

TOFAN SINGH VS. STATE OF TAMIL NADU

Case Citation: (2021) 4 SCC 1

Decision Date: 29 October 2020

Bench Strength: 3

Number of Opinion(s): 2

Aspect(s) of Privacy: Autonomy

Legal Provision(s): Article 20(3) and Article 21 of the Constitution of India, 1950 (“Constitution”).

Case Status: Not Overruled

Case Type: Criminal Appeal

“The interpretation of a statute like the NDPS Act must needs be in conformity and in tune with the spirit of the broad fundamental right not to incriminate oneself, and the right to privacy, as has been found in the recent judgments of this Court.”

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[Tofan Singh vs. State of Tamil Nadu \(ccgnlud.org\)](https://ccgnlud.org)

CASE BRIEF

In this case, the Supreme Court (“Court”) held that confessions recorded under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”) would be inadmissible as evidence against the person. Using such confessions as evidence would violate the person’s right against self-incrimination under Article 20(3), and their right to privacy under Article 21 of the Constitution.

In this case, officers of the National Crime Bureau (“NCB”) arrested the Appellant for offences under the NDPS Act. The officers exercised their powers under Section 67 of the NDPS Act (the power to call for information, etc.) and asked the Appellant to provide a confessional statement. The Appellant subsequently retracted his confession. However, the Additional Special Court under the NDPS Act admitted the confession as evidence and convicted the Appellant.

The Court held that the Appellant’s conviction, based upon a retracted confessional statement, violated his fundamental rights. It further held that statements recorded under Section 67 of the NDPS Act would not be admissible as evidence, as they would violate Article 20(3) (right against self-incrimination) and Article 21 (right to privacy) of the Constitution. Additionally, the Court stressed the importance of stringent penal statutes like the NDPS Act to be highly cognizant of their impact on an individual’s fundamental rights, particularly the rights under Article 20(3) and Article 21.

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CASE SUMMARY

FACTS

The present case arose when officers of the NCB arrested four individuals, including the Appellant, under the NDPS Act for possession and transportation of narcotic drugs. The officers exercised their powers under Section 67 of the NDPS Act to record a confessional statement of the Appellant. Section 67 granted officers conducting enquiries under the Act the power to call for information from any person in connection with violations of the Act.

Although the Appellant had subsequently retracted his confession, the Additional Special Court under the NDPS Act still admitted the confession as evidence, and convicted the Appellant for possession and transportation of narcotic drugs. Aggrieved by this, the Appellant approached the Madras High Court. The Appellant argued that he was convicted solely based on the retracted confessional statement recorded by the officers. However, the High Court rejected this argument and dismissed the appeal. This prompted the Appellant to approach the Supreme Court.

The Court directed the matter to be placed before a larger bench of the Court and sought the larger bench to provide its judgement on two key questions. First, whether officers empowered under the NDPS Act would be considered as ‘police officers’ within the meaning of the Indian Evidence Act, 1872 (“Evidence Act”). Second, whether any confessions recorded by such officers would attract the provisions of Section 25 of the Evidence Act, which stated that any confessions made to police officers would not be admissible as evidence.

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ISSUE

- A) Whether the use of confessions recorded under Section 67 of the NDPS Act as evidence violates a person's right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution.

DECISION

In a 2:1 majority, the Court held that a person's right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution would be applicable against confessions recorded under Section 67 of the NDPS Act. Therefore, such confessions would not be admissible as evidence.

The Court observed that the right to privacy was not only a facet of the right to life and personal liberty. It also derived its roots from various other fundamental rights, as the Court discussed in *Justice K.S. Puttaswamy (Retd.) vs. Union of India* ((2017) 10 SCC 1). Thus, the right to privacy would be read into Article 20(3), to protect an individual's right to autonomy and choice against being compelled to provide self-incriminatory confessions.

The Court noted that various provisions of the NDPS Act provided safeguards to protect individuals' fundamental rights. Hence, Section 67 should be similarly construed to balance the powers of the officers with individuals' fundamental rights. The Court stressed that courts must adopt this approach when interpreting provisions of stringent penal statutes, like the NDPS Act. Such statutes must be construed in a manner that protects the rights under Articles 20(3) and 21 of the Constitution.

The Court noted that Section 25 of the Evidence Act intended to prevent police officers from compelling or coercing individuals to make self-incriminatory confessions. Consequently, the Court highlighted that the officers under the NDPS Act were

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exercising the functions of police officers to conduct enquiries, and such officers were in a position to compel or coerce individuals into recording confessions. Therefore, officers under statutes like the NDPS Act should also be construed as ‘police officers’ under Section 25 of the Evidence Act. The Court held that, therefore, to protect the fundamental right against self-incrimination and the right to privacy, confessions made before such officers would be inadmissible as evidence.

The Court also overruled previous judgements wherein the courts held that Section 25 of the Evidence Act would not be applicable to officers under certain penal statutes. The Court held that providing such exceptions to certain officers directly infringed the rights to equality, privacy, and the right against self-incrimination under Articles 14, 21, and 20(3) of the Constitution.

In her dissenting opinion, Justice Banerjee held that the officers under the NDPS Act would not be considered ‘police officers’, since they did not hold all the powers of police officers under the Code of Criminal Procedure, 1973. Therefore, confessions recorded by such officers would be admissible as evidence. Relying on *Justice K.S. Puttaswamy (Retd.)*, she stated that the right to privacy was not an absolute right, and the NDPS Act prescribed reasonable restrictions on individuals’ rights, to protect the larger public against drug-related offences. Hence, the confessions recorded under Section 67 of the NDPS Act should be admissible as evidence.