of provisions of Section 67 of the N.D.P.S. Act has been made in the summons Exh. 27 given to the accused. The concerned customs authorities have also made enquiry by virtue of the provisions contained in Section 108 of the Customs Act and a reference has also been made to provisions of Section 67 of the N.D.P.S. Act. In the present case, the accused has challenged not only the second statement which has been called in question by the learned Counsel for him before us but he challenged before the learned Additional Sessions Judge even the first statement which is rightly submitted by Mr. Barot to be exculpatory statement.

37. In the case of Bipinbhai A. Patel, the Division Bench of this Court has referred to one case of K. I. Pavunny v. Central Excise Collectorate, Cochin, reported in 1997 SCC (Cri.) 444 and relevant Para from that authority has been extracted in Para 9. From that authority of K. I. Pavunny, a relevant Para 23 has been reproduced on as follows :-

"It is not every threat, inducement or promise even emanating from the person in authority that is hit by Section 24 of the Evidence Act. In order to attract the bar, it has to be such an inducement, threat or promise, which should lead the accused to suppose that "by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceedings against him". In the case before us, what is it that the appellant has been told ? He has been told that the law requires him to tell the truth and if he does not tell the truth, he may be prosecuted u/s 193 I.P.C. for giving false evidence."

"The plea of the appellant therein was that he was compelled to make the statement under threat that otherwise his mother and another brother would be prosecuted. He had further stated that he was induced to make statement on the belief that it will be used only against the second accused and not against him. These pleas of the appellant therein had been disbelieved by both the trial Court and the High Court. Therefore, it was held that even assuming that there was an inducement or threat, the appellant therein had no basis for supposing that by making the statement, he would gain any advantage or avoid any evil to the

proceedings in respect of which an inquiry was being conducted by the Customs Officers. Therefore, even on this ground also Section 24 of the Evidence Act had no application. The above ratio squarely applies to the facts of this case. The appellant was under a legal duty to state the facts truthfully, lest he would be liable to prosecution. The threat emanates from and is that of the statute and the officers merely enforced the law. The allegations as to the threat of implication of his wife was an after-thought and he did not mention the same when he appeared before the Magistrate and obtained bail."

38. In view of aforesaid legal position, while examining such statement u/s 67 of the N.D.P.S. Act, on the basis of evidence on record, the Court has to form a view whether such statement appears to have been caused by any inducement, threat or promise having reference to the charge against the accused persons. At this stage, it is required to be made clear that the statement Exh. 41 is not a confessional statement. It is merely a statement given by accused and that statement was recorded by an officer authorised in this behalf. The officer who recorded the statement can call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of the N.D.P.S. Act. The powers are also given to such officers to examine any person acquainted with the facts and circumstances of the case, and therefore. Mr. Bakshi, while recording the statement of accused at Exh. 41, exercised his powers vested in him by the provisions of Section 67 of the N.D.P.S. Act. He recorded the statement in exercise of his official duty and the presumption would be in favour of the prosecution, u/s 114, Illustration of the Evidence Act that the judicial and official acts have been regularly performed, and therefore, the Court should not start to appreciate the evidence with presumption that what the officer did, has been done by him giving threats or inducement to the person concerned. As discussed earlier, a burden is cast on the accused to prove that the statement was obtained by giving threats, duress or promise as was held in case of Bhagwan Singh Vs. The State of Punjab, . Keeping in mind the aforesaid legal position with regard to statement u/s 67 of the N.D.P.S. Act, we have carefully examined the evidence of Mr. Bakshi and statement Exh. 41 in question. From evidence, we can summarize the following hard facts relating to Exh. 41 :-

(i) When plea of the accused was recorded Exh. 7, the accused stated that he is carrying on business, and therefore, he is a businessman. He is not an illiterate person putting thumb-impression on the statement.

(ii) From evidence, it is proved that the accused is carrying on business of transport in name and style of M/s. Paramount Transport. He has not denied the fact that he is an owner of the vehicle No. GJ-IT-4797.

(iii) Admittedly, when raid was carried out in the house situated in Sanklitnagar, Juhapura, Ahmedabad, he was absent throughout. Mr. Bakshi issued a summons Exh. 27 to appear before him on 19-7-1995. It was issued on 18-7-1995 and by that summons, the accused was directed to appear before Mr. Bakshi at 11-00 a.m. on 19-7-1995. On 19-7-1995, he did not appear before Mr. Bakshi. As per

his own further statement, in answer at Serial No. 3 on Page 203 he has stated that he appeared before the officer on his own. Instead of date 20-7-1995, he has stated that he appeared before the officer on 19-7-1995. Summons Exh. 27 was served on Kulsumben and in the endorsement of service of summons, Kulsumben has stated that she would inform Usmanbhai for the summons. When the summons was not served on the accused, it was not necessary for him to appear before Mr. Bakshi, but in this case, he himself appeared before Mr. Bakshi, on his own.

(iv) Major part of the statement Exh. 41 is in the form of questions and answers. Entire statement Exh. 41 is admittedly written by accused in his own handwriting.

(v) If we read Para 2 of the statement at Exh. 41, we find that the accused has given details about his family members giving age and relation with him minutely. Such details cannot be within the knowledge of D.R.I. Officer on 20-7-1995. In Para 3 of the statement, the accused has explained as to how he acquired the property situated in Mirzapur, Ahmedabad and as to how he became an owner of vehicle No. GJ-1T-4797. He has stated that he is carrying on business of transport in the name of M/s. Paramount Transport. He has also stated that he has got two other vehicles and explained as to how he became the owner of these two vehicles. He has also stated the Account Number of Current Account which he is operating with Bombay Mercantile Bank at Khanpur. All these particulars are such that it can only be within the knowledge of the accused. He has given a statement which is vividly descriptive. In the beginning of said statement Exh. 41, he has stated that he was given information with regard to Section 67 of the N.D.P.S. Act. He has further stated that he was given an understanding that he was required to give true and correct statement and if he would fail to do so, proceedings could be initiated against him under the relevant provisions of the Indian Penal Code.

(vi) At the end of his statement, he has stated that whatever replies he had given in his statement are admitted by him and that he has voluntarily and willingly written the statement. He has also stated that while giving that statement, Officer did not give him any threat, pressure or inducement. He has also stated that he read the statement, and thereafter, he signed the statement.

(vii) With regard to Charas of 95 kgs. found from the house situated at Sankalitnagar, he has explained as to how the goods were transported to that house and he received commission previously for transporting such contraband article. To some extent, it is inculpatory statement.

On examining the statement Exh. 41, we are fully satisfied that it is a free and voluntary statement. No doubt, certain allegations are made that before recording the statement Exh. 41, officer concerned gave him threats and inducement, but these are merely in form of suggestions. Suggestion cannot take place of proof. Burden was on the accused to satisfy the Court that the

statement was recorded under threats and coercion or by giving inducement. Here in this case, the accused has merely stated in his further statement that the statement was got recorded by exercising mental and physical torture on him. We have already discussed the evidence of Mr. Bakshi on the point with regard to the statement Exh. 41. Certain suggestions were made in cross-examination of Mr. Bakshi which are specifically denied by him, and therefore, these are only vague suggestions. In view of the fact that the accused was served with summons to appear before Mr. Bakshi on 19-7-1995. He did not appear before Mr. Bakshi on 19-7-1995. As per his evidence, on his own he went to the office of Mr. Bakshi and after carrying out certain formalities, Mr. Bakshi recorded the statement of the accused for which he had an authority u/s 67 of the N.D.P.S. Act. At the cost of repetition, it is again stated that entire statement Exh. 41 is admittedly written in own hand-writing of the accused, and therefore, the contention taken by Mr. E. E. Saiyed that the statement Exh. 41 is not free and voluntary statement, cannot be accepted.

39. A question may arise as to whether the sole statement recorded u/s 67 of the N.D.P.S. Act can be made basis for conviction of the accused ? Mr. Asim Pandya, learned Advocate for the respondent No. 2 has heavily placed reliance on an unreported judgment of this Court rendered in Criminal Appeal No. 198 of 1997 decided on 26-2-2003. In para 25.7, this Court has referred to the case of Bipinbhai A. Patel (supra) wherein the Division Bench of this Court upheld the order of conviction passed on confessional statement made before the Customs authorities. It was also held that since maker of the statement was not "person accused of offence" Article 20(3) of the Constitution of India would not be attracted. In that case pursuant to summons issued u/s 108 of the Customs Act and Section 67 of the N.D.P.S. Act inculpatory statement was made by the accused before the Customs authorities who made formal arrest of the accused thereafter. The ratio laid down by the Division Bench of this Court in the above referred to decision is squarely applicable to the facts of the present case.

40. In aforesaid case of Bipinbhai A. Patel (supra), one another case of Sumarkhan Sidiqkhan Sindhi v. Collector of Customs (Preventive), 1999 (1) GLR 863 is referred to, wherein the Division Bench of this Court held that confessional statement made before Superintendent, Central Excise is admissible in evidence as officers appointed under the provisions of Section 53 of the N.D.P.S. Act are not police officers within the meaning of Section 25 of the Evidence Act. The ratio laid down in the above referred to decision is squarely applicable to the facts of the present case, as in this case also, when Mr. Bakshi recorded the statement of accused, the accused was not arrested for offence under the N.D.P.S. Act.

41. After examining various decisions cited by the learned Advocates for both the parties, the Division Bench of this Court has in the judgment rendered in case of Husen Bhenu Malad v. State of Gujarat in Criminal Appeal No. 193 of 1997 decided on 26th February, 2003, laid down a law in Para 25.12 as follows :

"Para 25.12 : It cannot be laid down as an absolute rule of law that the

statement of an accused recorded u/s 108 of the Customs Act and Section 67 of the N.D.P.S. Act cannot form the sole basis of conviction, unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. To put it differently, there is neither rule of law nor of prudence that the statement cannot be acted upon without corroboration. If the Court is satisfied that the statement is true and voluntary in nature, it can base conviction on it without corroboration. The Court has to scrutinise the statement carefully and must ensure that the Statement is not the result of coercion, duress or undue influence."

42. In view of aforesaid legal position, this Court finds that the statement Exh. 41 is free and voluntary and it is not recorded as a result of threats, coercion, duress, undue influence, pressure, (the ingredients which are referred to in Section 24 of the Evidence Act.). On examining statement Exh. 41 as a whole and the circumstances in which that statement was recorded, we are of the considered view that said statement Exh. 41 is an important piece of evidence which can be relied on as a basis for conviction of the appellant. For the sake of arguments, if it is held that in such type of cases, corroboration is necessary, then here in this case, corroboration of independent evidence is found in the evidence on the record. As discussed earlier, Mr. Saiyed has not argued much on the point of raid and search carried out in the house situated in Sankalitnagar, Juhapura, Ahmedabad on 18-7-1995. It is not seriously disputed that from that house, 95 kgs. of Charas was found by the Officers of D.R.I. in presence of panch witnesses. The only point which is agitated by Mr. Saiyed is that the accused has no connection whatsoever with that house. He has also argued that said house is in the name of Kulsumben and the prosecution has not proved the relation between Kulsumben and the accused. As discussed earlier, when the said house was searched, certain documents were found from the safe from bed-room of that house and that documents have been exhibited in the case. One of the documents is a letter Exh. 22. It was written by United Indian Insurance Co. Ltd. addressed to M/s. Paramount Transport, Usmanali Mansuri, Sankalitnagar, Sarkhej Road, Ahmedabad. The accused has not offered any explanation either in his further statement or in written reply as to how this letter Exh. 22 addressed to him was found from the house raided. It is not the case of the accused that said letter was planted by D.R.I. officers in the said house. It is also not the case of the accused that said letter Exh. 22 which appears to have been addressed to him at the address of Sankalitnagar, Ahmedabad is a forged document or a bogus document and it was never addressed to him. Therefore, this letter Exh. 22 gives corroboration to the statement Exh. 41.

43. Another piece of evidence is of two books issued by R.T.O. Authority. As discussed earlier, after the raid was carried out, about three months thereafter, vehicle No. GJ-1T-4797 was attached and seized by D.R.I. officer in the presence of panch witnesses at the address of another house of accused situated in Mirzapur, area of Ahmedabad. When this vehicle was attached, as per the evidence of P.W. 6-Natvarlal Dajibhai, from decky of the vehicle near driver"s

seat, two R.T.O. books were found. That vehicle as well as two books were attached and seized under panchnama Exh. 36. That two books are given separate exhibit numbers. Exh. 36-A is a Goods Tax Book issued by R.T.O. while Exh. 36-B is a book of form of certificate of registration. In column No. 2 of Exh. 36-A, name of operator of vehicle No. GJ-1T-4797 is shown as M/s. Paramount Transport, Proprietor U. C. Mansoori, Sanklitnagar, Sarkhej Road, Ahmedabad. In Exh. 36-B, name of registered owner of vehicle No. GJ-1T-4797 is shown as M/s. Paramount Transport, Proprietor U. C. Mansuri, House No. J-188, Sankalitnagar, Sarkhej Road," Ahmedabad. It was issued in the month of April, 1990. From statement Exh. 41, we find that the accused appears to have been carrying on business of transport in the name and style of M/s. Paramount Transport and he is an owner of vehicle No. GJ-1T-4797. Those two documents lend corroboration to the statement Exh. 41. If we read Exh. 41 together with Exh. 22, Exh. 36-A and Exh. 36-B, it is proved that the accused was residing in his house which was raided on 18-7-1995. He was an occupant of that house. Along with him, his wife Kulsumben and other children by his second wife Kulsumben were residing in said house. Thus, the prosecution has ably proved that the accused was found with exclusive, conscious possession of 95 kgs. of Charas.

44. Mr. E. E. Saiyed has attacked the statement Exh. 41 on the ground that Mr. Bakshi ought not to have recorded the statement Exh. 41 in his own office, because atmosphere was so charged with fear and anxiety that the statement of accused cannot be said to be free and voluntary. As per his arguments, said statement ought to have been recorded at independent place. This contention is countered by Mr. Asim Pandya by arguing that on going through Section 67 of the N.D.P.S. Act, law does not require that statement of a person u/s 67 of the N.D.P.S. Act should be recorded at some another place other than a Office of the officer empowered to record such statement. He has further argued that when law confers the powers on the officer to call a person, document etc., it is obvious that the person from whom such information or the document are called for, should attend the office of that officer. The officer is not required to go and collect the information at the place as desired by that person. On this point, he has placed reliance on the case of Poolpandi Vs. Superintendent, Central Excise and others etc. etc., , wherein it has been held in Para 11 as follows :-

"It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice."

"The purpose of inquiry under the Customs Act and other similar statutes will be completely frustrated, if the whims of the persons in possession of useful information for the departments are allowed to prevail, For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons

should be disassociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-co-operative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company."

In that case, it was further held that --

"Recording of a statement of a person in the office of the Customs Department does not violate any constitutional provision."

45. Mr. E. E. Saiyed has argued that the statement Exh. 41 is statement simpliciter as suggested by the respondent No. 2. As per his argument, this statement is a confessional statement recorded by Mr. Bakshi. He has further argued that provisions with regard to such confessional statement contained in Section 164 of the Cr.P.Code are applicable to it. By placing reliance on Sub-section (2) of Section 164 of the Criminal Procedure Code, Mr. Saiyed has argued that it was duty of Mr. Bakshi before recording statement Exh. 41 to explain to the accused making it that he was not bound to confess and if did so, it be used in evidence against him. Second requirement of Sub-section (2) of Section 164, Cr.P.C. is to the effect that the officer would not record any such confession unless upon questioning a person making out has reason to believe that it is being made voluntary. Mr. Saiyed has argued that this requirement has not been satisfied in the case of accused on whose statement Exh. 41, heavy reliance has been placed by the prosecution.

46. Mr. Asim Pandya has countered this contention by citing a case of The Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro Industries Ltd. and Others, , wherein statement recorded u/s 171A of the Sea Customs Act was examined by the Supreme Court. The Supreme Court has referred to a case of Haroon Haji Abdulla Vs. State of Maharashtra, , and from that judgment, Para 6 has been referred to in Para 13 of the cited case.

"Para 13 : These statements are not confessions recorded by a Magistrate u/s 164 of the Code of Criminal Procedure, but are statements made in answer to a notice u/s 171-A of the Sea Customs Act. As they are not made subject to the safeguards under which confessions are recorded by Magistrate, they must be separately scrutinised to finding out if they were made under threat, or promise from some one in authority. If after such scrutiny, they are considered to be voluntary they may be received against the maker and in the same way as confessions are received, also against co-accused jointly tried with him."

It has been further held in Para 17 in the said case as follows :

"Para 17 : We hold that a statement recorded by Customs Officers u/s 108 of the Customs Act is admissible in evidence. The Court has to test whether the inculpatory portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged in Section 24 of the Evidence Act".

47. Now, it is settled position, that safeguards in respect of recording

confessional statement as contained in Section 164 of the Cr.P.C. are not required to be followed by the empowered officer, while recording statement u/s 67 of the N.D.P.S. Act. Only requirement is to ascertain whether such statement is voluntary or not.

48. In view of above legal position, it was not necessary for Mr. Bakshi to comply with the requirement of Sub-section (2) of Section 164 of Cr.P.C. because such provisions are not there in Section 67 of the N.D.P.S. Act, and therefore, this contention is devoid of merits and the same is rejected.

49. Mr. E. E. Saiyed has further argued that though Mr. Bakshi was conferred with the powers u/s 53 of the N.D.P.S. Act with regard to powers of officer in charge of a police for the investigation of the offences under this Act, he did not record statements of other witnesses. He has argued that Mr. Bakshi ought to have recorded statement of witnesses during his inquiry. Had he recorded such statements, accused could have well-prepared his defence on the basis of statement. He has further argued that here in this case, no such statements of witnesses were recorded by Mr. Bakshi, and therefore, the accused was not knowing the facts as to what evidence would be given by a particular witness when he would enter into witness-box, and thus, the defence of accused is seriously prejudiced, and therefore, benefit of doubt should be extended to the appellant and he be acquitted of the offences.

50. Mr. Asim Pandya has argued that though Mr. Bakshi was invested with the powers u/s 53 of the N.D.P.S. Act, he had no power to submit report u/s 173 of the Cr.P.C. because he was not a Police Officer within the purview of Section 27 of the Evidence Act. For this, he has placed reliance on the decision in the case Raj Kumar Karwal Vs. Union of India and others, , wherein it is held that we must, therefore, negative the contention that an officer appointed u/s 53 of the Act, other than a Police Officer is entitled to exercise "all the powers under Chapter XII of the Code including the powers to submit a report or a charge-sheet u/s 173 of the Cr.P.C. It would be appropriate to refer to Para 21 of the said authority to understand the powers of the officers invested u/s 53 of the Act.

"Para 21 : For the offences under the Act, the investigation is entrusted to officers in whom powers of an officer-in-charge of a police station are vested by a notification issued u/s 53 of the Act by the concerned Government. Thus, a special investigating agency is created to investigate the commission of offences under the Act. There is no doubt that the Act creates new offences, empowers officers of certain departments to effect arrest, search and seizure, outlines the procedure thereof, provides for a special machinery to investigate these offences and provides for the constitution of Special Courts for the trial of offences under the Act, notwithstanding anything contained in the Code. But, argued learned Counsel for the appellants, the officers empowered to investigate u/s 53 of the Act must of necessity follow the procedure for investigation under Chapter XII of the Code, since the Act does not lay down its own procedure for investigation. By virtue of Section 51 of the Act, the provisions of the Code would apply since

there is no provision in the Act which runs counter to the provisions of the Code. It was said that since the term "investigation" is not defined by the Act, the definition thereof found in Section 2(h) of the Code must be invoked in view of Section 2(xxix) of the Act which in terms states that words and expressions used in the Act but not defined will carry the meaning assigned to them, if defined in the Code. Section 2(h) of the Code, which defines "investigation" by an inclusive definition means all proceedings under the Code for collection of evidence conducted by a police officer or by any person authorised by a Magistrate in this behalf. Under-Section 4(2) of the Code, all offences under any other law have to be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code. However, according to Section 5, nothing contained in the Code shall, unless otherwise provided, affect any special or local law or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time-being in force. The power to investigate is to be found in Chapter XII of the Code which begins with Section 154 and ends with Section 176. The scheme of this Chapter is that the law can be set in motion in regard to a cognizable offence on receipt of information, written or oral, by the officer-in-charge of a police station. Once, such information is received and registered, Section 156 empowers any officer-in-charge of the police station to investigate the same without any Magisterial order. The investigation which so commences must be concluded, without unnecessary delay, by the submission of a report u/s 173 of the Code to the concerned Magistrate in the prescribed form. Any person on whom power to investigate under Chapter XII is conferred can be said to be a "police officer", no matter by what name he is called. The nomenclature is not important, the content of the power he exercises is the determinative factor. The important attribute of police power is not only the power to investigate into the commission of cognizable offence but also the power to prosecute the offender by filing a report or a charge-sheet u/s 173 of the Code. That is why this Court has since the decision in *Badku Joti Savant Vs. State of Mysore*, accepted the ratio that unless an officer is invested under any special law with the powers of investigation under the Code, including the power to submit a report u/s 173, he cannot be described to be a "police officer" u/s 25, Evidence Act. Counsel for the appellants, however, argued that since the Act does not prescribe the procedure for investigation, the officers invested with power u/s 53 of the Act must necessarily resort to the procedure under Chapter XII of the Code which would require them to culminate the investigation by submitting a report u/s 173 of the Code. Attractive though the submission appears at first blush, it cannot stand close scrutiny. In the first place, as pointed out earlier there is nothing in the provisions of the Act to show that the legislature desired to vest in the officers appointed u/s 53 of the Act, all the powers of Chapter XII, including the power to submit a report u/s 173 of the Code. But the issue is placed beyond the pale of doubt by Sub-section (1) of Section 36A of the Act which begins with a non-obstante clause notwithstanding anything contained in the Code and proceeds to say in Clause (d) as under :

?36-A(d) ; a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial."

?This Clause (a) of Section 36A(1) makes it clear that if the investigation is conducted by the police, it would conclude in a police report, but if the investigation is made by an officer of any other department including the D.R.I., the Special Court would take cognizance of the offence upon a formal complaint made by such authorised officer of the concerned Government. Needless to say that such a complaint would have to be u/s 190 of the Code. This clause, in our view, clinches the matter. We must, therefore, negative the contention that an officer appointed u/s 53 of the Act, other than a police officer, is entitled to exercise "all" the powers under Chapter XII of the Code, including the power to submit a report or charge-sheet u/s 173 of the Code".

51. In view of aforesaid legal position, Mr. Bakshi had no power to record statements of witnesses like the statements which are being recorded by Police Officers under Sections 161 and 162 of the Cr. P. Code, and therefore, the contention raised by Mr. Saiyed that the accused has been prejudiced because Mr. Bakshi failed to record the statements of witnesses during the course of inquiry, has no force of law, and therefore, it is rejected.

52. As stated in earlier part of this judgment, it was one of the contentions of Mr. Saiyed that though Mr. Omprakash had an information that goods of contraband article were lying in the fields of two different persons in Rajasthan, the said Officer came to Ahmedabad for which there is no logic. It was informed by the informant that said goods of contraband article were likely to be transported from Rajasthan to Ahmedabad, and therefore, instead of raiding at the place of storing, the Officers of D.R.I, came to Ahmedabad, where the delivery of the goods of contraband article was to be effected. Meaning thereby, they went to place at Other end where transaction was to be completed. In this context, we find nothing otherwise to hold against them when Intelligence Officers of D.R.I, thought it fit to come to Ahmedabad. It was in their absolute discretion as to how inquiry should be proceeded further. When they have come directly to Ahmedabad, it has no adverse effect in the trial against the accused. The trial against the accused is for keeping the possession of contraband article Chards of 95 kgs., and therefore, this contention is of a little value and it has no significance with the trial conducted against the accused.

53. Except above, no other contention is taken by Mr. Saiyed. We have thoroughly examined the contentions taken by Mr. Saiyed. We have thoroughly examined the evidence on record and we are of the firm opinion that the statement Exh. 41 is a free and voluntary statement of the accused and it was not given by him as a result of any threat, duress, coercion or any undue influence. We find that it is a free and voluntary statement and we do not hesitate to base the conviction on the statement Exh. 41 only, though there is

other corroborative piece of evidence to support the case of the prosecution. Thus, with the help of documents Exhs. 22, 36-A and 36-B read with voluntary statement Exh. 41 recorded u/s 67 of the N.D.P.S. Act, the prosecution has proved beyond reasonable doubt that the accused was found with the possession of 95 kgs. of Charas.

54. Mr. E. E. Saiyed has argued that the statement Exh. 41 of the accused came to be recorded after notice u/s 27 was served on Kulsumben who received it for and on behalf of the accused. He has further argued that in this notice, there is a reference of Sections 174 and 175 of the I. P. Code. In penultimate para of this notice Exh. 27, dated 18-7-1995 it is stated as follows :

"Non-compliance with this summon is an offence under Sections 174-175 of the Indian Penal Code 1860."

Mr. Saiyed has argued that reference of Sections 174 and 175 of the Indian Penal Code in Exh. 27 clearly suggests that threat was given to the accused that if he would fail to give the statement under ,Section 67 of the N.D.P.S. Act, he would have to face the prosecution for offences under Sections 174 and 175 of the Indian Penal Code, and therefore, the statement Exh. 41 cannot be said to be free and voluntary because such type of threat of prosecution was given in the summons Exh. 27. Section 174 of the Indian Penal Code is with regard to non-attendance or disobedience of order to public servant. While Section 175 of the Indian Penal Code is for omission to produce document to public servant by a person legally bound to produce it. As per Section 67 of the N.D.P.S. Act, Mr. Bakshi was empowered u/s 67 of the N.D.P.S. Act to examine any person acquainted with the facts and circumstances of the case and in exercise of the said powers, he issued summons Exh. 27 and in response to that summons, accused on his own appeared before Mr. Bakshi on 20-7-1995. In view of Section 174 of the Indian Penal Code, accused was legally bound to attend in person at a place shown in summons Exh. 27 before Mr. Bakshi who was a public servant legally competent to issue the summons, and therefore, what Mr. Bakshi stated in his summons Exh. 27 was nothing but an information given to the accused as to what consequence would follow, if he would remain absent as per the summons. In case of unreported judgment of Criminal Appeal No. 610 of 1988 decided on 20-2-2003, the Division Bench of this Court examined such type of summons issued u/s 108 of the Customs Act, wherein there was a reference of Section 177 of the Indian Penal Code. Section 177 of the Indian Penal Code is with regard to furnishing false information to a public servant. By keeping this provision in mind, ultimately the Division Bench of this Court has examined Section 67 of the N.D.P.S. Act, and ultimately in Para 10.6.10, it has been held as follows :-

"Para 10.6.10 :..... In the case on hand, the officers of D.R.I, are empowered u/s 67 to call upon any person to furnish correct information or to examine such person regarding facts and circumstances of the case. By necessary implication, the person so called upon is bound to render correct information and give correct

statement, and if he fails so to do, he can be said to have illegally omitted to do a thing which he is legally bound to do. The law makers, by enacting Section 67, can certainly be said to have intended to cast such a duty implicitly on persons called upon to give information to officers exercising powers u/s 67 of the N.D.P.S. Act with a view to facilitate the investigation. The contraventions and offences of such type are committed in an organized manner under absolute secrecy, and therefore, in order that such offences are detected and or prevented, the officers are empowered to have correct information. Therefore, apart from provisions of Sections 177 and 43 of the Indian Penal Code, a duty is implicitly cast on such person to give correct information. It is not possible to accept the contention that Section 67 only empowers the officer to call for the information and does not require such person called upon to give correct information. If this interpretation is accepted, Section 67 of the Act would be rendered toothless and would lose efficacy. The law makers could not have intended such a provision. In our opinion, although the language of Section 67 is not explicit, implicitly, it casts a duty on person so called upon to give correct information. Section 177 of the Indian Penal Code will also apply with full force to such a situation. It, therefore, cannot be accepted that the statements recorded in exercise of power u/s 67 of the Act were obtained under threat of legal action emanating from the officers recording the same."

55. In view of above legal position, the contention of Mr. Saiyed that by referring Sections 174 and 175 of the Indian Penal Code in the summons Exh. 27, a threat was given to the appellant for appearing before Mr. Bakshi for giving the statement u/s 67 of the N.D.P.S. Act, cannot be sustained and same is rejected.

56. In view of aforesaid discussions, it cannot be said that the statement Exh. 41 was not voluntary and free. At this stage, it is required to be reiterated that when the accused was produced immediately after recording of the statement before the learned Metropolitan Magistrate, he did not complain anything about any threat, coercion, duress or inducement, and therefore, retraction of statement for the first time in the further statement cannot be considered while examining statement Ex. 41 as a piece of evidence.

57. We have given a close scrutiny to the record and proceedings in light of the contentions raised, and for the foregoing reasons, we do not find any merit in any of the contentions raised by Mr. Saiyed, learned Advocate for the appellant-convict which would call for any interference in the judgment impugned. No other contention was raised to assail the judgment. The learned Judge of the trial Court has assigned cogent and convincing reasons for his arrival to a particular finding. Mr. Saiyed is unable to dislodge these said reasons.

58. On overall appreciation of evidence on record, we do not find any material or ground to interfere with the order of sentence and conviction recorded in the impugned judgment rendered by the learned Judge of the trial Court, and therefore, this appeal deserves to be dismissed.

59. For the foregoing reasons, the appeal deserves to be dismissed, and accordingly, it is dismissed, The judgment Exh. 52 dated 11th September, 1997 rendered by the learned Additional City Sessions Judge, Court No. 9, Ahmedabad in Sessions Case No. 358 of 1995 convicting and sentencing the appellant-accused is hereby confirmed. Muddamal articles be disposed of in terms of directions given by the learned Judge of the trial Court in the operative part of final order of the impugned judgment.