

ABU SALEM ABDUL QAYYUM ANSARI

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v.

CENTRAL BUREAU OF INVESTIGATION & ANR.

(Criminal Appeal Nos. 415-416 of 2012)

AUGUST 5, 2013.

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[P. SATHASIVAM, CJI AND J. CHELAMESWAR, J.]

EXTRADITION ACT, 1962:

ss.3(1) and 21 - Extradition - Accused in 1993 Bombay Blast case, extradited to India from Portugal (Extradition order dated 28.3.2003) on the assurance that he would not be awarded capital sentence and imprisonment for more than 25 years - Additional charges framed - Difference of opinion between courts in India and courts in Portugal as regards trial of accused for additional charges - CBI seeking to modify judgment in Abu Salem and praying for withdrawal of additional charges - Held: Taking note of the fact that the offences for which the appellant was extradited to India are grave enough to even award him the maximum punishment and, therefore, no prejudice would be caused if the application for modification is allowed - Accordingly, prayer of CBI allowed and additional charges permitted to be withdrawn -- However, the analysis and reasoning rendered in the judgment of Abu Salem with regard to the interpretation of the Principle of Speciality stands good as the law declared by the Court under Art. 141 of the Constitution of India and shall be binding on all courts within the territory of India - Constitution of India, 1950 - Art. 141.

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ss. 3(1) and 21 - Ministerial order of Government of Portugal permitting extradition of accused in 1993 Bombay blast case - Additional charges framed by Special Court - Lisbon Court of Appeals holding the additional charges in violation of extradition order and authorization granted ought

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A *to be terminated - Held: Constitutional Court of Portugal holding that Portuguese law does not provide for any specific consequence for violation of the Principle of Speciality and the findings may not be construed as a direction to Union of India to return the appellant to Portugal but shall only serve*
 B *as a legal basis for Government of Portugal, should it choose to seek the return of appellant to Portugal through political, or diplomatic channels, which has not been done till date -- In this view of the matter, order of Extradition dated 28.03.2003 stands valid and effective in the eyes of law.*

C **CONSTITUTION OF INDIA, 1950:**

Art.136 - Supreme Court of India - Power to modify its decisions - Held: Constitution of India bestows upon Supreme Court the inherent power to modify its earlier decision if it finds
 D *that the error pointed out in the modification petition was under mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration had resulted in miscarriage of justice - Interlocutory applications.*

E **INTERNATIONAL LAW:**

Extradition - Explained.

The appellant was one of the 189 persons accused
 F **in TADA Special Case No. 1-B of 1993 and Special Case No. 1 of 2006 before the Designated Court under TADA for causing serial bomb blasts in Mumbai on 12.3.1993. The Designated Court framed a common charge of criminal conspiracy punishable u/s 3(3) of TADA. Various**
 G **other charges under the Penal Code, 1860, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 and the Prevention of Damage to Public Property Act, 1984 were also framed. Since the appellant had absconded, a Red Corner Notice was issued through**
 H **Interpol, which led to his detention by the Portuguese**

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Police at Lisbon. The Government of India submitted a request for extradition of the appellant in 9 criminal cases with an assurance to the Government of Portugal that the appellant, if extradited for trial in India, would neither be awarded death penalty nor be subjected to imprisonment for a term beyond 25 years. Accordingly, in view of the Ministerial order dated 28.3.2003 admitting extradition, the Supreme Court of Justice, Portugal, on 27.1.2005 granted extradition of the appellant in respect of various offences like criminal conspiracy, murder etc. punishable u/ss 302, 307, 435, 436 IPC, ss 3(2) and 3(3) of TADA, s.3 of the Explosive Substances Act, 1908 and ss. 4 of the Prevention of Damage to Public Property Act, 1984. On 11.11.2005, the appellant was brought to India and was produced before the Designated Court, Mumbai in RC-1(S/93)/CBI/STF, i.e., BBC No. 1 of 1993.

On 01.03.2006, a supplementary charge sheet u/s 173(8) of the Code of Criminal Procedure, 1973 was filed in respect of the appellant before the Designated Court in BBC No. 1 of 1993. By order dated 18.03.2006, the substantive charges, in addition to the charge of conspiracy, were framed against the appellant. By order dated 13.06.2006, the Designated Court allowed the application for separation of trial and held that the trial would continue as BBC-1-B of 1993 in continuity with the earlier joint case being BBC No. 1 of 1993. It was also held that the assurances were given with respect to sentence which could be imposed and not with respect to the offences with which he could be tried. The said order was challenged before the Supreme Court of India in Criminal Appeal No. 990 of 2006 and Writ Petition No. 171 of 2006, as being in violation of the extradition decree.

The appellant also moved an application before the Lisbon Court of Appeals stating that he was being tried in India in violation of Principle of Speciality as contained

A in Article 16 of Law 144 of 99. The Court of Appeals, by
order dated 13.10.2008, adjourned the matter till the
Supreme Court of India passed the final order in the
Criminal Appeal No. 990 of 2006 as well as in Writ Petition
B No. 171 of 2006. The Supreme Court of India, by judgment
dated 10.09.2010 in *Abu Salem*¹ dismissed the appeal as
well as the petition filed by the appellant. The Lisbon
Court of Appeals, by judgment dated 14.09.2011, held
that the authorization granted for the extradition of the
appellant ought to be terminated. The Supreme Court of
C Justice, Portugal dismissed the appeal of Union of India
as not maintainable. However, the Constitutional Court of
Portugal, on 05.07.2012, decided the appeal preferred by
the Union of India holding that in spite of having
considered the trial for new crimes illegal and of having
D decided to terminate the authorization granted for the
extradition of the appellant, "the decision of the Lisbon
Court of Appeals only concludes for the violation of the
Principle of Speciality. It does not by itself bind the
requesting State to the practice of a certain act and
E namely to return the extradited person and thus it is not
a decision rendered against the Union of India, a decision
that directly and effectively prejudices it".

The appellant then filed applications before the
Special Court, which dismissed the same. The appellant
F filed the appeals. Pending disposal of the appeals, the
respondent- CBI filed CrI. Misc. Petitions Nos. 3301-3302
of 2013 praying for clarification/modification of the
judgment dated 10.09.2010 in *Abu Salem*, as also for
permission to withdraw charges (iii) to (viii) leveled
G against the appellant by order dated 18.3.2006, and for
vacation of the stay order dated 17.02.2012.

The questions for consideration before the Court
were: (i) whether Court could modify the judgment
H rendered in *Abu Salem* under the grounds raised by the

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respondent; and (ii) whether the order of Extradition dated 28.03.2003 stood annulled/cancelled as alleged by the appellant.

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Disposing of the appeals and the Crl. Misc. Petitions, the Court

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HELD: 1.1 The Constitution of India bestows upon the Supreme Court the inherent power to reconsider, modify and revise its earlier decisions for the reason that law has to bend before justice. Certainly, nothing would preclude this Court from rectifying the error if it finds that the error pointed out in the modification petition was under mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration had resulted in miscarriage of justice. [para 11] [1081-D-E]

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1.2 In the given case, the only ground on which the respondent/CBI seeks modification is to harmonize the situation created by the divergent views expressed by the Indian Courts and the Courts in Portugal with regard to violation of the Principle of Speciality, and accordingly seeks permission to withdraw the additional charges framed against the appellant. [para 12] [1081-F; 1082-B-C]

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1.3 Extradition is a system consisting of several processes whereby one sovereign surrenders to another sovereign a person sought after as an accused, criminal or a fugitive offender. This delivery of individuals to a requesting sovereign is usually based on treaties or bilateral agreements but sometimes it also occurs by reciprocity and comity as a matter of courtesy and goodwill between sovereigns, as in the instant case. Therefore, 'world public order' is the recurring theme based on which the extradition is practiced by the States. [para 13] [1082-C-E]

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A 1.4 Taking note of the fact that the offences for which
the appellant was extradited to India are grave enough
to even award the appellant with maximum punishment
and, therefore, no prejudice would be caused if the
application for modification is allowed, this Court is of the
B considered view that allowing the modification petition
under the existing peculiar circumstance will not be
detrimental to any of the parties. However, it is pertinent
to clarify that by allowing the modification petition filed
C by the respondent, it cannot be construed that this Court
is reviewing the judgment in the light of the verdict of the
Constitutional Court of Portugal. Both India and Portugal
are two sovereign States with efficient and independent
judicial system. As a consequence, in unequivocal terms,
the verdict by the Constitutional Court of Portugal is not
D binding on this Court but only has persuasive value.
[para 14] [1082-F-H; 1083-A]

1.5 Consequently, though this Court has rendered a
decision in favour of the CBI, in the interest of comity of
Courts and on the statement made by the Attorney
E General that the matter is being pursued through
diplomatic channels, while allowing the modification
petition, the respondent-CBI is permitted to withdraw the
charges (iii) to (viii) in the additional charge-sheet. The
Attorney General also assured this Court that they are in
F the process of withdrawing other charges too pending
in various States against the appellant which are claimed
to be in violation of the Extradition order. [para 15] [1083-
B-D]

G 1.6 Nevertheless, it is clarified that the modification
petition is allowed only to the extent of withdrawal of the
additional charges framed against the appellant. However,
the analysis and reasoning rendered in the judgment with
regard to the interpretation of the Principle of Speciality
still stands good as the law declared by this Court under
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Art. 141 of the Constitution of India and shall be binding on all courts within the territory of India. [para 16] [1083-D-E]

2.1 As regards the status of the order of Extradition dated 28.03.2003, the Constitutional Court of Portugal has categorically held that Portuguese law does not provide for any specific consequence for violation of the Principle of Speciality and their findings may not be construed as a direction to the Union of India to return the appellant to Portugal but shall only serve as a legal basis for the Government of Portugal, should it choose to seek the return of the appellant to Portugal through political, or diplomatic channels, which has not been done till date. In this view of the matter, the order of Extradition dated 28.03.2003 stands valid and effective in the eyes of law. [para 17] [1083-F, G-H; 1084-A-B]

2.2 In the result, the respondent-CBI is permitted to withdraw charge Nos. (iii) to (viii) of the additional charges. Consequently, the stay order dated 17.02.2012 is vacated and the trial is allowed to continue. [para 18] [1084-C-D]

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From the Judgment and Order dated 08.11.2011 of the Designated Judge (designated Court of TADA) for Greater Bombay at Mumbai in Exhibit No. 208 in TADA Special Case No. 1-B of 1993 and Exhibit No. 491 in TADA Special Case No. 1 of 2006.

G.E. Vahanvati, AG, Sidharth Luthra, ASG, Sudeep Pasbola, Shobha Kurshi, Sushil Karanjkar, K.N. Rai, Mohd, Nizam Pasha, Supriya Juneja, Balram Das, Arjun Divan, Arvind Kumar Sharma, Asha G. Nair, Sanjay Kharde for the appearing parties.

The Judgment of the Court was delivered by

A **P. SATHASIVAM, CJI.** 1. These appeals, at the instance of the appellant - Abu Salem Abdul Qayyum Ansari, have been filed under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short 'the TADA') challenging the final judgment and order dated 08.11.2011 passed by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in TADA Special Case No. 1-B of 1993 and Special Case No. 1 of 2006 whereby the Designated Judge dismissed both the applications filed by the appellant in view of the order dated 14.09.2011 passed by the Court of Appeals of Lisbon, Portugal terminating the extradition order dated 28.03.2003 for stay of all further proceedings.

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2. Pending disposal of the above appeals, the respondent- CBI filed Criminal Misc. Petitions being Nos. 3301-3302 of 2013 praying for clarification/modification of the judgment and order dated 10.09.2010 in *Abu Salem Abdul Qayoom Ansari vs. State of Maharashtra and Another* (2011) 11 SCC 214. In the same applications, the CBI has also prayed for permission to withdraw certain charges leveled against the appellant-Abu Salem. They also prayed for vacation of the stay order dated 17.02.2012 and to allow the trial to continue.

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3. In view of the applications filed by the CBI for clarification/modification of the earlier order dated 10.09.2010, it is useful to highlight the factual aspects of the case to decide the present applications.

4. Brief facts

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(i) On 12.03.1993, a series of 12 bomb blasts took place one after the other in the city of Bombay which resulted in the death of 257 persons, injuries to 713 others and properties worth about Rs.27 crore were destroyed. Thereafter, 27 criminal cases were registered in relation to the said incident at various police stations in Bombay City, District Thane and District Raigarh. Upon completion of the investigation, a single

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chargesheet was filed against 189 accused persons including 44 absconding accused (AA) persons on 04.11.1993. A

(ii) During the course of investigation, large number of arms, ammunitions and explosives were recovered from the possession of accused persons. Since the appellant was an absconder, he was shown as an absconding accused (A-139) in the charge sheet and a proclamation was issued against the appellant on 15.09.1993. A Red Corner Notice bearing No. A-103/3-1995 was also issued through Interpol for the arrest of the appellant herein. B

(iii) The Designated Court framed a common charge of criminal conspiracy punishable under Section 3(3) of TADA as well as various charges under the Indian Penal Code, 1860 (in short 'the IPC'), the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 and the Prevention of Damage to Public Property Act, 1984 were also framed. C

(iv) The specific role attributed to Abu Salem in the said chargesheet was that he was entrusted with the task of transporting illegally smuggled arms and ammunitions, their storage and distribution to other conspirators. Some of the arms and explosives which were smuggled into India on 09.02.1993 were transported to Village Sansrod, District Bharuch. In the second week of January, 1993, Abu Salem brought AK-56 rifles, ammunitions and hand grenades from village Sansrod to Bombay and distributed them among various co-accused. D

(v) At the time of trial, the Designated Court directed that evidence to be adduced against the absconding accused persons for the purpose of Section 299 of the Code of Criminal Procedure, 1973. E

(vi) The appellant herein entered the territorial jurisdiction of Portugal in assumed name of Arsalan Mohsin Ali on a Pakistani Passport. On 18.09.2002, Abu Salem was detained F

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A by the Portuguese Police at Lisbon on the strength of the said Red Corner Notice.

(vii) In December 2002, Government of India submitted a request for the extradition of Abu Salem in 9 criminal cases (3 cases of CBI, 2 cases of Mumbai Police and 4 cases of Delhi Police). The request was made relying upon the International Convention for the Suppression of Terrorist Bombings of which India and Portugal are signatories. The requisition was signed by the then Minister of State for External Affairs and was supported on facts with a detailed affidavit sworn by Mr. Om Prakash Chhatwal, the then Sr. Superintendent of Police, CBI/ STF.

(viii) On 13.12.2002, the Government of India issued a Notification under Section 3(1) of the Extradition Act, 1962 to the effect that the provisions of the Extradition Act (other than Chapter III) will apply to the Portuguese Republic with effect from 13.12.2002.

(ix) On 17.12.2002, the Government of India extended an assurance to the Government of Portugal through the then Deputy Prime Minister that the appellant, if extradited for trial in India, would neither be conferred with death penalty nor be subjected to imprisonment for a term beyond 25 years.

(x) On 28.03.2003, the Ministerial order came to be passed admitting extradition, amongst others, under Section 120-B read with Section 302 IPC and Section 3(2) of TADA. However, the Ministerial order declined extradition of the appellant under Section 25(1-A) and (1-B) of the Arms Act, 1959 Sections 4 & 5 of the Explosive Substances Act, 1908, Sections 5 & 6 of TADA and Section 9-B of the Explosives Act, 1884.

(xi) The Ambassador of India in Lisbon gave a further assurance on 25.05.2003 that -

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(i) Abu Salem will not be prosecuted for offences other than those for which his extradition has been sought; and

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(ii) Abu Salem would not be re-extradited to any third country.

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(xii) On 27.01.2005, the Supreme Court of Justice, in view of the guarantee given by the Indian Government, granted extradition of the appellant in respect of various offences like criminal conspiracy, murder punishable under Section 302 IPC, attempt to murder under Section 307 IPC, offence punishable under Section 435 IPC, mischief by fire or explosive punishable under Section 436 IPC, offence punishable under Sections 3(2) and 3(3) of TADA, offence punishable under Section 3 of the Explosive Substances Act, 1908 and offence punishable under Section 4 of the Prevention of Damage to Public Property Act, 1984.

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(xiii) On 10.11.2005, the custody of the appellant was handed over to the Indian Authorities and on 11.11.2005, the appellant was brought to India and was produced before the Designated Court, Mumbai in RC-1(S/93)/CBI/STF, i.e., BBC No. 1 of 1993.

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(xiv) On 01.03.2006, a supplementary charge sheet under Section 173(8) of the Code of Criminal Procedure, 1973 was filed in respect of the appellant before the Designated Court in BBC No. 1 of 1993.

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(xv) By order dated 18.03.2006, the substantive charges, in addition to the charge of conspiracy, were framed against the appellant and his plea of not guilty and claim of trial was recorded. The charges which have been framed by the Designated Court are:

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(i) Criminal Conspiracy punishable under Section 3(3) of TADA and Section 120B IPC read with Section

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A 3(2)(i), (ii), 3(3), 3(4), 5 and 6 of TADA read with Sections 302, 307, 326, 324, 427, 435, 436, 201, 212 IPC read with Sections 3 and 7 read with Section 25(1A), (1B)(a) of Arms Act, 1959, Section 9-B (1)(a), (b), (c) of Explosives Act, 1884, Sections B 3, 4(a), (b), 5 & 6 of Explosive Substances Act, 1908 and Section 4 of Prevention of Damage of Public Property Act, 1984.

(ii) Section 3(3) of TADA;

C (iii) Section 5 of TADA;

(iv) Section 6 of TADA;

(v) Section 4(b) of the Explosive Substances Act, 1908;

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(vi) Section 5 of the Explosive Substances Act, 1908;

(vii) Section 25(1-A) (1-B) (a) read with Section 387 of the Arms Act, 1959 and

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(viii) Section 9-B of the Explosives Act, 1884

(xvi) The additional charges which were framed by the Court (which Abu Salem contends are in violation of the Extradition Order) pertain to offences under Section 5 of TADA, F Section 4(b) and Section 5 of the Explosive Substances Act, 1908 and Section 9-B of the Explosive Substances Act, 1884.

(xvii) On 31.03.2006, the prosecution filed an application being M.A. No. 144 of 2006 seeking separation of the trial of the appellant in the same manner as was done by the Designated Court in respect of Mustafa Ahmad Dossa (AA). G

(xviii) On 12.04.2006, the appellant also filed an application being M.A. No. 161 of 2006 seeking production of relevant record of extradition and sought joint trial along with H other 123 accused whose trial was nearing completion.

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(xix) By way of order dated 13.06.2006, the Designated Court allowed the application for separation of trial and held that the trial would continue as BBC-1-B of 1993 in continuity with the earlier joint case being BBC No. 1 of 1993. It was also held that the assurances were given with respect to sentence which could be imposed and not with respect to the offences with which he could be tried.

(xx) In September, 2006, Criminal Appeal No. 990 of 2006 came to be filed before this Court. A writ petition was also filed invoking Article 32 of the Constitution challenging the said orders. It was his grievance that time and again the authorities abused the process of criminal law by failing to file the orders passed by Portugal courts and by wilfully and deliberately violating the solemn sovereign assurance. It was his categorical claim that the respondents are lowering the esteem of the nation by their deceitful behaviour in the field of international law, breaching the principle of speciality established under the rule of international law and recognised by Section 21 of the Extradition Act after securing the extradition and gaining control of the appellant. The construction made by the Designated Court is not acceptable and the appellant is being wrongly tried by the Designated Court in violation of the extradition decree and prayed for quashing of the entire proceedings. It was contended by the appellant that he has been charged with the offences other than that for which he was extradited and to that extent the order framing charges is bad. The appellant further contended that the order of separation of trial is prejudiced inasmuch as the confessions and evidence recorded in the trial of BBC No.1 of 1993 will not be available to him. He also contended that the separation is against the spirit of the extradition decree which confines the trial of the appellant to the Bombay Bomb Blast case.

(xxi) In view of the above, the appellant moved an application before the Court of Appeals of Lisbon stating that he is being tried in India in violation of Principle of Speciality as contained in Article 16 of Law 144 of 99.

A (xxii) By order dated 18.05.2007, the Court of Appeal expressed its inability to enquire into the question of surrender by the Indian State on the ground that the Indian State has violated certain conditions on which extradition was granted and when the said order was carried in appeal, the Supreme Court of Justice, by order dated 13.12.2007, remitted the matter to the Court of Appeal to enquire whether there has been violation of any condition as alleged by the appellant.

C (xxiii) The Court of Appeal, by order dated 13.10.2008, adjourned the matter till this Court passed the final order in the abovesaid proceedings, namely, Criminal Appeal No. 990 of 2006 as well as in Writ Petition No. 171 of 2006.

D (xxiv) This Court, by judgment and order dated 10.09.2010 in *Abu Salem* (supra) dismissed the appeal as well as the petition filed by the appellant holding that:-

E "72. We have already highlighted how the Government of India and the Government of Portugal entered into an agreement at the higher level mentioning the relevant offences and the appellant was extradited to India to face the trial. We have also noted the notification of the Government of India about the applicability of the Extradition Act, 1962. In the light of the said notification, the additional charges that have been framed fit well within the proviso to Section 21(b) of the Extradition Act. The offences with which the appellant has been additionally charged are lesser than the offences for which the appellant has been extradited. To put it clear, the offences with which the appellant is charged are punishable with lesser punishment than the offence for which he has been extradited. The extradition granted in the present case had due regard to the facts placed which would cover the offences with which the appellant has been charged. As rightly pointed out by the learned Solicitor General, the offences are disclosed by the same set of facts placed before the Government of Portugal. We agree with the

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submission of the learned Solicitor General and the ultimate decision of the Designated Court". A

(xxv) Subsequent to the judgment dated 10.09.2010, the Court of Appeals of Lisbon, by judgment dated 14.09.2011, took a contrary view and held that the authorization granted for the extradition of Abu Salem ought to be terminated. It was held that Article 16 of the Portuguese Law No. 144/99 clearly provides that a person cannot be tried for an offence other than the one that gives rise to request for cooperation by way of extradition. It was further held that Article 16(2) provides that a person cannot be tried for offences other than those determined in the request for cooperation. However, the said two sub-articles need to be read with sub-Article (5) which provides that an extradition can be sought in respect of facts other than those that laid the foundation for the request. The Court of Appeals of Lisbon has concluded that B
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".....In the light of the Portugese legal system, the Indian Union were not considering the limits imposed by the Portuguese Republic to the extradition of Abu Salem of which it was perfectly aware.....violated the principle of Speciality." E

(xxvi) Being aggrieved of the above order, Union of India preferred an appeal before the Supreme Court of Justice, Portugal but the same was dismissed as not maintainable. The Constitutional Court of Portugal has, however, on 05.07.2012, decided the appeal preferred by the Union of India. For the sake of brevity and convenience, certain portions are relevant which are as under: F

"8. Independent of the manner how the question of violation of the principle of speciality is framed, whether or not it is seen as an incident of the delivery of the extradited person that still falls within the judicial phase of the extradition procedure, the considerations just made apply to the judicial procedure that gave rise to the present appeal. In G
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A spite of the judgment whose possibility of appeal is under
consideration being in the sense of the violation of such
principle by the Union of India, terminating the authorization
granted by the extradition of the appellant, the judicial
decision does not impose by itself the devolution of the
B extradited person. The Principle of Speciality according to
which the extradited person cannot be prosecuted held
tried or subjected to any other restriction of his freedom
for a fact or a condemnation previous to his leaving the
Portuguese territory other than those determined in the
C request for extradition (Article 16, No.1 of Law No. 144/
99) is an internationally recognized principle by means of
which the sovereignty of the requested State is protected
and the protection of the extradited person is assured
(about this, Gregory B. Richardson, "The Principle of
D Speciality in extradition" ; and Dominique Poncet/Paul
GullyHart, "Le Pricnipe de la specialite en matiere
d'extradition.", *Revue Internationale de Droit Penal*, 1991,
respectively, page 86, and pages 201 and following). The
question of violation of the principle presupposes,
E therefore, two distinct plans: that of the relations between
the requesting State and the requested State, with an
eminently political basis; and that of the relations between
the requesting State and the extradited person in relation
to which the form how the latter makes the assurance that
the Principle of Speciality represents for the extradited
F person avail against the former is analysed (cf. point 2. of
the Legal Basis, above and such authors, pages 86 and
following and pages 217 and following respectively). When
what is under consideration is the plan in which the
relations between the requesting State and the extradited
G person are established, even if the violation of the Principle
of Speciality is determined in the internal legal order of the
requested State within the scope of a judicial procedure
brought by the extradited person which occurred in the
present records, without the admissibility of this via being
H peacefully understood (cf. point 2. of the Legal Basis, above)

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the State requesting the extradition request is not in this procedure in a position of procedural confrontation in relation to such State. It is not vested with any role as procedural participant (party) in relation to which it can be concluded that a decision against it or in its favour was rendered which directly and effectively prejudices it because the legal nature of the extradition would always prevent that, a form of international judicial cooperation between sovereign States in criminal matters. An understanding that is also sustained by Article 7 No.1 of the CRP, when in respect of matters of international relations it sets out that Portugal is governed among other international law principles by the principles of equality between States and of non-interference in the internal matters of other States. The legal decision that terminates the authorization extradition, namely for violation of the Principle of Speciality, must be considered only as one element among others that the requested State takes into consideration when it politically ponders on the attitude to take in the plan of its relations with the requesting State. Therefore, it cannot have the reach of a decision that just by itself sets off the consequence of violation of the Principle of Speciality, applying as a decision against the requesting State, as a decision that directly and effectively prejudices it. All the more so that unlike what occurs in the judicial phase of the extradition procedure which is necessarily preceded by an administrative decision in the sense of granting the extradition request, there has not yet been any decision made with an eminently political basis, and it is certain that the violation of the Principle of Speciality has direct repercussions on the plan of the relations between the States involved since such principle also protects in an autonomous manner the sovereignty of the requested State."

What has just been said is in consonance with the judgment of the Supreme Court of Justice of 13.12.2007,

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A which although deciding in the sense of the internal legal
order having to take a position on the alleged violation of
the principle of speciality, concludes that the declaration
of termination of the authorization granted should
B "subsequently be referred to the political power instances
State to take the attitude it deems to be the most
convenient, through diplomatic channels" (cf. point 2 of the
Report above). As well as with the judgment of the Lisbon
Court of Appeals of 14.09.2011 the judicial decision whose
C non-possibility of appeal arises out of the rule under
appraisal that fulfilled it. In reply to the two questions that
it undertook to appraise and decide upon the said
judgment of the Lisbon Court of Appeals concludes that
D in the light of the Portuguese Legal system, the Union of
India violated the Principle of Speciality laid down in Article
16 of Law No. 144/99 (sheet 587); and that, although such
law does not set out in general terms any specific
consequence for the violation of the Principle of Speciality
E by the State requesting the extradition, that does not
impair that in case of violation the Portuguese State can
react through political diplomatic channels, and for such
purpose the judgment formulated by Portuguese judicial
instances will be relevant. Further to the possibility of the
F Portuguese State requesting the intervention of
international jurisdiction instances and extracting due
political consequences from the case. That is: in spite of
having considered the trial for new crimes illegal and of
having decided to terminate the authorization granted for
the extradition of Abu Salem Abdul Qayoom Ansari, the
G decision of the Lisbon Court of appeals only concludes for
the violation of the Principle of Speciality. It does not by
itself bind the requesting State to the practice of a certain
act and namely to return the extradited person and thus it
is not a decision rendered against the Union of India, a
H decision that directly and effectively prejudices it. As a
result of the reply to the question of knowing which is the

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consequence of the violation of the Principle of Speciality in the light of Portuguese Law, it will be incumbent on the Portuguese State rather than on Portuguese judicial instances to decide what such consequence will be, which will have to do with the political diplomatic plan of the relations between the two sovereign States."

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5. Heard Mr. Sudeep Pasbola, learned counsel for the appellant and Mr. G.E. Vahanvati, learned Attorney General for the respondent-CBI.

Discussion:

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6. This Court, in *Abu Salem* (supra) (2011) 11 SCC 214 has held that in view of the Indian Laws, there has been no violation of the Principle of Speciality on the part of the Union of India whereas the Courts in Portugal have decided otherwise. The reason given by this Court while arriving at such conclusion is that the appellant could have been tried for offences which are lesser in nature than the offences for which the extradition has been granted. In view of the above, it is clear that there exist differences of opinion in the ratio of judgments of this Court and the Courts in Portugal.

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7. Learned Attorney General appearing for the respondent submitted that though the Constitutional Court of Portugal may not have entertained the appeal of Union of India on a constitutional issue, still the Court has observed that the issue of whether the person extradited has to be returned to the requested State or not, is something which may be decided by both the countries diplomatically. It is also pointed out that the Union of India, through diplomatic routes, is in touch with the Government of Portugal on the present issue. According to learned Attorney General, the Constitutional Court of Portugal has simply dismissed the appeal of the Union of India on the ground that they had no locus standi to appeal since it is not an order against them. It is also brought to our notice that pursuant to the decision of the Constitutional Court of Portugal,

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A the appellant-Abu Salem had made a representation dated 14.09.2012 to the Ministry of Home Affairs and the Ministry of External Affairs trying to make out a case of annulment of Extradition Order due to its alleged violation by the prosecution. Further, the appellant has filed a petition to the Court of Appeals of Lisbon on 19.09.2012 praying that directions may be given to the Government of Portugal for taking steps for his devolution to Portugal in view of the orders passed by the Portuguese Courts.

C 8. It is relevant to mention that out of the eight charges mentioned in the supplementary chargesheet filed against the appellant supra, the charges mentioned at S. Nos. (iii) to (viii) hereinabove have been termed as "Additional Charges" by the Portuguese Court because of which it has come to the conclusion that there has been a violation of the Principle of D Speciality. More so, the technicality on which the appellant has raised various objections/litigations/representations in India as well as in Portugal has been with respect to the charges at S.Nos. (iii) to (viii) hereinabove. In view of the earlier commitment given to the Government of Portugal and also in view of the comity of Courts as well as in the interest of justice, E the respondent-CBI seeks to withdraw the abovementioned charges, i.e., charges at S.Nos. (iii) to (viii). It is stated by learned Attorney General that no prejudice would be caused to the appellant if the present applications are allowed by this F Court and the stay on the trial of the appellant is vacated in view of the above.

G 9. On the other hand, learned counsel for the appellant-Abu Salem submitted that the present application of the respondent praying for clarification/modification of the judgment and order dated 10.09.2010 rendered in Criminal Appeal No. 990 of 2006 and Writ Petition (Cri.) No. 171 of 2006 is vexatious and serves no purpose and the same should be dismissed. It is submitted by the appellant that since the order of Extradition itself has been set aside and is no longer valid and subsisting, H

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the withdrawal of additional charges will have no effect and the appellatant cannot be tried in India. A

10. In view of the above, the following points arose for consideration:-

- "Firstly, whether this Court can modify the judgment rendered in *Abu Salem* (supra) dated 10.09.2010 reported in (2011) 11 SCC 214 under the grounds raised by the respondent. B
- "Secondly, whether the order of Extradition dated 28.03.2003 stands annulled/cancelled as alleged by the appellatant. C

11. As regards the first question, no doubt, the Constitution of India bestows upon the Supreme Court the inherent power to reconsider, modify and revise its earlier decisions for the reason that law has to bend before justice. Certainly, nothing would preclude this Court from rectifying the error if it finds that the error pointed out in the modification petition was under mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration had resulted in miscarriage of justice. D E

12. In the given case, the only ground on which the respondent/CBI seeks modification is to harmonize the situation created by the divergent views with regard to the violation of the Principle of Speciality. It is further submitted that in the interest of comity of Courts, united fight at international level against the global terrorism, the Government of India is taking further efforts through diplomatic channels. As a result, the respondent is of the view that the additional charges framed against the appellatant, which were held valid by this Court in the order dated 10.09.2010, may come as impediment for furthering the diplomatic talks. As on date, there exist two divergent views with regard to the violation of the Principle of Speciality rendered by the Supreme Court of India and the H

- A Constitutional Court of Portugal. The available options for the Union of India are either to approach an international forum to settle the divergent view or in alternate reconcile via diplomatic channels. Considering the two decades delay in the prosecution of the accused/appellant, the respondent is of the view that withdrawal of additional charges framed against the appellant will cut short the process. Therefore, the respondent seeks permission to withdraw the additional charges levied against the appellant via this modification petition. While it is made clear that this petition is moved before this Court only to avoid endless deferral of the trial of the appellant.

13. It is vital to comprehend the cause behind the concept of extradition before we decide the issue at hand. Extradition, throughout the history of the practice, has remained a system consisting of several processes whereby one sovereign surrenders to another sovereign a person sought after as an accused criminal or a fugitive offender. This delivery of individuals to a requesting sovereign is usually based on treaties or bilateral agreements but sometimes it also occur by reciprocity and comity as a matter of courtesy and goodwill between sovereigns as in this case. Therefore, 'world public order' is the recurring theme based on which the extradition is practiced by the States.

14. Taking note of the submission of the respondent that the offences for which the appellant was extradited to India are grave enough to even award the appellant with maximum punishment and therefore no prejudice would be caused if the present application for modification is allowed, we are of the considered view that allowing the present modification petition under the existing peculiar circumstance will not be detrimental to any of the parties. However, it is pertinent to clarify that by allowing the modification petition filed by the respondent, it cannot be construed that this Court is reviewing the judgment in the light of the verdict of the Constitutional Court of Portugal. Both India and Portugal are two sovereign States with efficient

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and independent judicial system. As a consequence, in unequivocal terms, the verdict by the Constitutional Court of Portugal is not binding on this Court but only has persuasive value.

15. Consequently, though this Court has rendered a decision in favour of the CBI in the interest of comity of Courts and on the statement made by learned Attorney General that the matter is being pursued through diplomatic channels, while allowing the modification petition, we permit the respondent-CBI to withdraw the charges (iii) to (viii) as mentioned in paragraph supra. Learned Attorney General also assured this Court that they are in the process of withdrawing other charges too pending in various States against the appellant which are claimed to be in violation of the Extradition order and the same is hereby recorded.

16. Nevertheless, it is clarified that the modification petition is allowed only to the extent of withdrawal of the additional charges framed against the appellant. However, the analysis and reasoning rendered in the impugned judgment with regard to the interpretation of the Principle of Speciality still stands good as the law declared by this Court under Article 141 of the Constitution of India shall be binding on all courts within the territory of India.

17. As regards the second question, whether the order of Extradition dated 28.03.2003 stands annulled/cancelled as alleged by the appellants, it is submitted by the respondent that the decision of the Courts of Portugal themselves does not contain any direction to the Union of India to return the appellant to Portugal as is being agitated by the appellant. The Constitutional Court of Portugal has categorically held that Portuguese law does not provide for any specific consequence for violation of the Principle of Speciality and their findings may not be construed as a direction to the Union of India to return the appellant to Portugal but shall only serve as a legal basis

A for the Government of Portugal, should it choose to seek the return of the appellant to Portugal through political, or diplomatic channels, which has not been done till date according to the statement made by learned Attorney General. In view of the above discussion, it is vividly clear that the order of Extradition dated 28.03.2003 still stands valid and effective in the eyes of law. Accordingly, the second question stands responded.

C 18. In the light of the above discussion, we allow Criminal Misc. Petition Nos. 3301-3302 of 2013 for modification of our order dated 10.09.2010 rendered in Criminal Appeal No. 990 of 2006 and Writ Petition (Crl.) No. 171 of 2006 and permitting the respondent-CBI to withdraw the charges viz., charge Nos. (iii) to (viii) as mentioned in paragraph supra. Consequently, we vacate the stay order dated 17.02.2012 and allow the trial to continue. It is made clear that we have not expressed any opinion in respect of other charges and both the parties are free to put forth their respective stand.

E 19. In view of the order passed in Criminal Misc. Petition Nos. 3301-3302 of 2013, no further adjudication is required in the above appeals, i.e., Criminal Appeal Nos. 415-416 of 2012 filed by the appellant-Abu Salem. These appeals are accordingly disposed of in terms of the order passed in Criminal Misc. Petition Nos. 3301-3302 of 2013. In view of the above, no order is required in the application for impleadment.

F R.P. Appeals & Crl. Misc. Petitions disposed of.