

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

DECIDED ON : 26th July, 2013

+ CRL.A. 847/2013 & CrI.M.B.No.1372/2013

AKHIL DASS

..... Appellant

Through : Mr.J.S.Kushwaha, Advocate.

versus

STATE

..... Respondent

Through : Mr.M.N.Dudeja, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. The appellant-Akhil Dass impugns the judgment dated 11.06.2012 in Sessions Case No.9/2010 arising out of FIR No.73/2010 registered at Police Station Narcotics Cell by which he, Chijoke Smith Okpe and Marina were convicted under Section 25A NDPS Act r/w Section 29 NDPS Act. By an order dated 03.07.2012 he was sentenced to undergo Rigorous Imprisonment for four years with fine of ₹20,000/-

2. Allegations against the appellant were that he and Chijoke Smith Okpe entered into a criminal conspiracy for supply of controlled substance (ephedrine) and consequent to that appellant and Chijoke Smith

Okpe were found exchanging the same with conscious possession of ephedrine. On 25.05.2010 a secret information was received by SI Satyawar of Narcotics Cell that one Nigerian national namely Chijoke Smith Okpe (A-1), resident of Madhya Pradesh was involved with one Asif in bringing the ephedrine from Madhya Pradesh and further used to send the same to South Africa through Delhi, would be coming with his girl friend, with heavy quantity of ephedrine to supply at the gate of St.Stephen's hospital. The raiding party was organized. At 03.35 P.M., Chijoke Smith Okpe was seen coming with a blue bag on his right shoulder and one black bag on his left hand and was accompanied with a North Eastern girl. Both stood near the main gate and after about 2-3 minutes appellant-Akhil Dass came from Tis Hazari side and started having conversation with them. Chojoke Smith Okpe handed over blue bag to appellant (Akhil Dass) and they started moving back. They were apprehended. From the search of black colour bag carried by Chojoke Smith Okpe it was found containing shiny powder weighing 6 kg. The blue bag carried out by Akhil Dass was found containing 3.5 kg ephedrine. Necessary proceedings were conducted. After completion of investigation they all were sent for trial for committing offences punishable under Section 25A read with Section 29 NDPS Act. The

prosecution examined 13 witnesses in all to bring home the guilt of the appellant. In his 313 statement, the appellant pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties the Trial Court by the impugned judgment convicted the appellant-Akhil Dass for the offence previously described. Being aggrieved, the appellant has preferred the appeal.

3. During the course of arguments, learned counsel for the appellant, on instructions, stated that the appellant has opted not to challenge his conviction under Section 25A NDPS Act read with Section 29 NDPS Act. The counsel, however, prayed to take lenient view as the appellant has already undergone the substantial sentence awarded to him.

4. I have heard the learned Additional Public Prosecutor and the learned counsel for the appellant and have examined the record. Since the appellant has opted not to challenge his conviction recorded by the Trial Court, his conviction is confirmed.

5. Regarding sentence, the appellant was sentenced to undergo Rigours Imprisonment for four years with fine of ₹20,000/- vide order dated 03.07.2012. Nominal roll dated 25.07.2013 reveals that he has already undergone three years, one month and twenty eight days incarceration as on 25.07.2013. He is not a previous convict and is not

involved in any other criminal case. He is 31 years of age and is a sole earning member of his family consisting of a wife and three children. Vide judgment dated 23.05.2013, sentence of the Co-convicts Chijoke Smith Okpe and Marina was modified and they were ordered to be released for the period already undergone by them.

6. Taking into consideration the above facts, the order on sentence is modified and the appellant is ordered to be released for the period already undergone by him in this case which is more than three years. Regarding fine of ₹20,000/- imposed by the Trial Court, the appellant shall pay the same and in default of payment of the same, he shall undergo SI for one month.

7. The appeal is disposed of in the above terms. Crl.M.B,No.1372/2013 also stands disposed of.

(S.P.GARG)
JUDGE

JULY 26, 2013

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