

State By Hennur P.S vs A1 Abraham Martin Logos @ Anigbogu on 15 June, 2016

IN THE COURT OF THE XXXIII ADDL.CITY CIVIL &
SESSIONS JUDGE & SPL. JUDGE (NDPS),
BANGALORE. CCH.33.

PRESENT:

Sri. D.Y. BASAPUR, B.Com., LL.B. (Spl.)
XXXIII ACC & SJ & SPL.JUDGE (NDPS)
BENGALURU.

DATED: THIS THE 15th DAY OF JUNE 2016

SPL.C.C. NO.121/2011 & SPL.C.C.197/2014

COMPLAINANT : State by Hennur P.S.

(By Public Prosecutor)

V/S.

ACCUSED: A1 Abraham Martin Logos @ Anigbogu
(Spl.CC.121/11) Ambrose Emenike, S/o.Chukwu, 29
years, Plot No.144, ABA Street,
Nigeria, East Africa.

A2 A Mahama }
A3 Jeromaiah Chisom Okpusa } Split up
A4 Thitaree Khaektet } in Spl.CC.197/14

(Spl.CC.197/14) A3 Jeromaiah Chisom Okpusa,
S/o.Chisom, 33 years, No.14, Abuja
Street, Nigeria.

A2 A Mahama } Split up
A4 Thitaree Khaektet } in Spl.CC.602/14

2

(A1, A3 by Sri KSV, Advocate)

Date of Commission of offence:	12.12.2010
2. Date of report of offence:	12.12.2010
3. Arrest of the accused :	13.12.2010
4. Date of release of accused on bail:	A1 & A3 - 14.2.2011

5. Period undergone in custody:	2 months 1 day
6. Date of commencing of recording Evidence :	13.1.2015
7. Date of closing of Evidence :	11.5.2016
8. Name of the complainant:	Sri Narasimhaiah
9. Offence complained of :	U/s.22(C) of NDPS Act & U/s.14 of Foreigners Act
10. Opinion of the Judge :	Offence proved
11. Order of sentence :	As per final order

COMMON JUDGMENT

PI of Hennur P.S. filed charge sheet against accused persons in Cr.No.421/2010 for the offences punishable U/Sec.22(C) of N.D.P.S. Act and U/s.14 of Foreigners Act.

CCH-33

3 Spl.C.C.121/11 & 197/14

2. Both these cases are arising out of same crime number. In Spl.C.C.No.121/11, case against A3 split-up on 8.5.2014 and registered separately in Spl.C.C.No.197/2014. Later on, they are clubbed with each other and common evidence adduced. Hence, common judgment passed.

3. Brief facts of the case are as under:

That on 12.12.2010 at 2.30 pm., complainant received information that in the house No.16-17, Vaddarapalya, occupants possessing and selling drugs, he secured staff members and panchas and issued notice to panchas. They went to the said house and three men and one woman were

present at the house. He questioned them regarding their personal search before Gazetted officer or Magistrate and issued notice. On personal search of accused No.1 they seized 7.300 grams of cocaine powder, 5 empty plastic covers, Rs.39,000/- cash, 2 watches and 1 Nokia mobile and 2 Samsung mobiles from accused No.1, further seized 5.500 grams cocaine powder, empty tennis ball, 5 packets and cash

4

of Rs.29,000/-, 2 Nokia mobiles from accused No.2, 1 swish watch, another watch, passport, 3.700 grams of cocaine, 6 empty packet, cash of Rs.20,000/- from accused No.3 and 4.6 grams cocaine, Rs.22,000/- cash, 3 mobiles, watch from possession of accused No.4 and also seized lactose, electronic weighing scales. They prepared panchanama and recorded the confession statements of accused Nos.1 to 4 and lodged complaint and produced the accused persons before Magistrate and remanded to judicial custody.

4. After taking cognizance registered the case in Spl.CC.121/2011 against accused persons. Accused No.1 through his counsel and enlarged on bail. Accused Nos.2 to 4 remained absent and hence case against them was split up in Spl.CC.197/14. In the said case, accused No.3 was secured and enlarged on bail and accused Nos.2 and 4 remained absent. Hence, case against them was split up in Spl.CC.No.602/14. Copies of the prosecution papers were

supplied to accused Nos.1 and 3 U/Sec.207 of Cr.P.C. After hearing, charge framed separately U/Sec.22(B) of N.D.P.S. Act and read over and explained to them. Accused pleaded not guilty and claimed to be tried.

5. In support of the case, prosecution has examined P.Ws.1 to 8 and got marked Exs.P1 to P.25 and M.Os.1 to 42. After closure, accused are examined U/Sec.313 of Cr.P.C., they denied the incriminating circumstances appeared against them and not chosen to adduce evidence for their defence.

6. Heard the arguments on both sides.

7. The points for consideration are as under:

1. Whether the prosecution proves that on 12.12.2010 at house No.16 and 17 of Vaddarapalya village within the limits of Hennur Police Station A1 & A3 along with A2 and A4 were illegally possessing 19.6grams of cocaine for the purpose of selling which is a narcotic drug and

6

thereby accused Nos.1 and 3 have committed the offence U/Sec.22(C) of N.D.P.S. Act?

2. Whether the prosecution proves that on the said date, time and place accused No.1

was residing in India even after expiry of the permit given to him in VISA to stay in India which exceeded the period for which VISA was issued and thereby accused No.1 has committed the offence U/s.14 of Foreigners Act?

3. What order?

8. My findings on the above points are as under:

Point No.1: In the affirmative

Point No.2: In the negative

Point No.3: See the final order for the following:

REASONS

9. POINT No.1:- The learned P.P. vehemently argued that as per evidence of PWs.1 to 8 and Exs.P.1 to P.25 and M.Os.1 to 42, the prosecution proved the guilt. Learned counsel for accused Nos.1 and 3 argued that no mandatory CCH-33
7 SPL.C.C.121/11 & 197/14
provision complied and so many contradictions and discrepancies found in the prosecution witnesses.

10. On careful perusal of the materials placed on record, the prosecution mainly relied on the testimonies of P.Ws.1 to P.W.8.

P.W.1 has stated that on 12.12.2010 at 2.30 pm., he received information that in house No.16-17, Vaddarapalya, occupants possessing and selling drugs, he secured staff members and panchas and issued notice Ex.P1 to panchas.

They went to the said house and three men and one woman were present at the house. He questioned them regarding their personal search before Gazetted officer or Magistrate and issued notice Ex.P2 to P5. On personal search of accused No.1 they seized 7.300 grams of cocaine powder, 5 empty plastic covers, Rs.39,000/- cash, 2 watches and 1 Nokia mobile and 2 Samsung mobiles from accused No.1, further seized 5.500 grams cocaine powder, empty tennis ball,

8

5 packets and cash of Rs.29,000/-, 2 Nokia mobiles from accused No.2, 1 swish watch, another watch, passport, 3.700 grams of cocaine, 6 empty packet, cash of Rs.20,000/- from accused No.3 and 4.6 grams cocaine, Rs.22,000/- cash, 3 mobiles, watch from possession of accused No.4 and also seized lactose, electronic weighing scales. They prepared Ex.P7 panchanama and recorded the confession statements of accused Nos.1 to 4. Accused Nos.1 to 4 residing in India without VISA and Passport. They are citizens of foreign nationals. In the cross examination of P.W.1, stated that print out taken at spot in lap top on chits and affixed on M.Os.1 to 42 and admitted that on Ex.P1 to P7 documents is not taken in Laptop. It is left to P.W.1 to take print out through laptop or write it on the spot, there is no contradiction. P.W.1 further stated that PF and Cr.No., mentioned on chit affixed on M.Os.1 to 42 and no case being registered at the time of seizure. Cr.No. and PF no may be

written on chits after registering the case. Merely Cr.No., and
PF No., mentioned on chit is not a sole ground to discard the
CCH-33
9 SPL.C.C.121/11 & 197/14

testimony of prosecution witnesses regarding seizure at spot
from the possession of accused persons. P.W.1 denied that
M.Os.3, 7, 11, 15 and 17 tennis balls are not cut and
M.Os.12 to 14 tennis balls there is no mark for cutting.
Further he denied that accused Nos.1 and 3 were brought by
one follower of a rowdy JCB Narayan and also denied that
M.Os.39 to 42 cash is personal amount of accused persons.
No doubt, accused are not disputing the seizure of M.Os.39 to
42 cash from their possession. Whether it is personal
amount or out of the sale proceeds of the drugs is different
aspect. Once accused admits the seizure of M.Os.39 to 42
and seizure of other articles M.Os.1 to 38 corroborates the
case of the prosecution. P.W.1 admits that Ex.P12 to P14 are
not packed and sealed and affixed the chits. He has stated
that the said photos taken prior to packing. He has stated
that he left the office within 5-6 minutes and he has not
written the information in weekly diary. C.W.14 has not
shown the information in writing to him. When C.W.14
himself received the information he has to send the
10

information in writing to his superior officer. P.W.1 is not
superior to C.W.14. So the question of P.W.1 reducing the

information in writing after receipt of the information by C.W.14 and question of showing the information to P.W.1 does not arise. He further stated that C.Ws.5 and 6 owner of the house came to the spot before completion of mahazar. Of course, he admits that in Ex.P2 to 5 notices issued to accused, legal right of the accused persons is not specifically mentioned. Any how, P.W.1 stated that he orally informed the legal right to the accused persons. Accused No.4 is a lady. Her personal search conducted by lady police officer in separate room. P.W.1 stated that they have not prepared separate inventory at spot and no test memo prepared and handed over the copy of the mahazar to the accused.

11. P.W.5 and 6 are also members of the raiding team have supported the testimony of P.W.1. They have stated that they went to the house of the accused persons, apprehended

CCH-33

11

SPL.C.C.121/11 & 197/14

them and seized M.Os.1 to 42 and prepared panchanama at spot in the presence of panch witnesses. In the cross examination of P.W.5 stated that he has written the information received by C.W.14 in SHD. Admittedly, P.W.5 is not superior to C.W.14. Once information received by C.W.14, it is duty to reduce in writing, but no obligation to inferior officer again to write in SHD. So reducing the information in writing by P.W.5 in SHD is not mandatory. He

denied that no articles seized from the house of the accused persons and drew panchanama.

12. P.W.6 stated in his cross examination that P.W.1 directly went to the spot and secured C.Ws.2 to 4 panchas. He denied that C.Ws.2 to 4 are known persons to the station. He has specifically stated that panchanama was written after search and seizure of each accused.

12

13. P.W.2 and 3 independent panch witnesses have stated that they were called by P.W.1 and informed the information and issued notice to them. They went to the spot and seized mobile, watch and drugs in their presence and drew mahazar Ex.P7 and also photos Ex.P12 to 14 taken and they have specifically identified the accused persons in the said photos who are standing. In the cross examination of P.W.2 he has stated that his shop is situated at Hennur cross. Usually staff and C.W.14 of Hennur PS are known to him. He admits that he is witness in another two cases. He went to the spot along with ACP wherein already police were present and he do not know who apprehended the accused persons. He has stated that in 4-5 packets drugs found, except weighing the drugs he do not know other aspects. He has not stated the contents of Ex.P7 and he has put his signature as per the instructions of police on Ex.P7. Ex.P7 is

written by another police and he do not know the owner of the house and who wrote panchanama. He has specifically stated that photos taken prior to going to station. Merely he

CCH-33

13

SPL.C.C.121/11 & 197/14

put the signature as per the instructions of police on Ex.P7 and he has not instructed to write the panchanama is not a ground to disbelieve his other reliable testimony regarding drugs weighed and seized in his presence. Merely, he is witness in other cases also is not a ground to disbelieve his evidence as no suggestion put to him regarding any enmity between this witness and accused persons, why he is falsely deposing against them. In the cross examination of P.W.3 he has also stated that P.W.4 residing in rented house opposite to his house and C.W.14 is known to him. He has stated that he went to the spot after seeing the accused persons standing in front of his house wherein police issued notice. Police already seized the articles. Articles were taken to station after taking photos at spot. He has stated that he has not seen the seizure, packing of the articles prior to putting the seal. Of course, he shows his ignorance regarding the notice issued to accused and seizure. However, his testimony regarding going to the spot and police seized and taken photos and prepared panchanama is believable. Merely, he is

14

a known person to police is not a sole ground to discard his

other evidence as there is no enmity between the accused persons and other witnesses.

14. P.W.4 owner of the house bearing No.16 and 17 has stated that accused No.1 along with three others was residing in his house and paying rent of Rs.5,000/- pm. Police called him to the house wherein accused Nos.1 and 3 present. Police informed that accused persons were selling drugs and issued arrest memo Ex.P15 in his presence and he put his signature as per Ex.P15(a). On the same day at 7.00 pm., he went to the police station along with his wife and handed over the passport of accused No.1. On verification of the Passport, photo of another person affixed. Further he handed over the rental agreement to the police. In his cross examination stated that police called him through phone to come to the spot at 3-4 pm., he went to the spot at 7.00 pm., wherein police have not seized the articles in his presence from the

CCH-33

15

SPL.C.C.121/11 & 197/14

accused. He admits that accused were not selling the drugs in his rented house and no allegations from the neighbours regarding accused selling the drugs. Of course, no signature of panchas and ACP put on chits affixed on M.Os.1 to 42.

However, independent witnesses and official witnesses specifically stated that they seized from the possession of the accused in their house in the presence of panch witnesses

State By Hennur P.S vs A1 Abraham Martin Logos @ Anigbogu on 15 June, 2016
and affixed the chits. Merely, signature is not obtained on
chits is not a sole ground to disbelieve their testimony that no
property seized.

15. P.W.7 has stated that on 28.12.2010 he produced
the 4 sample articles to F.S.L and obtained acknowledgement
ExP22. In his cross examination denied that he has not
personally produced the articles.

16. P.W.8 F.S.L officer has stated that on 10.3.2011 he
conducted 4 tests on the sample articles and issued report
16

Ex.P23 and opined that the sample articles responded
positive for the presence of cocaine, Paracetamol and sugar.
In his cross examination stated that he has not personally
conducted the tests and falsely issued the report on the
request of I.O. Nothing is elicited in his cross examination
except denial. So the testimony of P.W.8 is corroborated with
the prosecution case to believe that the sample articles
responded positive for cocaine.

17. Ex.P1 notice issued to panch witness is proved as
P.W.3 one of the panch witnesses has stated regarding the
issuance of notice. Ex.P7 panchanama is also proved as
P.W.3 specifically stated that police seized the articles in their

presence and drew mahazar. Ex.P8 to P11 voluntary
statements of accused persons has presumptive value under
NDPS Act in respect of the seizure of the articles. Ex.P15
arrest memo of accused persons reveal that immediately after
arrest, information issued to one C.Lawrence. Ex.P16 is
rental agreement which clearly goes to show that accused
CCH-33
17 SPL.C.C.121/11 & 197/14

No.1 is residing as a tenant in the said house. Ex.P17 copy of
passport produced by the owner of the house. Ex.P17
passport is not pertaining to accused No.1. Ex.P18 SHD
reveal that immediately after receipt of information, reduced
in writing. Ex.P2 to 4 notices issued to accused persons prior
to their personal search. In the said notices the answers
given by the accused is written in English. Accused admitted
that ACP may conduct personal search as he being a gazetted
officer. Of course, contraband seized from the house of the
accused, compliance U/s.50 of NDPS Act does not arise.
However, when I.O proceeded to conduct personal search of
accused persons, he has to comply the same. Notices issued
to accused persons has duly complied the said provision prior
to their personal search. Of course, no search warrant
obtained to enter the house and seize the property. However,
superior officer-ACP himself received information and
personally he went to the spot, such being the case, when
superior officer himself received information and participated

in the raid, the question of obtaining search warrant does not

18

arise. Of course, after search and seizure no written report submitted to superior officer for success of raid. However, ACP and I.O have specifically stated that after success of the raid they have informed to superior officer. Hence, the prosecution has complied the mandatory provisions U/s.41, 42, 50 and 57 of NDPS Act.

18. The learned PP has relied on a decision reported in 2014(4) Crimes 266 (Karnt.) M.D.Kohiunddin @ Phohinuddin Vs., State, 2015(4) Crimes 153 (SC) Kulwinder Singh and another Vs., State of Punjab. In the above decisions Hon'ble Apex Court held that Sec.50 does not apply if recovery from truck or suitcase. It applies only in a case of personal search of a person. Non-compliance of section 50 does not vitiate the conviction,

2015 SAR (Criminal) 597 in the case of Kulwinder Singh and another Vs., State of Punjab wherein it is held CCH-33
19 SPL.C.C.121/11 & 197/14

that once possession is found, the accused is presumed to be conscious possession.

2015(2) Crimes 219 (SC) Yunus Zia Vs., State of Karnataka and another wherein it is held that;

(a) Cr.P.C., 1973 Sec.2(d) and 154 - respondent 2 an Inspector of Police, though deputed to Lokayuktha - Empowered to act suo-motu on published reports against Appellant warranting registration of FIR and investigate the matter.

(d) Administration of justice - Fair investigation - Inspector of Police deputed to Lokayuktha - Suo moto registering FIR and investigating the case - investigation transferred to Corps of Detectives (COD) of the State.

Facts and circumstances of the above decision is applicable to the case on hand as IO is empowered to act suo-motu on information warranting registration of FIR and investigating the matter in other law, when FIR discloses commission of cognizable offences and trial case is made out.

20

2004(3) Crimes 109 (SC) S Jeevanantham Vs., State through Inspector of Police, Tamil Nadu wherein it is held that contention of P.W.8 Inspector who got FIR registered after search and recovered being complainant himself conducted investigation and that was illegal. Appellant failing to point out any circumstances by which investigation caused prejudice or was biased against the appellant. P.W.8 was not in any way personally interested in the case. Conviction could not be disturbed. Facts and circumstances of the above decision is applicable to the case on hand as accused failing to point out any circumstances by which investigation caused prejudice or biased against him and also IO was not in any way personally

interested in the case.

2002 (3) Supreme 95 Gopal Vs., State of MP wherein it is held that contraband was recovered from a heap of Kadvi lying on the boundary of agricultural fields Sy.Nos.1511 and 1517. Conscious possession of the accused was not proved.

CCH-33

21

SPL.C.C.121/11 & 197/14

Facts and circumstances of the above decision is not similar to the case on hand as prosecution seized in the presence of the accused in his rented house.

1996 (1) Crimes 358 (SC) Ummed Vs., State of Rajasthan wherein it is held that complainant and I.O was one and the same person. Place was recovery in common possession of the accused and his brother against whom also search warrants were issued. No action was taken against brother of appellant. Investigation suffers from basic infirmity and conviction cannot be sustained.

2011 (1) SCC (Cri) 1191 Jarnail Singh Vs., State of Punjab wherein it is held that Sec.50 can be invoked only in cases where drug/narcotic substance is recovered as a consequence of body search of accused. In case recovery is made from container being carried by individual, provisions of Sec.50 would not be attracted.

(1994) 3 SCC 299 in state of Punjab Vs., Balbir Singh wherein it is held that if empowered officer while

effecting search or arrest in accordance with Sec.100, 165 of Cr.P.C., fails to record reasons such a failure will not amount to an illegality vitiating the trial.

ILR 2004 Kar. 3855 between The Intelligence officer, Bangalore and others Vs., Arshad Saleem Khan and others wherein it is held that the special procedure of arrest, search and seizure U/s.50 becomes applicable only to the officers named in Sec.42 of the Act. The provisions of Sec.50 does not apply to first category of empowered Gazetted Rank officers contemplated in Sec.41(2).

2000 SCC (Cri) 496 between Abdul Rashid Ibrahim Mansuri Vs., State of Gujarat wherein it is held that requirements U/s.42 of taking down in writing the information received and sending a copy thereof to the immediate official superior, non compliance with effect action taken on unrecorded information, held would

CCH-33

23

SPL.C.C.121/11 & 197/14

become suspect and one causing prejudice to the accused but would not ipso-facto vitiate the trial.

(2010) 4 SCC 445 between Bahadur Singh Vs., State of Haryana wherein it is held that with advancement of

technology and availability of high speed exchange of information, some of the provisions of NDPS Act including Sec.42 have to be read in the changed context. Delay caused in complying with provisions of Sec.42 could result in escape of offender or even removal of contraband. Hence, substantial compliance is sufficient, if the information received were subsequently sent to the superior officer.

AIR 2000 SCC 403 in Sarjudas and another Vs.

State of Gujarat wherein it is held that Charas was not found on person of accused, but it was found kept in a bag which was hanging on scooter on which they were riding. Said search cannot be said to be illegal on ground tat accused were not informed of their right

24

U/s.50 to be examined in presence of Gazetted Officer or Magistrate. Facts and circumstances of the above decisions are similar to the case on hand.

19. For the above, testimony of raiding members P.W.1, 5 and 6 is corroborated by independent panch witnesses P.Ws.2 and 3. so also accused No.1 is residing in the house of P.W.4 on rental basis is also proved. Of course, some minor discrepancies and contradictions found in the testimony of above witnesses. Merely, some discrepancies

found in the prosecution witnesses is not a ground to discard their other documentary and corroborative oral evidence.

Naturally, minor discrepancies bound to happen when witnesses depose before court after some years, after seizure.

Their testimony is supported by documentary evidence. So there is no reason to disbelieve the evidence of prosecution.

CCH-33

25 SPL.C.C.121/11 & 197/14

20. Prosecution has filed charge sheet for the offence punishable U/s.22(C) NDPS Act and also Charge has been framed U/s.22(C) of NDPS Act by my Predecessor in office. Infact, entire seizure from accused persons is 19.6 grams of cocaine. The substance seized more than 100 grams comes under commercial quantity. the present substance seized is 19.6 grams which comes in between small and commercial quantity. thus, the prosecution has proved the guilt of the accused persons beyond reasonable doubt for the offence punishable U/s.22(B) of NDPS Act. Accordingly, I answer Point No.1 in the affirmative.

21. Point No.2: Prosecution has filed charge sheet against all the accused for the offence U/s.14 of Foreigners Act, but Charge U/s.14 of Foreigners Act is framed against Accused No.1 only. Ex.P17 copy of passport produced by the owner of the house. Ex.P17 passport is not pertaining to accused No.1. Infact, passport of Accused No.1 was seized by

counsel for the accused this court issued a letter to ascertain the seizure of Passport. PI of Ashoknagar P.S., in his reply admitted the seizure of Passport of Accused No.1 and stated that it was valid upto 18.1.2012. Accused No.1 is acquitted in Spl.C.C.No.24/2010 by this court. The said Passport is still retained by Ashoknagar P.S., till the disposal of this case. At the time of search, seizure and arrest of accused No.1, VISA was valid. So, prosecution has not proved the guilt against accused No.1. Accordingly, I answer Point No.2 in the negative.

22. POINT NO.3:- In the result, I proceed to pass the following:

ORDER

Acting under Section 235(1) Cr.P.C accused Nos.1 and 3 are acquitted for the offence punishable U/Sec.14 of Foreigners Act.

CCH-33 27 SPL.C.C.121/11 & 197/14 Acting under Section 235(2) Cr.P.C accused Nos.1 and 3 are convicted for the offence punishable U/Sec.22(B) of N.D.P.S. Act.

To hear before Sentence.

[Dictated to the Stenographer directly on computer, typed and computerised by her, corrected, signed and then pronounced by me in Open Court on this the 15th day of June, 2016] (D.Y.BASAPUR) XXXIII ACC & SJ & SPL.JUDGE (NDPS) BANGALORE.

HEAR BEFORE SENTENCE Accused Nos.1 and 2 present. They submit that they are sole earning member of their family having aged parents. They are innocent and poor persons. They are not involved in any offence, previously. Hence, prays for taking lenient view.

The learned PP argued that they have committed heinous offence. It is punishable up to 10 years R.I., and fine of Rs.1,00,000/-. Further, accused No.1 was involved in similar offence in Spl.C.C.No.24/2010 of Ashoknagar P.S., and in Spl.C.C.118/11. Accused No.3 is also involved in similar offence in Spl.C.C.No.10/2013. So, they are not entitled for any lenient view.

Learned counsel for the accused submits that accused No.1 is already acquitted in Spl.CC.No.24/10. Accused Nos.1 and 3 are young persons and citizens of Nigeria. They are unable to return to their country due to seizure of Passport.

CCH-33 29 Spl.C.C.121/11 & 197/14 On perusal of the material placed before the court, it is true that accused No.1 is involved in Spl.C.C.24/2010 and he has been acquitted. Case against accused No.1 in Spl.C.C.No.118/11 and against accused No.3 in Spl.C.C.No.10/2013 are still pending. After enlarge on bail accused are attending the court regularly. Taking into consideration the nature of offence, social and economic status of accused and the reasons for which they appeared to have committed the offence, conduct and dependency of the family members and accused being young persons and citizens of Nigeria, I feel it is a fit case to take lenient view in the interest of justice.

The learned counsel for the accused relied on the judgment and sentence passed in Crl.Appeal.No.1311/14 & Crl.M.A.No.14713/2014 on the file of Hon'ble High Court of New Delhi dated 24.2.2015 between NCB Vs., Nthadiseng Josephina Bulaya and another. In the said case trial court convicted and passed sentence one year RI and fine of Rs.75,000/- each to both accused who were women and foreign nationality for the offence punishable U/s.25(A) of NDPS Act. In the Appeal filed by the complainant Hon'ble High Court disposed the Appeal directing the accused to pay fine of Rs.75,000/- only. The facts and circumstances of the above case is similar with the case on hand. Hence, I proceed to pass the following:-

ORDER Accused Nos.1 and 3 are sentenced to undergo 3 years R.I., and they shall pay fine of Rs.50,000/-

each in default, they shall undergo 6 months SI for the offence punishable U/s.22(B) of NDPS Act.

Further, JC period of accused Nos.1 and 3, is given set up.

The bail bond of the accused Nos.1 and 3 shall stands cancelled.

The entire records and property shall be kept in Spl.C.C.602/2014 for trial of accused No.2 and 4.

CCH-33 31 Spl.C.C.121/11 & 197/14 Copy of the judgment shall be kept in Spl.C.C.No.197/2014.

(D.Y.BASAPUR) XXXIII ACC & SJ & SPL.JUDGE (NDPS) BANGALORE.

ANNEXURE

1. List of witnesses examined for the:

(a) Prosecution:

P.W.1 : Narasimaiah
P.W.2 : Rajaram Jain
P.W.3 : Ashwathnarayan
P.W.4 : C.P.Lawrence
P.W.5 : R.H.Bhagavan
P.W.6 : N.Hanumantharaya
P.W.7 : Nanjundappa
P.W.8 : Manjappa.C

(b) Defence :

-NIL-

2. List of documents exhibited for the:

(a) Prosecution:

Ex.P.1 : Notice to panch
Ex.P.2 to 5 : Notice to A1 to A4
Ex.P.6 : Passport

Ex.P.7 : Panchanama
Ex.P.8 - 11 : Confession statement of A4
Ex.P.12 - 14 : Photos
Ex.P.15 : Arrest memo
Ex.P.16 : Rental Agreement
Ex.P.17 : Passport
Ex.P.18 : SHD
Ex.P.19 : F.I.R
Ex.P.20 : PF
Ex.P.21 : Passport of FSL
Ex.P.22 : Acknowledgement of FSL
Ex.P.23 : FSL Report
Ex.P.24 : Sample Seal of FSL
Ex.P.25 : Specimen Seal

(b) Defence:

NIL

3. List of Material Objects admitted in evidence:

M.O.1 : FSL Sample
M.O.2 : Bulk
M.O.3 : Empty Ball
M.O.4 : Empty Plastic covers
M.O.5 : FSL Sample

M.0.6	:	Bulk
M.0.7	:	Empty Tennis Ball
M.0.8	:	Five Packets
M.0.9	:	FSL Sample
M.0.10	:	Bulk
M.0.11	:	Tennis Ball
M.0.12	:	Six Empty Packets
M.0.13	:	FSL Sample
M.0.14	:	Bulk
M.0.15	:	Empty Tennis Ball
M.0.16	:	Empty plastic Cover
M.0.17	:	Two Tennis ball

CCH-33

33

SPL.C.C.121/11 & 197/14

M.0.18	:	Watch
M.0.19	:	Watch
M.0.20	:	Nokia Mobile
M.0.21	:	Samsung Mobile
M.0.22	:	Samsung Mobile
M.0.23	:	Watch
M.0..24	:	Nokia Mobile
M.0.25	:	Nokia Mobile
M.0.26	:	Swiss Watch
M.0.27	:	Watch
M.0.28	:	Nokia Mobile
M.0.29	:	Nokia Mobile
M.0.30	:	Mobile
M.0.31	:	Mobile
M.0.32	:	Mobile
M.0.33 - 34	:	Two packets
M.0.35 -36	:	Electronic Weighing Scale
M.0.37	:	Empty Packet
M.0.38	:	Watch
M.0.39	:	Cash
M.0.40	:	Cash
M.0.41	:	Cash
M.0.42	:	Cash

(D.Y. BASAPUR)

XXXIII ACC & SJ & SPL.JUDGE (NDPS) BENGALURU.

CN/* Accused Nos.1 and 3 filed application U/s.389(3) of Cr.P.C.

Heard.

Reasons are bonafide and genuine. Hence, application is allowed. The conviction and sentence is hereby suspended till Appeal period.

For surety by 20.6.2016 (D.Y. BASAPUR) XXXIII ACC & SJ & SPL.JUDGE (NDPS), BANGALORE.