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DEVENDER PAL SINGH
v.
STATE N.C.T. OF DELHI AND ANR.

DECEMBER 17, 2002

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[M.B. SHAH, B.N. AGRAWAL AND ARIJIT PASAYAT, JJ.]

Constitution of India, 1950—Article 137:

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Review application in Criminal proceedings—Scope of—Held, it has to be proved that there is miscarriage of justice—Though miscarriage of justice is of wider amplitude, scope of interference under review is limited—Review proceeding cannot be equated with original hearing—Finality of the Judgment of the Court cannot be reconsidered except where glaring omission or patent error has crept in earlier—Reference of the case to larger Bench would be

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creation of a new forum—Supreme Court Rules, 1966—Order XL Rules 1 and 2.

Review of death sentence—Scope of—Scope for Review of death sentence awarded is not there merely because one of the Judges in the Bench held that the accused should be acquitted or that life sentence was appropriate—Sentencing.

The Review Petitions seek review of the Judgment of this Court wherein death penalty was imposed on the accused. The petitions were restricted to the question of sentence. Petitioners contended that death sentence should not be awarded in a case where one of the three Judges recorded a finding of acquittal or held that life sentence was appropriate; that in case of acquittal by one Judge, the case would not be covered in the category “rarest of rare”; that as a matter of practice death sentence is not imposed in case of acquittal by trial Court or High Court; and that since one Judge felt that either life sentence would be imposed or the accused should be acquitted, the matter should be referred to larger Bench for review. Dismissing the petitions, the Court

HELD: *Per Arijit Pasayat, J (for himself and Agrawal, J):*

1.1. Though the scope of review in criminal proceedings has been widened to a considerable extent, in any case review is not re-hearing of

the appeal all over again. In order to maintain the review petition it has to be shown that there is a miscarriage of justice. Though the expression “miscarriage of justice” is of wider amplitude, it has to be kept in mind that the scope of interference is very limited. Ordinarily application for review is disposed of by circulation without any detailed arguments, unless otherwise ordered by the Court. [337-G, H; 338-A]

P.N. Eswara Iyer and Ors. v. Registrar, Supreme Court of India, [1980] 4 SCC 680 and *Ramdeo Chauhan @ Raj Nath v. State of Assam*, [2001] 5 SCC 714, referred to.

1.2. The scope for review of death sentence awarded is not there merely because one of the Judges in the Bench held that the accused should be acquitted or that life sentence was appropriate. [335-G; 338-B]

Suthendraraja @ Suthenthira Raja @ Santhan and Ors. v. State through DSP/CBI, SIT, Chennai, [1999] 9 SCC 323, relied on

1.3. Review is not a routine procedure. A review of earlier order is not permissible unless the Court is satisfied that material error, manifest on the face of the order undermines its soundness or results in miscarriage of justice. A review of judgment in a case is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. The stage of review is not a virgin ground but review of an earlier order which has the normal feature of finality. [345-B-C]

Col. Avtar Singh Sekhon v. Union of India and Ors., AIR (1980) SC 2041, relied on .

1.4. Whatever nature of the proceeding it is beyond dispute that review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be reconsidered except where glaring omission or patent mistake or like grave error has crept in earlier. [345-D]

M/s Northern India Caterers (India) Pvt. Ltd. v. Lt. Governor of Delhi, [1980] 2 SCC 167, relied on.

1.5. A judgment of the final Court of the country is final, and a review of such judgment is an exception. [345-E]

A 1.6. Compelling reasons for review are non-existent in the instant cases and acceptance of the prayer for reference to a larger Bench would be the creation of a new forum.

Rupa Ashok Hurra v. Ashok Hurra and Anr., [2002] 4 SCC 388 and *Mohini Giri v. Union of India*, W.P. (Crl.) 96/2002 AIR (2003) SC 642,

B referred to.

2. While deciding the question whether a case falls under “rarest of rare category” the nature of the offence and its impact on the society are determinative factors. Mere acquittal or lesser sentence imposed does not really relate to the gravity of the offence or its impact on the society. If after consideration of the materials, the Court comes to a finding that it belongs to the “rarest of rare category”, acquittal or sentence of life awarded by trial or High Court should not be considered to be a mitigating factor. The majority will be precluded as a matter of course from death sentence and that is not the correct position. [339-B-C]

D *State of U.P. v. Dharmendra Singh and Anr.*, [1999] 8 SCC 325; *Ronny @ Ronald James Alwaris and Ors. v. State of Maharashtra*, [1998] 3 SCC 625 and *Ramdeo Chauhan @ Raj Nath v. State of Assam*, [2001] 5 SCC 714, referred to.

E *Pandurang and Ors. v. State of Hyderabad*, AIR 1955 SC 216; *State (Delhi Administration) v. Laxman Kumar and Ors.*, [1985] 4 SCC 476; *Smt. Lichhamadevi v. State of Rajasthan*, [1988] 4 SCC 456 and *State of Maharashtra v. Bharat Fakira Dhiwar*, [2002] 1 SCC 622, referred to.

Per Shah, J (Concurring with the reasons and conclusion but dissenting on the question of sentence): [348-G]

F In these matters, if death sentence is altered to imprisonment for life, it would be sufficient to meet the ends of justice.

Suthendraraja alias Suthenthira Raja alias Santhan and Ors. v. State, [1999] 9 SCC 323, referred to.

G CRIMINAL APPELLATE JURISDICTION : R.P. (CRL.) No. 497 of 2002.

IN

Criminal Appeal No. 993 of 2001.

H From the Judgment and Order dated 24.8.2001 of the Designated Court,

New Delhi in Special Case No. 4 of 2000.

WITH

R.P. (Crl.) No. 626 of 2002 in Crl. A. No. 761/2001 and R.P. (Crl.) No. 627/2002 in Crl. A. No. 761 of 2001.

Kapil Sibal, Ms. Nitya Ramakrishan, Ms. Neeru Vaid, Ms. Preeti Verma and Sumit Aggarwal for the Petitioners/Appellants.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. These three review petitions have been filed in terms of Article 137 of the Constitution of India, 1950 (in short 'the Constitution'). Though the review applications contain certain references to the conclusions arrived at the judgment in Criminal Appeal No.761/2001 with death reference No.1/2001, at the time of the hearing it was restricted to the question whether imposition of death sentence would be proper when one of the three Hon'ble Judges recorded a finding of acquittal. So far as review application No.626/2002 is concerned, same was the plea. In review application No.627/2002 the plea was that when one Hon'ble Judge held that life sentence should be proper, death sentence could not be imposed merely because the two other Hon'ble Judges held so. Though at the outset learned counsel for the applicants submitted that they were not questioning the correctness of the conclusions but reference was made to certain findings recorded in the appeals and the death references to contend that the conclusions arrived at by the majority were not in order. However, when it was pointed out by the learned counsel for the applicants that they had conceded to the position that their submissions with regard to the review application were restricted to the question of sentence at the threshold, it was submitted that a reference to the conclusions arrived at may be incidental and necessary.

The primary stand of the applicant in the review application as noted above is that as a matter of practice, this Court never imposed death sentence when there was an acquittal by the trial court or the High Court. It was also submitted that since one Hon'ble Judge in each case felt that either life sentence should be imposed or acquittal should be there, the judgments should be reviewed and the matter should be referred to a larger Bench to decide this issue. Reference was made to the minority view in *Bachan Singh v. State of Punjab*, [1982] 3 SCC 24 and contended that in view of the irrevocable nature of the death sentence, in the facts situation as noted above, death

- A sentence cannot be appropriate. Reference was made to several decisions where this Court had not imposed death sentence because of the acquittal by the trial court or by the High Court. (e.g. *Pandurang and Ors. v. State of Hyderabad*, AIR (1955) SC 216 (para 37), *State (Delhi Administration) v. Laxman Kumar and Ors.*, [1985] 4 SCC 476 at (para 49), *Smt. Lichhamadevi, v. State of Rajasthan*, [1988] 4 SCC 456 (paras 14 and 15) and *State of Maharashtra v. Bharat Fakira Dhiwar*, [2002] 1 SCC 622 (para 23). It was submitted that in case of acquittal by one Hon'ble Judge, it would not come within the umbrella of the category "rarest of the rare". It was also submitted that when there is a difference of view on the Bench even if it be of minority view, notice should be issued to the respondents for hearing of the review application.

Review applications can be filed under Article 137 of the Constitution of India read with Order XL of the Supreme Court Rules, 1966 as amended (hereinafter referred to as 'the Rules'). As the Article indicates that this Court has the power to review any judgment pronounced or order made by it subject to the provisions of any law made by Parliament or any rule made under Article 145 of the Constitution, in exercise of these powers the Rules have been framed. Rules 1 and 2 of Order XL of the Rules are relevant and reproduced as under:

"1. The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII Rule 1 of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.

2. An application for review shall be by a petition, and shall be filed within thirty days from the date of the judgment or order sought to be reviewed. It shall set out clearly the grounds for review."

The scope of review in criminal proceedings was considered by a Constitution Bench in *P.N. Eswara Iyer and Ors. v. Registrar, Supreme Court of India*, [1980] 4 SCC 680 and recently in *Suthendraraja @ Suthenthira Raja @ Santhan and Ors. v. State through DSP/CBI, SIT, Chennai*, [1999] 9 SCC 323 and *Ramdeo Chauhan @ Raj Nath v. State of Assam*, [2001] 5 SCC 714.

The Constitution Bench in *P.N. Eswara Iyer's* case (supra) observed as follows:

“34. Rule 1 of Order XL on its face, affords a wider set of grounds for review of orders in civil proceedings, but limits the ground *vis-à-vis* criminal proceedings to ‘errors apparent on the face of the record’. If at all, the concern of the law to avoid judicial error should be heightened when life or liberty is in peril since civil penalties are often less traumatic. So, it is reasonable to assume that the framers of the rules could not have intended a restrictive review over criminal orders or judgments. It is likely to be the other way about. Supposing an accused is sentenced to death by the Supreme Court and the ‘deceased’ shows up in court and the court discovers the tragic treachery of the recorded testimony. Is the court helpless to review and set aside the sentence of hanging? We think not. The power to review is in Article 137 and it is equally wide in all proceedings. The rule merely canalizes the flow from the reservoir of power. The stream cannot stifle the source. Moreover, the dynamics of interpretation depend on the demand of the context and the lexical limits of the test. Here ‘record’ means any material which is already on record or may, with the permission of the court, be brought on record. If justice summons the Judges to allow a vital material in, it becomes part of the record; and if apparent error is here, correction becomes necessitous.

35. The purpose is plain, the language is elastic and interpretation of a necessary power must naturally be expansive. The substantive power is derived from Article 137 and is as wide for criminal as for civil proceedings. Even the difference in phraseology in the rule (Order 40 Rule 2) must, therefore, be read to encompass the same area and not to engraft an artificial divergence productive of anomaly. If the expression ‘record’ is read to mean, in its semantic sweep, any material even later brought on record, with the leave of the court, it will embrace subsequent events, new light and other grounds which we find in Order 47 Rule 1 CPC. We see no insuperable difficulty in equating the area in civil and criminal proceedings when review power is invoked from the same source.”

Though the scope of review in criminal proceedings has been widened to a considerable extent in view of the aforesaid exposition of law by the Constitutional Bench, in any case review is not re-hearing of the appeal all over again, and as was observed in *Suthendraraja* (*supra*) in order to maintain the review petition it has to be shown that there is a miscarriage of justice.

A Though the expression “miscarriage of justice” is of wider amplitude, it has to be kept in mind that the scope of interference is very limited. Ordinarily application for review is disposed of by circulation without any detailed arguments, unless otherwise ordered by the Court in terms of Rule 3. As regards the desirability of awarding life sentence when there is diversion of views, in *Suthendraraja’s* case (supra) a similar question was considered.

B Here again by majority it was held that the scope for the review of the death sentence awarded is not there merely because one of the Judges held so. The position has been succinctly stated by Learned Brother Quadri, J. in the following words:

C “The ambit of Rule XL(1) of the Supreme Court Rules which provides grounds for review, as interpreted by this Court in *P.N. Eswara Iyer v. Registrar, Supreme Court of India vis-à-vis* criminal proceedings, is not confined to “an error apparent on the face of the record”. Even so by the process of interpretation it cannot be stretched to embrace the premise indicated by my learned brother as a ground for review. That apart there are two difficulties in the way. The first is that the acceptance of the said proposition would result in equating the opinion of the majority to a ground analogous to “an error apparent on the face of the record” and secondly in a Bench of three Judges or of greater strength if a learned Judge is not inclined to confirm the death sentence imposed on a convict, the majority will be precluded from confirming the death sentence as that per se would become open to review.”

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Mr. Kapil Sibal, learned senior counsel, appearing for the applicant-Devender Pal Singh tried to distinguish the aforesaid view on the ground that the same related to question of life and death sentences, and not of acquittal and death sentence. When it was put to him as to the basis for making reference to a larger Bench, it is submitted that the same was in the background of Article 21 of the Constitution and after receiving the view of the larger Bench the review could be disposed of. On a query made as to whether that would not amount to creation of an appellate forum in respect of a decided case, his answer was in the negative. However, he submitted that even if it so, that would not be material when the life of a person in the background of Article 21 was involved.

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H It was pointed out that whenever there is an acquittal by the trial court or the High Court, as a matter of practice, death sentence was not imposed.

We may point out that there is a difference between a practice even if it is accepted to be prevalent, and the application of law. While former is variable, correct application of law is invariable. A practice may be departed from for good and compelling reasons, but in that sense application of law is invariable. We may point out here that in all cases relied upon for the proposition that death sentence would not be proper a rider was added by the Court that it was not of universal application and for good and compelling reasons departure can be made. We are primarily of the view that while deciding the question whether a case falls under “rarest of rare category” the nature of the offence and its impact on the society are determinative factors. Mere acquittal or lesser sentence imposed does not really relate to the gravity of the offence or its impact on the society. If after consideration of the materials, the Court comes to finding that it belongs to the “rarest of rare category”, acquittal or sentence of life awarded by trial or High Court should not be considered to be a mitigating factor. As was observed in *Suthendraraja's* case (supra) the majority will be precluded as a matter of course from death sentence and that is not the correct position.

In a recent case in *State of U.P. v. Dharmendra Singh and Anr.*, [1999] 8 SCC 325, the argument was that there was expectation of survival entertained by the accused after the High Court refused to confirm the death sentence and there should not be interference with the judgment of the High Court by substituting death for life sentence. This Court found no legal basis for the argument. It was, inter alia, observed that in the judicial system like ours when there is a hierarchy of courts the possibility of reversal of judgments is inevitable and, therefore, expectation of an accused cannot be a mitigating factor to interfere in an appeal for enhancement of sentence, if the same is otherwise called for in law. The Court also noted that in appropriate cases there is an obligation on the Courts to award sentence of death. Reference was made to *Ronny @ Ronald James Alwaris and Ors. v. State of Maharashtra*, [1998] 3 SCC 625, where it was observed:

The obligation of the court in making the choice of death sentence for the person who is found guilty of murder is onerous indeed. But by sentencing a person to death, the court is giving effect to the command of law which is in public interest whereas in committing the murder or being privy to commit murder, even if it be a vengeance for another murder, the convict is violating the law which is against public interest.”

A This position was re-iterated in *Ramdeo Chauhan's* case (supra) in the following words:

B “This Court considered the scope of review and the limitations imposed on its exercise under Article 137 of the Constitution of India in *Lily Thomas v. Union of India*, [2000] 6 SCC 224 and held: (SCC pp. 247-51, paras 52-56)

C 52. The dictionary meaning of the word ‘review’ is ‘the act of looking, offer something again with a view to correction or improvement’. It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji*, [1971] 3 SCC 844 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the court from rectifying the error. This Court in *S. Nagaraj v. State of Karnataka*, [1993] Supp. 4 SCC 595 held: (SCC pp. 619-20, para 19).

F “19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai*, AIR (1941) SC 1 the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy

Council in *Rajunder Narain Rae v. Bijai Govind Singh*, (1836) 1 A
Moo PC 117 that an order made by the Court was final and could not
be altered:

“.....nevertheless, if by misprision in embodying the
judgments, errors have been introduced, these courts possess, B
by common law, the same power which the courts of record
and statute have of rectifying the mistakes which have crept
in..... The House of Lords exercises a similar power of
rectifying mistakes made in drawing up its own judgments,
and this Court must possess the same authority. The Lords C
have however gone a step further, and have corrected
mistakes introduced through inadvertence in the details of
judgments; or have supplied manifest defects in order to
enable the decrees to be enforced, or have added explanatory
matter, or have reconciled inconsistencies.”

Basis for exercise of the power was stated in the same decision D
as under:

“It is impossible to doubt that the indulgence extended
in such cases is mainly owing to the natural desire prevailing
to prevent irremediable injustice being done by a court of last resort,
where by some accident, without any blame, the party has not E
been heard and an order has been inadvertently made as if the
party had been heard.”

Rectification of an order thus stems from the fundamental principle
that justice is above all. It is exercised to remove the error and not
for disturbing finality. When the Constitution was framed the F
substantive power to rectify or recall the order passed by this Court
was specifically provided by Article 137 of the Constitution. Our
Constitution-makers who had the practical wisdom to visualize the
efficacy of such provision expressly conferred the substantive power
to review any judgment or order by Article 137 of the Constitution.
And clause (c) of Article 145 permitted this Court to frame rules as G
to the conditions subject to which any judgment or order may be
reviewed. In exercise of this power Order 40 had been framed
empowering this Court to review an order in civil proceedings on
grounds analogous to Order 47 Rule 1 of the Civil Procedure Code.
The expression, ‘for any other sufficient reason’ in the clause has H

- A been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order 40 Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.' The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.
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- C 53. This Court in *Northern India Caterers (India) Pvt. Ltd. v. Lt. Governor of Delhi*, [1980] 2 SCC 167 considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order 40 Rule 1 of the Supreme Court Rules and held: (SCC pp. 171-72, para 8)
- D '8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: *Sajjan Singh v. State of Rajasthan*, [1965] 1 SCR 933, at p. 948. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: *Girdhari Lal Gupta v. D.H. Mehta*, [1971] 3 SCR 748, at p. 760. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: *O.N. Mohindroo v. Distt. Judge, Delhi*, [1971] 2 SCR 11, at p. 27. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order 40 Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceedings, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the
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judgment delivered by the Court will not be reconsidered except A
“where a glaring omission or patent mistake or like grave error has
crept in earlier by judicial fallibility”: Sow *Chandra Kante v. Sk.
Habib.*’ [1975] 1 SCC 674.

54. Article 137 empowers this Court to review its judgments subject B
to the provisions of any law made by Parliament or any rules made
under Article 145 of the Constitution. The Supreme Court Rules made
in exercise of the powers under Article 145 of the Constitution
prescribe that in civil cases, review lies on any of the grounds specified
in Order 47 Rule 1 of the Code of Civil Procedure which provides:

‘1. Application for review of judgment - (1) Any person C
considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed,
but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, D
or (c) by a decision on a reference from a Court of
Small Causes,

and who, from the discovery of new and important matter or
evidence which, after the exercise of due diligence, was not within
his knowledge or could not be produced by him at the time when
the decree was passed or order made, or on account of some E
mistake or error apparent on the face of the record, or for any
other sufficient reason, desires to obtain a review of the decree
passed or order made against him, may apply for a review of
judgment to the court which passed the decree or made the order.’

Under Order 40 Rule 1 of the Supreme Court Rules no review lies F
except on the ground of error apparent on the face of the record in
criminal cases. Order 40 Rule 5 of the Supreme Court Rules provides
that after an application for review has been disposed of no further
application shall be entertained in the same matter.

55. In *A.R. Antulay v. R.S. Nayak*, [1988] 2 SCC 602 this Court held G
that the principle of English law that the size of the Bench did not
matter has not been accepted in this country. In this country there is
a hierarchy within the Court itself where larger Benches overrule
smaller Benches. This practice followed by the Court was declared to

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A have been crystallized as a rule of law. Reference in that behalf was made to the judgments in *Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra*, [1985] 1 SCC 275, *State of Orissa v. Titaghur Paper Mills Co. Ltd.*, [1985] Supp SCC 280, *Union of India v. Godfrey Philips India Ltd.*, [1985] 4 SCC 369. In that case the Bench comprising seven Judges was called upon to decide as to whether the directions given by the Bench of this Court comprising five Judges

B in the case of *R.S Nayak v. A.R. Antulay*, [1984] 2 SCC 183 were legally proper or not and whether the action and the trial proceedings pursuant to those directions were legal and valid. In that behalf reference was made to the hierarchy of Benches and practice prevalent

C in the country. It was observed that Court was not debarred from reopening the question of giving proper directions and correcting the error in appeal if the direction issued in the earlier case on 16.2.1984 were found to be violative of limits of jurisdiction and that those directions had resulted in deprivation of fundamental rights of a citizen granted by Articles 14 and 21 of the Constitution of India. The Court referred to its earlier judgments in *Prem Chand Garg v. Excise Commissioner U.P.*, [1963] Supp 1 SCR 885, *Naresh Shridhar Mirajkar v. State of Maharashtra*, [1966] 3 SCR 744 and *Ujjam Bai v. State of U.P. and* [1963] 1 SCR 778 concluded that the citizens should not suffer on account of directions of the Court based upon error leading to conferment of jurisdiction. The directions issued by the Court were found on facts to be violative of the limits of jurisdiction resulting in the deprivation of the fundamental rights guaranteed to the appellant therein. It was further found that the impugned directions had been issued without observing the principle of *audi alteram partem*.

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F 56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the

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Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment. A

As was observed by this Court in *Col. Avtar Singh Sekhon v. Union of India and Ors.*, AIR (1980) SC 2041, review is not a routine procedure. A review of earlier order is not permissible unless the Court is satisfied that material error, manifest on the face of the order undermines its soundness or results in miscarriage of justice. A review of judgment in a case is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.....The stage of review is not a virgin ground but review of an earlier order which has the normal feature of finality. B C

As was observed by this Court in *M/s. Northern India Caterers (India) Ltd.'s case (supra)*, whatever nature of the proceeding it is beyond dispute that review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be re-considered except where glaring omission or patent mistake or like error has crept in earlier. D

A judgment of the final Court of the country is final, and a review of such judgment is an exception. E

In our opinion compelling reasons for review are non-existent in these cases and acceptance of the prayer for reference to a larger Bench would be the creation of a new forum. It may be pointed out that while laying the norms for a curative petition a Constitution Bench of this Court in *Rupa Ashok Hurra v. Ashok Hurra and Anr.*, [2002] 4 SCC 388 has observed: F

“24. There is no gainsaying that the Supreme Court is the court of last resort-the final court on questions both of fact and of law including constitutional law. The law declared by this Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India. In a judgment, there will be declaration of law and its application to the facts of the case to render a decision on the dispute between the parties to the lis. It is necessary to bear in mind that the principles in regard to the highest court departing from its binding precedent are different from the grounds on which a final judgment between the parties, can be reconsidered. Here, we are H

A mainly concerned with the latter. However, when reconsideration of a judgment of this Court is sought, the finality attached both to the law declared as well as to the decision made in the case, is normally brought under challenge. It is, therefore, relevant to note that so much was the value attached to the precedent of the highest court that

B in *The London Street Tramways Company, Limited v. London County Council*, [1898 Appeal Cases 375], the House of Lords laid down that its decision upon a question of law was conclusive and would bind the House in subsequent cases and that an erroneous decision could be set right only by an Act of Parliament.

C 25. In *Hoystead v. Commissioner of Taxation*, (1926) AC 155 at 165], Lord Shaw observed:

D “Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result.....If this were permitted litigation would have no end, except when legal ingenuity is exhausted.”

E 26. To the same effect is the view expressed by the Federal Court of India in *Raja Prithwi Chand Lall Choudhary's* case (supra) placing reliance on dicta of the privy council in *Venkata Narasimha Appa Row v. Court of Wards*, (1886) II Appeal Cases 660 at 664. Gwyer, C.J. speaking for the Federal Court observed:

F “This Court will not sit as a court of appeal from its own decisions, nor will it entertain applications to review on the ground only that one of the parties in the case conceives himself to be aggrieved by the decision. It would in our opinion be intolerable and most prejudicial to the public interest if cases once decided by the court could be re-opened and re-heard: “There is a salutary maxim which ought to be observed by all courts of last resort - *Interest reipublicae ut sit finis litium*. (It concerns the state that there be an end of law-suits. It is in the interest of the State that there should be an end of law-suits.) Its strict observance may occasionally entail hardship upon individual litigants, but the mischief arising from that source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the decisions of such a tribunal

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as this.”

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27. In *S. Nagaraj's* case (supra) an application was filed by the state for clarification of the order passed earlier. It was urged by the petitioner that any modification or recalling of the order passed by this Court would result in destroying the principle of finality enshrined in Article 141 of the Constitution. Sahai, J. speaking for himself and for Pandian, J. observed:

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“Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in administrative law as in public law. Even the law bends before justice.”

C

The learned judge referring to the judgment of *Raja Prithwi Chand Lall Choudhary's* case (supra) further observed:

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“Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order, the courts culled out such power to avoid abuse of process or miscarriage of justice.”

28. The position with regard to conclusive nature of the precedent obtained in England till the following practice statement was made by Lord Gardiner, L.C. in *Lloyds Bank, Ltd. v. Dawson and Ors.*, (1966) 3 All E.R. 68, at p.77 on behalf of himself and the Lords of Appeal in Ordinary,

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“They propose therefore to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.”

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The parameters for filing curative petition are indicated in the said judgment; and even the writ petitions do not fulfill these parameters. It is relevant to note that a petition was filed under Article 32 of the Constitution (*V. Mohini Giri v. Union of India*, (W.P. (Crl.) 96/2002) wherein prayer was made to issue guidelines as to what would be the approach where one of the Hon'ble Judges acquits while others confirm death sentence. The petition was dismissed on 16.8.2002 with the following order:

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A “This petition has been filed for issuance of a guideline as to what should be the appropriate approach in the case where one of the Judges in the Bench of this Court while hearing an appeal against death sentence, acquits the accused person. We do not think that the judicial discretion of the Bench hearing the appeal can be curtailed in any manner by issuing guidelines. This petition is dismissed accordingly.”

B
C Further as noted above, in the cases cited to show that life sentence was imposed in case of acquittal by trial/High Court, for compelling reasons departure can be made. In the case at hand, one related to TADA Act, and the two others related to killings on caste grounds.

The approach necessary in such cases was highlighted while confirming death sentence. Further, the remedy available (on the logic of *Ramdeo Chauhan*) because of difference in view was also highlighted.

D Submission of Mr. Sibal that the logic does not apply to a case of acquittal is clearly fallacious.

The review petitions are without any merit and deserve dismissal, which is so directed.

E **SHAH, J.** I am in respectful agreement with the reasons recorded by learned brother Pasayat, J. in arriving at the conclusion that the review petitions are required to be dismissed. Still however, I record my dissent with regard to sentence aspect.

R.P. (Crl.) No.497 of 2002 In W.P. (Crl.) No.993 of 2001.

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G In this case, it is to be stated that I had arrived at the conclusion that the prosecution case depends solely upon the confessional statement. The reasons recorded therein for acquitting him are not required to be reiterated. However, considering the majority view also, in my opinion, if death sentence is altered to imprisonment for life, it would be sufficient to meet the ends of justice.

R.P. (Crl.) Nos. 626 and 627 of 2002 In Crl. A. No.761 of 2001.

H In this case, it is to be stated that appeal of the main accused Bihari Manjhi and others was allowed and were acquitted on the basis that there was

no other evidence except the so-called confessional statement which was totally unreliable and faulty investigation. This is also a fit case for altering the death sentence and imposing sentence of imprisonment for life. A

For this purpose, I would rely upon the dissent noted by Thomas, J. in *Suthendraraja alias Suthenthira Raja alias Santhan and Ors. v. State*, [1999] 9 SCC 323 which is reproduced hereunder: B

“17. The Constitution Bench in *Bachan Singh v. State of Punjab*, [1980] 2 SCC 684 has narrowed down the scope for awarding death sentence to the extremely restricted radius of “rarest of rare cases” in which the alternative lesser sentence of imprisonment for life is unquestionably foreclosed. In the main judgment in the present case one of the three Judges found that sentence of imprisonment for life would be sufficient to meet the ends of justice as far A-1 Nalini. C

18. In a case where a Bench of three Judges delivered judgment in which the opinion of at least one Judge is in favour of preferring imprisonment for life to death penalty as for any particular accused, I think it would be a proper premise for the Bench to review the order of sentence of death in respect of that accused. Such an approach is consistent with Article 21 of the Constitution as it helps saving a human life from the gallows and at the same time putting the guilty accused behind the bars for life. In my opinion, it would be a sound proposition to make a precedent that when one of the three Judges refrains from awarding death penalty to an accused on stated reasons in preference to the sentence of life imprisonment that fact can be regarded sufficient to treat the case as not falling within the narrowed ambit of “rarest of rare cases” when the alternative option is unquestionably foreclosed”. D E F

In the result, in my opinion, Review Petition (Crl.) No.497 of 2002 filed by Devender Pal Singh in Crl. Appeal No.993 of 2001; Review Petition (Crl.) No.626 of 2002 filed by Dharmendra Singh @ Dharu Singh in Criminal Appeal No.761 of 2001 and Review Petition (Crl.) No.627 of 2002 filed by Krishna Mochi and others in Criminal Appeal No.761 of 2002, be partly allowed and their sentence be altered to imprisonment for life. G

K.K.T.

Petitions dismissed.