

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

DECIDED ON : 23rd May, 2013

+ CRL.A. 1093/2012

CHIJOKE SMITH OKPE & ANR. Appellants

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. (OPEN COURT)

1. Appellants Chijoke Smith Okpe (A-1) and Marina (A-2) challenge judgment dated 11.06.2012 in Sessions Case No.09/2010 arising out of FIR No.73/2010 registered at Police Station Narcotics Cell by which they and Akhil Dass were convicted under Section 25A NDPS Act read with Section 29 NDPS Act. A-1 was sentenced to undergo RI for four years with fine of ₹20,000/- and A-2 was sentenced to RI for three years with fine of ₹10,000/-.

2. Allegations against the appellants were that they and Akhil Dass entered into a criminal conspiracy for supply of controlled substance

(ephedrine) and consequent to that A-1 and Akhil Dass 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 Sought 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., A-1 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 Akhil Dass came from Tis Hazari side and started having conversation with them. A-1 handed over blue bag to Akhil Dass and they started moving back. They were apprehended. From the search of black colour bag carried by A-1 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 appellants. In their 313 statements, the appellants pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties the Trial Court by the impugned judgment convicted the appellants and Akhil Dass for the sentences previously described. Being aggrieved, the appellants have preferred the appeal.

3. During the course of arguments, learned counsel for the appellants, on instructions, stated that the A-1 has opted not to challenge his conviction under Section 25A NDPS Act read with Section 29 NDPS Act. A-2 has also opted not to challenge her conviction under Section 29 NDPS Act. The counsel, however, prayed to take lenient view as the appellants have already undergone the substantial sentence awarded to them.

4. I have heard the learned Additional Public Prosecutor and the learned counsel for the appellants and have examined the record. Since the appellants have opted not to challenge their conviction recorded by the Trial Court, their conviction are confirmed.

5. Regarding sentence, A-1 was sentenced to undergo RI for four years with fine of ₹20,000/- vide order dated 03.07.2012. Nominal roll reveals that A-1 had already undergone two years, five months and three days incarceration as on 28.10.2012. The period has since increased to more than three years. It further reveals that he is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory. He is of 31 years of age, unmarried and belongs to a poor family. A-2 was sentenced to undergo RI for three years with fine of ₹10,000/-. Her nominal roll reveals that she has already undergone two years, five months and three days incarceration as on 30.10.2012. It appears that she has served the substantive sentence completely. She is not a previous convict and is not involved in any other criminal case. She is aged about 25 years and is unmarried.

6. Taking into consideration all the facts and circumstances, the order on sentence is modified and A-1 and A-2 are ordered to be released

for the period already undergone by them in this case. Regarding fine of ₹20,000/- and ₹10,000/- imposed by the Trial Court, the appellants shall pay the same and in default of payment of the same, A-1 and A-2 shall undergo SI for one month and 15days respectively.

7. The appeal is disposed of in the above terms.

(S.P.GARG)
JUDGE

May 23, 2013
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