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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 335/2012

NWADIKE UGO BEN Appellant
Through: Ms. Sushma Sharma, Advocate.
versus

STATE Respondent
Through: Ms. Jasbir Kaur, APP for State with
SI Sunil Jain, Narcotics Cell, Crime and
Railways.

% Reserved on: 25th September, 2012.
Date of Decision: 05th October, 2012

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J.

1. Present appeal has been filed challenging the judgment dated 28th February, 2012 and order on sentence dated 5th March, 2012 passed by learned Additional Sessions Judge/Special Judge, NDPS (North), Delhi whereby the appellant was convicted under Section 21 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”) and under Section 14 of Foreigners Act, 1946 and sentenced to undergo two years rigorous imprisonment and a fine of ₹ 15,000/-.

2. The brief facts of the present case are that the appellant, a Nigerian national, was apprehended by officials of the Narcotics Cell on 08th January, 2011 on the basis of a secret information that appellant had been dealing with supply of cocaine. Fifty two grams of cocaine was recovered from his possession and during investigation, he failed to produce his passport and visa. The trial Court held the appellant guilty under Section 21 NDPS Act and Section 14 of Foreigners Act.

3. The relevant portion of the impugned judgment is reproduced hereinbelow:-

“25. It is clear from the evidence and the documents, produced on record that due compliance was made to sections 52/55/57 of NDPS Act as the case property as well as accused were produced before SHO and Incharge concerned and also the special reports about seizure of contraband and arrest of accused were sent to the seniors. In this way, the compliance to the mandatory and directory provisions of NDPS Act has been properly made.

26. It is confirmed with the FSL result EX PX (admissible u/s 293 Cr.P.C.) that contraband recovered from the accused was cocaine.

27. The accused has pleaded innocence and false implication and has given suggestions to prosecution witnesses, however, no motive has been attributed to the witnesses for false implication of the accused. The accused has failed to spell out any reason for his false implication and also failed to prove the same through evidence or any other material brought on record. It is clear that accused has no defence to show his innocence.

28. The recovery of contraband is clearly established from the accused. It is also not disputed that accused is Nigerian national. According to PW-10 SI Rajbir Singh, accused failed to produce his passport or visa to show his legitimate presence in India. The accused during his statement recorded u/s 313 Cr. P.C. admitted that he came

on business visa for a period of one year. The accused failed to show relevant documents and there is nothing on record to conclude that accused had valid passport and visa to remain in India. The onus lies upon the accused to prove the legitimate presence within the territory of India which the accused has failed to prove in this case. In my opinion, there is sufficient evidence to show that accused has been living in India in violation of the visa conditions. I find that guilt of accused is also proved u/s 14 of Foreigners Act, 1946.

29. In view of aforesaid observations, I, hold that prosecution has been able to bring home the guilt of the accused u/s 21 NDPS Act and u/s 14 of Foreigners Act, 1946 and therefore I convict the accused under these provisions.”

4. The judgment of the trial Court has been challenged by way of the present appeal on the ground that prosecution had not been able to link the appellant with the recovered contraband as neither the source of contraband had been traced nor any effort had been made to arrest or interrogate the person who supplied it. Further it was stated that the secret informer was neither produced in Court nor cited as a witness.

5. In the opinion of this Court, failure of the prosecution to arrest the supplier or to trace the source is not material as recovery of contraband from the appellant's person has been duly proved by testimony of official witnesses as well as the documentary evidence of recovery and testing of the contraband.

6. There is also no provision in the NDPS Act requiring compulsory disclosure of source of secret information. The only requirement of arrest on the basis of secret information is that the procedure prescribed under NDPS Act must be followed. In this context, it has been rightly observed by the trial Court as under:-

“19. It is clear with the testimony of PW-3 Inspector V.N. Pathak that he interacted with the secret informer and thereafter transmitted the secret information to the senior officers. It is, therefore established that compliance to section 42 NDPS Act has been properly made.”

7. Further, this Court is of the opinion that if production and examination of secret informer in each case is made mandatory, the source would get compromised and the opportunity of future information and recovery would be lost.

8. Learned counsel for appellant further submitted that there were material contradictions in the statements made by the prosecution witnesses and also no public/independent witness had joined the raiding party despite the fact that the appellant had been apprehended in a thickly populated area at 11:30 A.M.

9. With regard to the alleged contradictions pointed out by the learned counsel for appellant, this Court is of the view that the same do not go to the root of the matter especially when the search and seizure memos/proceedings have been duly proved.

10. Also, non-joining of public/independent witnesses also cannot be said to be fatal to the prosecution's version when it is on record that genuine efforts were made to join such witnesses, but none came forward. The Supreme Court in ***Ajmer Singh Vs. State of Haryana, (2010) 3 SCC 746*** has held that non joining of independent witness is not fatal to the prosecution case particularly when efforts were made by the investigating party to join public witness but none was willing. The conviction was upheld in that case.

11. Moreover, the Apex Court in *P.P. Beeran vs. State of Kerala* reported in (2001) 9 SCC 571 has held that there is no mandatory requirement of having public witnesses in an NDPS case. The Supreme Court has further held that if the evidence of the Police Officer inspires confidence, then even if it is not corroborated by any other source, it can nonetheless be made sole basis for conviction. The aforesaid judgment has been relied upon by this Court in *Paramjit Singh @ Pammi vs. State*, 154 (2008) DLT 524.

12. Consequently, this Court does not find any reason to interfere with the judgment of the trial court. The appeal is, accordingly, dismissed.

13. However, keeping in view the fact that the appellant was found in possession of intermediate quantity and has been sentenced to two years rigorous imprisonment out of which he has undergone almost one year and nine months, his sentence is reduced to the period already undergone.

14. Accordingly, the Jail Authorities are directed to hand over the appellant to FRRO so that he can be deported to his home country, provided he is not required in any other case. A copy of this judgment is directed to be sent to the Superintendent, Tihar Jail, New Delhi for compliance.

MANMOHAN, J

OCTOBER 05, 2012

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