REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 106 OF 2007

Shaukat Hussain Guru ... Petitioner

vs.

State (NCT) Delhi & Anr. ... Respondents

JUDGMENT

P.P. NAOLEKAR, J:

1. Close to noon on 13.12.2001, five heavily armed persons entered the Parliament House Complex and inflicted heavy casualties on the security men on duty. In the gun battle which took place in the Parliament House Complex, the five terrorists who stormed the Complex were killed. Nine persons including eight security personnel and one gardener succumbed to the bullets of the terrorists and 16 persons including 13 security men received injuries. The Investigating Agency took up investigation which revealed possible involvement of the four accused persons, namely, Mohd. Afzal, Shaukat Hussain Guru, S.A.R. Gilani and Navjot Sandhu alias Afsan

Guru along with some other proclaimed offenders said to be the leaders of the banned organization known as Jaish-e-Mohammed. The four accused persons were charged of different offences.

2. The petitioner was charged under the following sections of the Prevention of Terrorism Act (POTA), the Indian Penal Code (IPC) and the Explosive Substances Act:

i) Section 3(2) of POTA
ii) Section 3(3) of POTA
iii) Section 3(4) of POTA
iv) Section 3(5) of POTA
v) Section 4(b) of POTA
vi) Section 121 of IPC
vii) Section 121A of IPC
viii) Section 122 of IPC
ix) Section 302 read with 120B of IPC
x) Section 307 read with 120B of IPC
xi) Section 3 of Explosive Substances Act.

3. The accused persons were tried by the Designated Special Court on the charges framed. After the conclusion of the trial, the Designated Court convicted three accused, namely, Mohd. Afzal, Shaukat Hussain Guru and S.A.R. Gilani for the offences under Sections 121, 121A, 122, Section 120B read with Sections 302 and 307 read with Section 120B, IPC, sub-sections (2), (3) and (5) of Section 3 and Section 4(b), POTA and Sections 3 and 4 of the Explosive Substances Act. Accused Nos. 1 and 2 were also convicted

under Sections 3(4), POTA. The other accused Navjot Sandhu alias Afsan Guru was acquitted of all the charges except the one under Section 123, IPC. The other three accused were awarded the death sentence under Section 302 read with Section 120B, IPC and Section 3(2), POTA. They were also sentenced to life imprisonment on as many as eight counts under the provisions of IPC, POTA and the Explosive Substances Act in addition to varying amounts of fine.

4. The Designated Judge submitted the record of the case to the High Court of Delhi for confirmation of death sentence imposed on the three accused. Each of the four accused filed appeals against the verdict of the Designated Judge. The State also filed an appeal. The High Court dismissed the appeals of Mohd. Afzal and Shaukat Hussain Guru and confirmed the death sentence imposed on them, and allowed the appeal of the State in regard to sentence under Section 121, IPC and awarded them death sentence under that Section also. The High Court allowed the appeals of S.A.R. Gilani and Navjot Sandhu alias Afsan Guru and acquitted them of all the charges. The judgment of the High Court gave rise to seven appeals - two appeals preferred by Shaukat Hussain Guru and one appeal by Mohd. Afzal and four appeals preferred by the State/Government of National Capital Territory of Delhi against the acquittal of S.A.R.

Gilani and Navjot Sandhu alias Afsan Guru. The matter was heard by this Court and by its judgment dated 4th August, 2005 this Court dismissed the appeal filed by Mohd. Afzal and death sentence imposed upon him was confirmed. Appeal of the petitioner Shaukat Hussain Guru was partly allowed. He was convicted under Section 123, IPC and sentenced to undergo rigorous imprisonment of 10 years and to pay a fine of Rs. 25,000/- and in default of payment of fine he was to undergo rigorous imprisonment for a further period of one year. His conviction on the other charges was set aside. The appeals filed by the State against the acquittal of S.A.R. Gilani and Afsan Guru were dismissed.

5. Aggrieved by the order of this Court convicting the petitioner under Section 123 IPC, a review petition was filed by the petitioner under Article 137 of the Constitution. The petitioner in the review petition filed before this Court mainly took the ground that the petitioner had not been charged under Section 123 IPC but has been convicted by this Court for the offence under that Section. In para 2 of the review petition, it was stated thus :

> "Section 123 IPC was not a charge that the prosecution ever pressed against the petitioner, at any stage, not even in arguments before this court. This Hon'ble Court had during the course of the appeal hearings not indicated that this was a charge considered against the accused. Thus counsel for the

> petitioner had no occasion to address any argument on the point. The petitioner had no opportunity of being heard with regard to this charge, and nothing in the charge-sheet or in the evidence put him on notice that he would have to defend a charge under Section 123 IPC. The petitioner had no opportunity of being heard in this Hon'ble Court on the question of whether, upon acquittal on all charges of conspiracy to commit terrorist offences and waging war, a conviction could have been recorded under Section 123 of IPC which is of concealment of a design to wage war. It is the petitioner's respectful case that neither the charge-sheet nor the evidence revealed the ingredients of an offence under Section 123 IPC, aside of the fact that even taken at face value the facts said to be proved do not establish the offence. In the circumstances, the petitioner's conviction for an offence under Section 123 IPC is an error apparent on the face of record and a grave miscarriage of justice. It has been occasioned by a complete denial of natural justice, for he had neither notice of, nor opportunity to defend the charge or represent against it. Section 123 IPC is not a minor offence with respect to Section 121 or 121A, in fact or in law."

The review petition was dismissed by this Court on 22nd September, 2005.

6. Aggrieved by dismissal of review petition, the petitioner filed a curative petition contending therein that this Court had acquitted the petitioner on all charges framed against him but convicted him under Section 123 IPC, an offence with which he was not charged and in respect of which even the Public Prosecutor did not advance any argument in this Court. It was alleged in the curative petition that since the petitioner was not charged under Section 123 IPC, his

conviction for that offence is not only without jurisdiction but also in total contravention of the principles of natural justice and is liable to be set aside in exercise of this Court's jurisdiction in a curative petition on the ground of contravention of the principles of natural justice. It was further contended that the charge under Section 123 IPC having not been framed, he had no opportunity to raise and prove the defence available to him under Section 39(1) of the Code of Criminal Procedure. The curative petition was also dismissed by a Bench of four Judges of this Court on 12th January, 2007.

7. In the present petition filed by Shaukat Hussain Guru under Article 32 of the Constitution of India, prayers are made for a writ of habeas corpus requiring the petitioner to be brought before the court and to release him after recording a finding that his continued detention is in violation of his fundamental right guaranteed by Article 21 of the Constitution.

8. The Division Bench of this Court in the judgment delivered on 4th August, 2005 has considered the case of the petitioner from para 297 of State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600 and found that the confessional statement of the petitioner would be excluded from the consideration of the circumstances found against him. This Court has taken into

consideration the various circumstances against the petitioner and has held in paras 320 and 321 of SCC as under:

> "320. In the light of the above discussion, can it be said that the circumstances established by satisfactory evidence are so clinching and unerring so as to lead to a conclusion, unaffected by reasonable doubt, that the appellant Shaukat was a party to the conspiracy along with his cousin Afzal? We find that there is no sufficient evidence to hold him guilty of criminal conspiracy to attack Parliament. The gaps are many, once the confession is excluded. To recapitulate, the important circumstances against him are:
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> 1. Taking a room on rent along with Afzal at Christian Colony hostel into which Afzal inducted the terrorist Mohammed about a month prior to the incident. Shaukat used to go there.
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> 2. The motorcycle of Shaukat being found at Indira Vihar, one of the hideouts of the terrorists which was hired by Afzal in the 1st week of December 2001.
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> 3. His visits to Gandhi Vihar house which was also taken on rent by Afzal in December 2001 to accommodate the terrorists and meeting Afzal there quite often, as spoken to by PW34.
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> 4. Accompanying Afzal and Mohammed for the purchase of motorcycle by Afzal.
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> 5. His frequent calls to Afzal especially on the date of attack.
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> 6. His leaving Delhi to Srinagar on the date of attack itself in his truck with Afzal who carried a mobile phone, laptop used by the terrorists and cash of Rs.10 lakhs.

7. The fear and anxiety with which he and his wife conversed over the phone on the night of following day.

These circumstances, without anything more, do not lead to the conclusion that Shaukat was also a party to the conspiracy in association with the deceased terrorists. The important missing link is that there was no occasion on which Shaukat ever contacted any of the deceased terrorists on phone. Shaukat was not shown to be moving with the deceased terrorists at any time excepting that he used to go with Afzal to the boys' hostel where Mohammed was staying initially and he once accompanied Afzal and Mohammed to the second hand Motorcycle shop. He did not accompany Afzal at the time of purchase of chemicals, etc. used for preparation of explosives and motor car used by the terrorists to go to the Parliament House. In the absence of any evidence as regards the identity of the satellite phone number, the court cannot presume that the calls were received from a militant leader who is said to be the kingpin behind the operations. The frequent calls and meetings between Shaukat and Afzal should be viewed in the context of the fact that they were cousins. Though his inclination and willingness to lend a helping hand to Afzal even to the extent of facilitating him to flee away from Delhi to a safer place soon after the incident is evident from his various acts and conduct, are not sufficient to establish his complicity in the conspiracy as such. Certain false answers given by him in the course of examination under Section 313 are not adequate enough to make up the deficiency in the evidence relating to conspiracy as far as Shaukat is concerned. At the same time, the reasonable and irresistible inference that has to be drawn from the circumstances established is that the appellant Shaukat had the knowledge of conspiracy and the plans to attack the Parliament House. His close association with Afzal during the crucial period, his visits to the hideouts to meet Afzal, which implies awareness of the activities of Afzal, the last minute contacts between him and Afzal and their immediate departure to Srinagar in Shaukat's truck with the incriminating laptop and phone held by Afzal would certainly give rise to a high degree of probability of knowledge on the part of Shaukat that his cousin had conspired with others to attack Parliament and to

indulge in the terrorist acts. He was aware of what was going on and he used to extend help to Afzal whenever necessary. Having known about the plans of Afzal in collaborating with terrorists, he refrained from informing the police or Magistrate intending thereby or knowing it to be likely that such concealment on his part will facilitate the waging of war. In this context, it is relevant to refer to Section 39 CrPC:

> "39. Public to give information of certain offences.-(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely:--
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> (i) Sections 121 to 126, both inclusive, and Section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);
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> ...
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> shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention."

321. Thus, by his illegal omission to apprise the police or Magistrate of the design of Afzal and other conspirators to attack Parliament which is an act of waging war, the appellant Shaukat has made himself liable for punishment for the lesser offence under Section 123 IPC. If he had given the timely information, the entire conspiracy would have been nipped in the bud. The fact that there was no charge against him under this particular section, does not, in any way, result in prejudice to him because the charge of waging war and other allied offences are the subject matter of charges. We are of the view that the accused Shaukat is not in any way handicapped by the

> absence of charge under Section 123 IPC. The case which he had to meet under Section 123 is no different from the case relating to the major charges which he was confronted with. In the face of the stand he had taken and his conduct even after the attack, he could not have pleaded reasonable excuse for not passing on the information. Viewed from any angle, the evidence on record justifies his conviction under Section 123 IPC." (emphasis supplied)

9. It is contended by Shri Shanti Bhushan, learned senior counsel for the petitioner that no charge under Section 123 IPC having been framed, the petitioner was not given an opportunity to prove the fact that he had a reasonable excuse for not informing the nearest Magistrate or police officer of the commission of the offence of which the accused were charged of or their intention to commit an offence, nor the petitioner was given an opportunity to prove the fact that in fact he gave information to the nearest Magistrate or police officer of the commission of the offence or intention to commit an offence of conspiracy they were charged of. It is submitted by the learned senior counsel that the offence under Section 123 IPC is not a minor offence of the charged offences, for the court to exercise the powers under Section 222 of the Cr.P.C. The submission of the learned senior counsel further proceeded with that the petitioner has not been heard nor was given an opportunity to meet the charge under Section 123 IPC at the trial nor in the appeal stage or at the stage of

the review petition or when the curative petition was decided in chambers, which tantamounts to judgment being delivered against the accused without following the principles of natural justice. It was submitted by the learned senior counsel that the judgment delivered without following the principles of natural justice would be nullity and thus this Court should exercise jurisdiction under Article 32 of the Constitution to remedy the wrong and to set at liberty the accused petitioner who is in illegal detention and serving the sentence under Section 123 IPC under which he was not charged.

10. On the contrary, it is submitted by Shri Gopal Subramanium, learned Additional Solicitor General that the charges which had been framed against the petitioner under Sections 121, 121A and 122, IPC and the offence under Section 123, IPC for which he was found guilty and sentenced, are cognate offences having the main ingredients in common. The main ingredients consist of several particulars and combination of some of them constitute a complete offence under Section 123, IPC, which is a minor offence, and such combination having been proved the Court has rightly convicted the accused petitioner under Section 123, IPC for which neither separate charge was required to be framed nor the Court was required to hear him again after framing of the charge. The learned Additional Solicitor

General further urged that this Court having found that Section 123 is a minor offence of the Sections for which the accused petitioner faced trial after framing of the charges and his review petition and curative petition being dismissed, writ petition under Article 32 of the Constitution of India would not be maintainable, the relief under which could only be given by setting aside the judgment of the Court.

11. In Rupa Ashok Hurra v. Ashok Hurra and Another, (2002) 4 SCC 388, a Constitution Bench of this Court has considered whether an aggrieved person is entitled to any relief against the final judgment/order of this Court after dismissal of the review petition either under Article 32 of the Constitution or otherwise. After considering in threadbare the judgments of this Court in Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1 = (1966) 3 SCR 744 (judgment by 9 learned Judges), A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 (judgment by 7 learned Judges) and Triveniben v. State of Gujarat, (1989) 1 SCC 678 (judgment by Constitution Bench), the Constitution Bench has held in Rupa Ashok Hurra (supra) that a final judgment/order passed by this Court cannot be assailed in an application under Article 32 of the Constitution of India by an aggrieved person, whether he was a party

to the case or not. Thus, it is settled law now that judgment of this Court cannot be assailed invoking Article 32 of the Constitution of India. In Rupa Ashok Hurra (supra), the Court has considered the arguments advanced by the senior counsels that the principle of finality of the order of this Court had to be given a go-by and a case is required to be re-examined when the orders were passed without jurisdiction or in violation of the principles of natural justice and that the Court has inherent jurisdiction to examine the case under that jurisdiction of this Court. It was also contended that oral hearing on such an application should be given and it should be heard by a Bench of Judges other than those who passed the order on the ground that it would inspire confidence in the litigant public. It was submitted that Article 129 of the Constitution declared this Court to be court of record, so it would have inherent powers to pass appropriate orders to undo injustice to any party resulting from the judgments of this Court. It was urged that in case of gross miscarriage of justice, this Court ought to have exercised its inherent powers by entertaining an application to examine the final order of this Court, even when review was rejected, in the rarest of the rare cases. Where the order was passed without jurisdiction or in

violation of the principles of natural justice, the case would fall in the rarest of the rare cases. It was contended that the corrective power must be exercised so as to correct injustice in a case of patent lack of jurisdiction. It was urged that in case of manifest illegality and palpable injustice, this Court under its inherent powers could reconsider its final judgment/order. On the submissions of the counsel, the Court was faced with the question whether an order passed by this Court can be corrected under its inherent powers after dismissal of the review petition on the grounds that it was passed either without jurisdiction or in violation of the principles of natural justice or due to unfair procedure giving scope for bias which resulted in abuse of the process of the court or miscarriage of justice to an aggrieved person. The Constitution Bench after considering various cases on the topic and the arguments of the senior counsels appearing in the case, laid down mechanism to deal with the matters where the question of inherent lack of jurisdiction, violation of the principles of natural justice, manifest illegality or palpable injustice has been brought to the notice of the Court. This Court has held that to prevent abuse of its process and to cure gross miscarriage of justice, it may reconsider its judgment in exercise of its inherent powers and then

laid down tests and the requirements for exercising such jurisdiction

by the Court and the mechanism therefor in paras 50 to 53 as under:

> "50. The next step is to specify the requirements to entertain such a curative petition under the inherent power of this Court so that floodgates are not opened for filing a second review petition as a matter of course in the guise of a curative petition under inherent power. It is common ground that except when very strong reasons exist, the Court should not entertain an application seeking reconsideration of an order of this Court which has become final on dismissal of a review petition. It is neither advisable nor possible to enumerate all the grounds on which such a petition may be entertained.
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> 51. Nevertheless, we think that a petitioner is entitled to relief ex debito justitiae if he establishes (1) violation of principles of natural justice in that he was not a party to the lis but the judgment adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner.
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> 52. The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation. The curative petition shall contain a certification by a Senior Advocate with regard to the fulfillment of the above requirements.
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> 53. We are of the view that since the matter relates to re-examination of a final judgment of this Court, though on limited ground, the curative petition has to be first circulated to a Bench of the three senior-most Judges and the Judges who

passed the judgment complained of, if available. It is only when a majority of the learned Judges on this Bench conclude that the matter needs hearing that it should be listed before the same Bench (as far as possible) which may pass appropriate orders. It shall be open to the Bench at any stage of consideration of the curative petition to ask a Senior Counsel to assist it as amicus curiae. In the event of the Bench holding at any stage that the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner."

12. In the present case, the Court has specifically dealt with the question whether the offence under Section 123, IPC of which the accused was not charged, is a minor offence falling under the charges framed, and held that the fact that there was no charge against the accused under this particular Section, does not, in any way, result in prejudice to him because the charge of waging war and other allied offences are the subject matter of charges. It was held that the accused Shaukat is not in any way handicapped by the absence of charge under Section 123, IPC. The case which he had to meet under Section 123 is no different from the case relating to the major charges which he was confronted with. In the face of the stand he had taken and his conduct even after the attack, he could not have pleaded reasonable excuse for not passing on the information. It was held that

viewed from any angle, the evidence on record justifies his conviction under Section 123, IPC.

13. Section 222 of the Code of Criminal Procedure, 1973 (Cr.P.C.) authorizes and gives jurisdiction to the court to convict an accused of the charge which has not been framed, if he is found guilty of a minor offence. The court need not frame a separate charge before the conviction is rendered on a minor offence. In Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577, this Court has held in paras 15 and 16 as under:

> "15. Section 222(1) of the Code deals with a case "when a person is charged with an offence consisting of several particulars". The section permits the court to convict the accused "of the minor offence, though he was not charged with it". Sub-section (2) deals with a similar, but slightly different situation.
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> xxx xxx xxx
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> 16. What is meant by "a minor offence" for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-‘-vis the other offence."

In another case of Suman Sood @ Kamal Jeet Kaur v. State of Rajasthan, (2007) 5 SCC 634 (in para 29), a 2-Judge Bench of this Court was of the view that:

> "... Now, it is well settled that if the accused is charged for a higher offence and on the evidence led by the prosecution, the court finds that the accused has not committed that offence but is equally satisfied that he has committed a lesser offence, then he can be convicted for such lesser offence. Thus, if A is charged with an offence of committing murder of B, and the court finds that A has not committed murder as defined in Section 300 IPC but is convinced that A has committed an offence of culpable homicide not amounting to murder (as defined in Section 299 IPC), there is no bar on the court in convicting A for the said offence and no grievance can be made by A against such conviction".

14. To prove an offence under Section 121, IPC, the prosecution is required to prove that the accused is guilty of waging war against the Government of India or attempts to wage such war, or abets the waging of such war, whereas for proving the offence under Section 123, IPC against the accused the prosecution is required to prove that there was a concealment by an act or by illegal omission of existence of a design to wage war against the Government of India and he intended by such concealment to facilitate, or he knew that such concealment will facilitate, the waging of war. In the present case, the accused was charged under Section 121, IPC for waging war

against the Government of India or attempting to wage such war or abetting the waging of such war. The concealment of such fact by an act or illegal omission with an intention to facilitate, or knowing that such concealment will facilitate, waging of war, even in the absence of proof of his involvement in waging of war against the Government of India, will constitute an offence and an accused can always be convicted for the concealment of such fact under Section 123, IPC. The prosecution having been successful in proving the necessary ingredients of Section 123, IPC, it would constitute a minor offence of a major offence and, therefore, the petitioner was convicted under Section 123, IPC which is a minor offence of the offences he faced trial.

15. It is contended by the learned senior counsel for the petitioner that the charge having not been framed under Section 123 IPC the petitioner had lost opportunity of raising defence provided under Section 39, Cr.P.C. The relevant portion of Section 39 reads as under:

> "39. Public to give information of certain offences.-(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely:--

> (i) Sections 121 to 126, both inclusive, and section 130 (that is to say offences against the State specified in Chapter VI of the said Code);
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> ...
>
> shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention;
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> xxx xxx xxx"

16. Section 39, Cr.P.C. puts a burden on every person aware of the commission of, or of the intention of any other person to commit, any offence punishable under Sections 121 to 126 IPC, to forthwith inform to the nearest Magistrate or police officer of such commission or intention. The exception being if there is a reasonable excuse for not informing that fact to the nearest Magistrate or police officer of such commission or intention, the burden of proof lies upon the person so aware of the commission or intention to commit, or that he has in fact given such information to the nearest Magistrate or police officer. On such proof, the accused would be exonerated of the duty cast upon him under Section 39, Cr.P.C. The submission of the

learned senior counsel is that because the charge was not framed under Section 123, IPC, the petitioner lost an opportunity of raising a defence and prove that there was a reasonable excuse for not informing the commission of intended commission of the offence under Section 123, IPC, to the nearest Magistrate or police officer or that he had really in fact informed the commission or intention to commit an offence under Section 123, IPC to the nearest Magistrate or police officer. We are not impressed by the submission of the learned senior counsel for the petitioner. This defence was available to the petitioner even under Sections 121, 121A and 122 of which he had been expressly charged with. Thus, it cannot be said that because a specific charge under Section 123, IPC was not framed, he had lost an opportunity of raising the defence available to him and thus has been directly and prejudicially affected.

17. After the judgment was delivered by this Court, the petitioner filed a review petition raising therein the contention that he was denied an opportunity of being heard against the charge under Section 123, IPC. Neither the charge nor the evidence revealed the ingredients of an offence under Section 123, IPC and thus his conviction for an offence under Section 123, IPC is an error apparent

on the face of the record and grave miscarriage of justice. It has resulted in a complete denial of natural justice.

18. Order XL in Part VIII of the Supreme Court Rules, 1966 deals with 'review', under which an application for review shall be by a petition and shall be filed within 30 days from the date of the judgment or order sought to be reviewed. It shall set out clearly the grounds for review. Unless otherwise directed by the court, the review petition so filed shall be disposed of by circulation without any oral arguments. The petitioner may supplement his petition by additional written arguments. The court may either dismiss the petition or direct notice to the opposite party. An application for review was as far as practicable be circulated to the same Judge or Bench of Judges that delivered the judgment or order sought to be reviewed. Thus under the rules, a review petition is to be disposed of by circulation in chambers without any oral arguments. Unless there is a specific order of the court for placing the review petition in the open court, the matter shall be decided by circulation without there being any oral arguments, on the basis of the submissions made in the petition, but the petitioner may supplement his case by additional written arguments.

19. The scope and ambit of a review petition filed in this Court has been dealt with by a 3-Judge Bench of this Court in M/s. Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, AIR 1980 SC 674, as under in para 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 revise its judgment. G.L. Gupta v. D.N. 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 O. XLVII 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 XL R. 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a 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 a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.'Chandra Kanta v. Sheikh Habib, (1975) 3 SCR 933."

20. The review petition of the petitioner raising the ground as mentioned hereinabove was dismissed by the Court by its order dated 22nd September, 2005. Thus, the contention raised by the petitioner that his conviction under Section 123, IPC without there being any charge framed tantamounts to grave miscarriage of justice and is contrary to the principles of natural justice, has been rejected by the Court. Thereafter, a curative petition was filed by the petitioner as provided and under the procedure laid down in Rupa Ashok Hurra (supra). The curative petition was placed in chambers by circulation before the three seniormost Judges and one Judge who was a member of the Bench which initially delivered judgment (the other Judge of the Bench Hon. P.V. Reddi, J. being retired) and after due consideration the curative petition was also rejected by this Court on 12th January, 2007. In the curative petition also, a specific ground had been raised by the petitioner that there was violation of the principles of natural justice and manifest injustice was caused to him because he had not been given opportunity to defend himself for an offence under Section 123, IPC for which the charge had not been framed. By rejection of his curative petition, the contention so raised by the petitioner has been rejected.

21. In the facts and circumstances of the case, we do not find any ground to entertain the petition under Article 32 of the Constitution of India. Moreover, for granting the relief prayed for by the petitioner for entertaining the present writ petition it is necessary to set aside the judgment delivered by a Division Bench of this Court confirmed by dismissal of the review petition as also of the curative petition, which cannot be granted as not being permissible in exercise of the powers under Article 32 of the Constitution of India.

22. That being the case, we do not find any reason to entertain the present petition and grant relief as prayed for by the petitioner. The writ petition is, accordingly, dismissed.

.....J.
(P.P. NAOLEKAR)

.....J.
(V.S. SIRPURKAR)

New Delhi;
May 14, 2008.