

24/2013

20 DEU NCB

10/12/19

AJAY KUMAR JAIN  
Spl. Judge, NDPS Act.  
Room No. P-1, P. Building  
Patiala House Courts,  
New Delhi

IN THE COURT OF SH. AJAY KUMAR JAIN : SPECIAL JUDGE NDPS: PATIALA  
HOUSE COURTS: NEW DELHI

Case No. SC/9000/16  
ID No. 02403R0045922014

Narcotics Control Bureau  
Through: Ajay Dahiya  
Intelligence Officer,  
Narcotics Control Bureau, New Delhi

Versus

Obianika Amobi Chijioke  
S/o Francis Obianika  
R/o Zone no.14, No. 113,  
Main Market,  
Nnewi, Nigeria

Date of Institution : 15.03.2014  
Judgment reserved on : 08.08.2019  
Date of pronouncement : 22.08.2019

**JUDGMENT**

1. Prosecution case in brief, as per the complaint filed, is that on 27.09.2013, IO Rajesh Kumar received an information that the present accused indulging in narcotic drugs arrived Delhi on the intervening night of 25/26.09.2013 and staying at Hilton Garden Inn hotel, Saket and if his personal search or search of his baggage is conducted, there is possibility of recovery of huge quantity of drugs. The said information was reduced into writing and put up before Superintendent Jai Kishan who directed IO Ajay Dahiya to constitute the team and issued search authorization in favour of IO. Thereafter IO constituted a team consisting of himself, IO Pradeep, IO Rajesh, IO Vikas, IO C.S. Rai, IO Azad Singh, Sepoy Dinesh and Sepoy Sanjeev, and left the NCB office at around 12.20 PM in two government vehicles driven by Jai Prakash and Babu Lal alongwith all accessories required for seizure and field testing kits etc. At around 1255 hours, the team reached hotel Hilton Garden Inn, DLF, Saket and IO Ajay Dahiya enquired about the present accused to which the hotel persons replied that he is staying in room



Case No. SC/9000/16 NCB Vs. Obianika Amobi Chijioke Dated 22.08.2019 Page No. 1 of 25

AD/IO  
JTO (Legal)  
W/rendel  
13/12  
W/stay

no. 316. Thereafter, the persons of reception and lobby were joined as witnesses and went to the room which was opened by the accused. Thereafter, accused was informed about the information and search authorization was also shown. Accused and both the witnesses put their signatures on search authorization warrant. Then notice u/s 50 NDPS Act was also given. Before the search, the team also offered their own search which he denied. Nothing was found from the personal search of the accused. One small bag of Levi's was also searched which only contained personal belongings.

2. Then another brown colour trolley bag was opened containing some motor vehicle spare parts and some other items, and on minute examination it was found that there was small bulge in the side walls and in the bottom of trolley bag. On minute examination, the bulges found to be lined up with plywood. The plywood found to contain nuts and screws. On opening the nuts and screws, it was observed fake side walls and false bottom which were then opened and found that something is wrapped in the aluminum foil paper which was again wrapped by brown colour tape. After removing the brown colour tape, white colour crystalline substance was recovered from the cavity between fake side walls and false bottom. Small quantities of white crystalline substance from each cavity i.e. both fake side walls and false bottom was tested separately and gave positive result for 'cocaine'. As the nature and colour and texture and result from the test kit of white crystalline substance from all the cavities was same, the white crystalline substance from all cavities were removed and mixed together and transferred into transparent polythene bag which on weighing came out to be 8 kg. Thereafter two samples of 5 gm each were drawn and kept in small ziplock pouch and further kept in a white envelope. The remaining substance was also put in a transparent polythene bag. The motor vehicle parts and packing material alongwith the false side walls and false bottom was put inside the same trolley bag and sealed.
3. Test memo in triplicate was also prepared at the spot. The panchnama was also drawn at the spot. Some documents including passport and two mobile phones were also seized. The panchnama was concluded at about 1620 hours thereafter,



notice u/s 67 NDPS Act was served. The case property alongwith samples and test memo in triplicate were deposited with malkhana incharge and official seal was also deposited with seal incharge. Seizure report u/s 57 NDPS Act was submitted by IO Ajay Dahiya to Superintendent on 30.09.2019.

4. On 27.09.2013, accused gave his statement u/s 67 NDPS Act voluntarily in his own handwriting and admitted that he belongs to Nigeria and stated that one of his friend Okechukun gave him the offer to deliver the drugs in India. Thereafter, he booked his tickets, got visa and also booked hotel for him in India. Then they went to bag manufacturer in Nigeria and got the drugs concealed in a manner to cheat Custom Officials. He further admitted that he came to India on 26.09.2013 and stayed in hotel Hilton Garden Inn at room no. 316, and waiting for a call from his friend Okechukun, thereafter he was arrested.
5. His arrest report was also submitted to Superintendent on 30.09.2013. On 30.09.2013, the sample was sent to CRCL. On 30.09.2013, Superintendent Jai Kishan informed MEA regarding arrest of the accused. Rakesh Dabas and Ganesh Singh, panch witnesses were summoned and their statements u/s 67 NDPS Act were recorded. As per the report received from CRCL, the presence of cocaine could not be ascertained thereafter, with the permission of court, the sample was sent to Hyderabad. At Hyderabad, 'metamphetamine' was detected. The call details of mobile phone which the accused was carrying were obtained from Nodal Officer however the name and address mentioned in CAF could not be located. Thereafter, on the basis of seizure, statements and documents and evidence of the witnesses, complaint was filed.
6. Vide order dated 18.07.2014 charge u/s 23(c) NDPS Act framed against the accused to which he pleaded not guilty and claimed trial.
7. Prosecution for substantiating its case examined 14 witnesses. Summary details of their depositions is reproduced as under:
8. PW1 Ajay Dahiya, IO stated that on the direction of Superintendent Jai Kishan, he constituted the team and left the office with the team and other requisite items and seal to the hotel in two government vehicles. He made enquiries from the



reception and confirmed that the accused is residing in room no. 316. He shared the information with the people present in the lobby and one Ganesh and Rakesh agreed to join the investigation. Thereafter, they went to the room and it was opened by the accused who also showed his passport. Then, they shared the secret information with him and also shown the authorization letter. The said letter was signed by the accused and the two public witnesses. Notice u/s 50 NDPS Act was given and accused was apprised of his legal right to be searched before magistrate or gazetted officer however he wrote his refusal. Nothing was recovered from his personal search and a bag having label of Levi's, however, when a trolley bag was searched, the contraband was found concealed after removing the plywood wrapped in aluminum foil. A small amount of powder was taken from bottom as well as sides which gave positive result for cocaine. The weight of the powder was found around 8 kg. Two samples of 5 gm each were taken. The samples were seized and sealed. Panchnama and test memo were prepared. The documents passport, boarding pass, baggage tag, two phones, immigration slip etc were taken into possession. The notice u/s 67 NDPS Act was given and the team returned to NCB office at around 1715 hours. Seal was returned to Superintendent and the entry was made in seal movement register. The case property alongwith test memo was deposited with malkhana incharge IO Vikas Yadav. The statement of the accused was recorded by IO Azad Singh. Seizure was reported to Superintendent. Letter was sent to Emirates Airlines. The report regarding sample was received negative then sent to CFSL, Hyderabad. The letters were written to Vodafone and Airtel for CDR details.

9. In cross-examination stated that he was given the original information by the Superintendent with his endorsement. He did not conduct enquiry from the hotel with regard to date of arrival of the accused. The test kits were not specifically entrusted to any IO but are available in the office. He did not make any entry in the register showing departure or arrival. The contents of secret information was not recorded anywhere separately by him. He cannot tell the routes taken by both the vehicles. He also cannot tell the name of the person whom he met at the



reception. The public witness present at the spot are the employees of hotel however not collected any identity proof document from them. He did not give notice to the witnesses before joining. Manager did not accompany them to the room. The Levi's bag was found lying on the floor of the room and the trolley bag was also lying adjacent to it. He written the letter to Emirates Airlines disclosing about the ticket details of the accused but not asked how much luggage was carried by the accused. No permission was sought from the hotel authorities. The notice u/s 50 NDPS Act was given to accused around 01.20 PM. At the time when notice was served, it was signed by Pradeep but do not remember if the panch witnesses signed the same at that time or not. Nobody else from the outside had met the accused when they started conducting the search. No document regarding the identity of the accused from the trolley bag was recovered to suggest that it belongs to him. Only passport was recovered from the Levi's bag. He further stated that he does not remember the quantity of liquid available in the bottles of test kit. In the information the nature of contraband was not disclosed. Firstly, he tested for heroin, thereafter for cocaine but not mentioned the initial testing for heroin in panchnama. He denied suggestion that no notice u/s 50 NDPS Act was given and the signatures and writings of the accused were taken on certain printed papers under force. The trolley bag was not locked either by the number code or by other means. He further stated he do not know whether any security sticker were affixed on the bag or not, but it was having baggage tag. He had not seized the baggage tag and kept it lying affixed with the handle of the trolley bag. He further stated that he do not recall whether the counterfoil of the baggage tag found on the trolley bag was found affixed on the airline ticket of the accused. Vol. The ticket was printout only. He stated that he had not mentioned the file number in panchnama but on notice u/s 50 NDPS Act and report u/s 57 NDPS Act. The test memos were not signed by the accused, public witnesses or the IOs but it was signed by him, however, he could not assign any reason as to why the signature of accused were not taken on test memos. He denied the suggestion that panchnama is manipulated document. The statement of accused was not recorded at the spot.



The panch witnesses did not accompany them after conclusion of proceedings. No site plan was prepared. The seal was not given to public witnesses. On opening the bag, the witness taken out the handle from trolley bag and pointed out the baggage tag is affixed on the same. Thereafter the said baggage tag is removed and taken on judicial record as Ex.PW1/DA. The witness stated that as per the boarding pass the flight number is EK 510 and the same number finds mention also in Ex.PW1/DA.

10. PW11 Rakesh Dabas, head of the security in Hilton hotel stated that at around 01.00 PM on 27.09.2013, 6-7 persons were making inquiries about the guests. Then out of them one showed him the authorization and wanted him as an independent witness therefore, he joined as an independent witness. Thereafter, he alongwith his officer and said team went to the room and the room was opened by a person who looked like Nigerian. They introduced them as NCB officials and offered their search. They also offered that search can be conducted in presence of gazetted officer or magistrate however, the guest declined. He identified the accused as the guest. On personal search some papers were recovered and a bag was searched containing personal belongings. Then a brown colour trolley bag was searched found to be containing some motor parts. On minute checking of the bag, there was some bulge at the bottom, some plywood was found affixed and on removing the same, found to contain an aluminum foil containing white colour substance. The bag was opened from its sides also containing same material and total weight came around 7-8 kg. The NCB officials tested it for cocaine. Small quantities were taken as samples mark A1 and A2. Remaining material was given mark A and the bag was given mark B. In total five packets were found but he did not remember about the fifth packet. The signatures were taken on the packets. Bill of the guest from the hotel was also taken. His signatures were also take on a small statement which mentioned about seizure of material and packets, etc. He further stated that he had made a statement at NCB office on 08.10.2013.

11. In cross-examination, stated that on that day one security executive Ganesh was also on duty and CCTV cameras covering the reception area. He do not know



when the accused checked in or what luggage was brought by him while checking in the hotel. The NCB officials took the bill of stay of the accused from the hotel staff. Ganesh was with him when they visited the room. The NCB officials left the hotel at around 04.00 PM. No written direction was given to Ganesh to accompany him with NCB team. No document was prepared by NCB team in the hotel in his presence. The witness on court question stated that NCB team prepared the slips affixed on pullanda and his signatures were also taken. They also prepared a notice asking him to come to the office. He further stated that he do not know if any person had brought the luggage in the name of the accused after 01.00 PM on 27.09.2013. There were some tubes in the kit but he does not remember the other articles. The samples were taken before conducting test. He further stated that he do not remember the number of packets recovered from the sides or from the bottom however, no document or paper recovered from the bag from which contraband was recovered pertaining to accused. He also do not remember if any document affixed on the bag pertaining to identity of the accused to suggest that the same belonged to him. He further stated that he never deposed as a witness in NCB or Customs case. He also stated that he reached NCB office at around 11-11.30 AM and it took around 1-1 ½ hour in getting his statement recorded and Ganesh also accompanied him. The NCB officials asked him to give his statement in writing whatever happened in his presence. He also stated as far as he remember notice was also given to Ganesh. He further stated he do not remember how and by which material they had sealed the packets and in his presence no other hotel staff except Ganesh signed the slips. He denied suggestion that luggage was brought by the officials of NCB at around 01.00 PM at the reception of the hotel, and accused was forcibly taken from his room and was planted with contraband brought by NCB officials. He also denied the suggestion that he was stock witness of NCB. He further denied suggestion that the notice was given in NCB office on which subsequently denial was obtained.

12. **PW13 Ganesh Singh** deposed that he was working as security executive in the hotel and patrolling with Rakesh Dabas and noticed 6-7 persons making inquiries



about Obianika then showed him the authorization and he alongwith Rakesh Dabas joined as independent witnesses to raiding party. Then went to room no. 316 opened by the accused. Thereafter the passport was seen. Officials offered their search but accused refused. Then notice was given. On personal search some miscellaneous papers were recovered. One small bag containing personal belongings and on opening of second brown colour trolley bag some motor parts were found, plywood was fixed on lower part and on removing the said aluminum foil with brown colour tape was recovered containing white colour powder. The total substance was around 8 kg. Samples of 5 gm each were drawn. The inventory was prepared and he alongwith Rakesh Dabas signed the same. On 07.08.2013 he made statement in NCB office.

13. In cross-examination stated that he cannot tell the name of NCB officials who had come for search however, the search authorization was already prepared with the NCB officials and they had reached the reception between 01-01.05 PM however, he do not remember whether any person or guest had brought any luggage in the hotel between 01-01.05 PM. He do not remember how many documents were signed by him. Some of the documents were already typed and some were prepared in hand there itself. Both the bags were lying under the bed and the contraband was recovered in the trolley after removing the motor parts and the ply therein in the bottom area. The said bag had the lock of the guest which can be opened by adjusting the number and the lock was opened by the guest himself. There was a sticker also of the airline but he do not remember which was the airline. The test was carried out with the help of the chemicals. Two packets were recovered and NCB officials remained in the hotel till 04-04.30 PM. He denied suggestion that he was a stock witness of NCB. He also denied suggestion that no contraband was recovered from the luggage lying in the room of the accused.

14. PW2 Vikas Yadav, IO member of the raiding team also stated that two bags were checked. Notice u/s 50 was given. From one bag only personal clothes were recovered and other bag having some motor parts from the bottom and side walls of the bag crystalline powder was recovered found positive for cocaine. On the





same day, case property was deposited. On 30.09.2013 sample mark A1 alongwith test memo in duplicate sent to CRCL. On 08.10.2013 he recorded the statement of Ganesh Singh. In cross-examination stated that he did not signed any document prepared at the spot. Both the panch witnesses were employees of the hotel. The trolley bag was not locked. The writing work was done by IO Ajay Dahiya and sealing work was done with the help of Sepoy. He denied suggestion that trolley bag of contraband was planted upon the accused after he was picked up and taken to their office in order to implicate him in the present case. He also denied suggestion that only the Levi's bag of the accused was found containing personal articles. He stated that he is not aware whether there is any circular that only superintendent can sign malikiana register. The seal used by the IO is not handed over to any public person.

15. **PW3 IO Azad Singh**, also the member of raiding party stated that they went to the room with two independent witnesses. Search was conducted and from the trolley bag, some motor parts were recovered and on checking the bottom and side, the white crystalline powder was recovered. The accused at office given his voluntary statement, thereafter, arrested him, he prepared his arrest report. In cross-examination stated that they remained at the reception of hotel for about 10-15 minutes. The entire team went to the room except the driver. The section 50 notice was given immediately after reaching the room. The Levi's bag and trolley bag were lying besides the bed. No person visited the accused after they reached the room of the accused. He denied suggestion that accused has not given statement and accused copied the statement on their dictation under pressure.

16. **PW4 Kishan Lal Gurjar**, Sepoy deposited sample packet to CRCL. **PW5 Rajesh Kumar**, IO recorded the information that one Nigerian national staying at Hilton Garden Inn indulged in narcotics which was reduced into writing and put up before Superintendent Jai Kishan. Thereafter he alongwith IO Ajay Dahiya and team went to the hotel and joined Ganesh and Rakesh as independent witnesses. He further stated that in his presence from the trolley bag certain motor parts were recovered and from the bottom as well as sides, the aluminum foil packets



were recovered containing cocaine. The proceedings were conducted, panchnama was prepared. In cross-examination stated that informer told him that accused came Delhi on the night of 25/26 but not specified the country or the flight vide which he came. The panch witnesses were not called from anywhere but they were present in the hotel lobby itself. He further stated that he do not remember the size and colour of trolley bag and that the said bag was not locked. The contraband recovered from three different places were not weighed separately as it was of the same texture and appearance. The substance was tested. The test memos were signed by Ajay Dahiya however not by accused or panch witnesses. After NCB team reached the hotel, nobody came to the accused to meet him in his room.

17. **PW6 Jai Kishan, Superintendent** made endorsement to the information and directed to constitute a team and issued search authorization. In cross-examination stated that he is not aware when the file number was allotted to the case as it was allotted to Ajay Dahiya. He also not given any direction who will join the raiding party. **PW7 Sepoy Vasudev Bharadwaj** stated that on the instructions of Superintendent, he was taken to the room of Zonal Director and apprised him to take the sample to CFSL, Hyderabad, thereafter, he alongwith court order and CRCL report went to Hyderabad. **PW8 Vishwanath Tiwari** is the witness to the recording of statement of Rakesh Dabas u/s 67 NDPS Act. **PW9 Chandrashekhar**, Nodal Officer received the letters from NCB regarding the SIM numbers provided by the NCB. **PW10 Anuj Bhatia**, Nodal Officer exhibited the CAF and CDR details of mobile no. 9582112985.

18. **PW12 IO Pradeep Singh** also the member of raiding team issued notice u/s 50 NDPS Act to the accused, conducted personal search. On search of trolley bag from the side walls and bottom, some packets of aluminum foil containing white colour substance which gave positive test for cocaine were recovered. Notice u/s 67 NDPS Act was given to accused. In cross-examination stated that he do not remember whether the document qua the stay of accused was collected or not from the hotel. No person had brought the suitcase of the contraband from outside



to the reception after 12.55 PM. He stated that he do not remember if any tags were there on the bag or not. He denied the suggestion that any bag containing contraband was brought by someone at their instance at the reception on 27.09.2013 which was planted upon the accused. He further stated he do not remember how many packets were recovered from trolley bag. The packets were found fitted in the portion from where they were recovered. The file number was allotted before they left the office for the spot. The file number was not written on panchnama. Only IO Ajay Dahiya signed the test memo and the same was not signed by the accused or panch witnesses. PW14 K.M. Varshney, Chemical Examiner who examined sample and detected methamphetamine.

19. Accused in his statement u/s 313 Cr.PC denied all the incriminating circumstances and stated that he was present at the reception of hotel when the officers of NCB came and held him for the purpose of enquiry with regard to passport and visa, and the officers had not searched or visited his room. He only brought the Levi's bag and no other bag was brought by him. He also stated that no notice was given to him and no trolley bag was recovered from his room. His signatures and some endorsements were taken under force and pressure, and he arrived in India on 26.09.2013 with flight EK 510 and declaration form Ex.PW1/C2 for custom also shows about one Levi's bag, and the document Ex.PW1/C5 was a manipulated document. The baggage delivered pertaining to flight no. 512, and on that document his signatures were obtained forcefully in the office, and he also retracted his statement at first opportunity.
20. Accused examined himself as DW 1 in which he alleged that he arrived in India in the morning of 26.09.2013 by flight no. AK-510 with Levis bag containing personal belongings and checked in the hotel Hilton in room no. 316 and the said bag was lying in the aforesaid room. He further stated that he was stopped at the reception on 27.09.2013 for the purpose of inquiry and thereafter they took him from reception with Levis bag to the NCB office, and at NCB office he was beaten and his signatures were taken, and endorsement were obtained after taking his family history. He was also forced to sign the second part of document Ex. PW



1/C5 and he had not received any baggage from Emirates Airlines Services vide document Ex. PW 1/C5. He further stated that he did not come by flight no. EK-512 and documents did not contain his signatures. He also retracted his statement at first instance. The officers never searched his room and only asked him to bring the same at the reception of the hotel and he is not concerned with the contraband.

21. In cross examination stated form PW 1/C-4 is not in his handwriting, however, the statement Ex. DW 1/DA is in his handwriting. He also stated that he is doing the business of motorcycle parts and came to India for purchase of Indian hair and bangles and brought 3500 US dollars in cash, however, apprehended on 27.09.2013 in Hilton hotel at room no. 316, but stated nobody came inside his hotel room. He further stated that notice under section 50 NDPS Act was issued to him at hotel, again said in the office. He further stated that his passport was taken by NCB and the copy of the passport was taken from his possession. He stated he has only one luggage but also stated it is correct that he has filled the custom declaration form on arrival in India and the same is Mark A in Ex. PW 1/C-2 and it is in his writing. He however denied that there were two baggage in the said declaration form one was checked baggage and other was hand baggage. He denied suggestion that he had filled the form Ex. PW 1/C-4. He further stated that ticket was taken by the NCB from the hotel. The mobile phone Mark C does not belong to him, but photocopy of the mobile phone Mark D belongs to him. He also denied suggestion that document Ex. PW 1/DA recovered from the handle of his luggage. He stated that nobody from Emirates Airlines visited the hotel. He further stated that firstly he boarded the plane from Lagos for coming to India. He came from Lagos to Dubai, and on transit from Dubai to Delhi, his flight no. from Lagos is 0784 and the ticket and boarding pass is Ex. PW 1/C2 and the dinner bill did not belong to him, and he is also did not aware about the phone number of the hotel.

**22. Material Exhibits -**

Ex. PW 5/A (Mark A) is the secret information recorded at 09.30 Hours on



27.09.2013 with direction to IO Ajay Dahiya to constitute the team. Ex. PW 1/A is a search authorization under section 41 (2) NDPS Act. Ex. PW 1/X is the entries of the seal movement register. Ex. PW 11/A is the notice under section 50 NDPS Act apprising the accused of his legal right for search to be conducted before Magistrate or Gazetted officer, if he so desires, containing his recording that he do not need any magistrate or gazetted officer. NCB officer can take his search. Ex. PW 1/B is the panchnama, Ex. PW 1/C, the list of documents taken in possession at the time of search through panchnama i.e. passport, boarding pass from Dubai to Delhi, baggage tax, immigration slip on arrival, bill of Hilton garden, PIR of the checked baggage, Emirates baggage delivery receipt, on-line ticket papers, mobile phone Nokia, mobile phone Vodafone, driving license. Ex. PW 1/C-1 photocopy of the passport, Ex. PW 1/C-2 boarding card from Dubai to Delhi, baggage tag, immigration slip/custom declaration form on arrival in India. Ex. PW 1/C-3 is the dinner bill. Ex. PW 1/C-4 is the property irregularity report (PIR) for checked baggage given by the accused in India showing to contain motor spare parts, clothes, shoes and address of Hilton garden in Delhi. Ex. PW1/C-5 is the immigration baggage delivery receipt. Ex. PW1/C-6 to C-9 is the on-line ticket papers. Mark C and Mark D is the copy containing the photographs of the mobile phone. Ex. PW 1/DB is the copy of the license. Ex. DW 1/DA is the statement under section 67 NDPS Act of the accused. Ex. PW 3/C and Ex. PW 3/D are the arrest memo and articles of jamatalashi by the IO / Intelligence officer. Ex. PW 1/D is the seizure report under section 57 NDPS Act. Ex. PW 6/A is the arrest report under section 57 NDPS Act. Ex. PW 4/A is the letter forwarding sample for analysis. Ex. PW 2/A is the entry of malkhana register. Ex. PW 8/A is statement of Rakesh Dabas under section 67 of the NDPS Act. Ex. PW2/B is the statement of Ganesh Singh u/s 67 NDPS Act. Ex. PW 1/E is the request regarding the payment details of the ticket. Ex. PW 1/F is the reply regarding the ticket payment. Ex. PW 6/C is the report of CRCL, Delhi. Ex. PW6/F is the report of CFSL, Hyderabad detecting meta amphetamine. Ex. PW 1/J-1 to J-3 is the CDR details of mobile number 9582112985. Ex. PW 1/DA is a tag / stub.



23. Ld. Counsel for the accused submitted that accused is falsely implicated in this case and no trolley bag from which the alleged contraband shown to have been recovered is recovered from the accused. Accused was apprehended from the hotel only with a hand bag. Ld. Counsel submits that the said trolley bag having tag no. EK028822 as per the Emirates airport delivery receipt pertains to flight no. EK512/26<sup>th</sup> September, however, the said flight is not the flight in which the applicant / accused traveled. Therefore, the said trolley bag cannot belong to accused. Furthermore as per the said delivery receipt the said baggage was delivered to accused at around 1 pm, and as per the case of the prosecution itself the entire raiding team has already reached at 12.55 hours, and it is not the case of the NCB that the said baggage was delivered in their presence. Ld. Counsel submits this itself suggest that the said trolley baggage was planted over the accused. Ld. Counsel submits that there is no investigation whether the said baggage was checked in by the accused.

24. Ld. Counsel submits that PW 11 Rakesh Dabas in his cross examination stated that no documents were prepared in the hotel in his presence and even after the clarifications by the Court he stated some slips were prepared which were affixed on the pullanda and his signatures were also obtained. Ld. Counsel submits that itself suggest that no document was either recovered or attached with the bag and furthermore there are no documents i.e. panchnama, notice under section 50 and test memo were prepared in the room no. 316 of hotel. Ld. Counsel submits that PW13 in cross examination stated only two packets were recovered and that too from the bottom area of the trolley bag, which is contrary to the case of NCB, which shows that one packet each from two side walls and one packet from the bottom of the bag. He further submitted that PW13 Ganesh Singh stated that the bag had a lock which can be opened by adjusting number, however, the IO Ajay Dahiya (PW 1) in cross-examination stated that trolley bag was not locked either by number code or by other means. Ld. Counsel submits that this itself creates doubt over the recovery of the trolley bag. Ld. Counsel submits that PW 1 in cross examination stated that no document was recovered regarding the identity of the



accused from the trolley bag, however, he had not seized the baggage tag and kept it lying affixed with the handle of the trolley, but when the said bag is opened before the Court the handle was not found attached but found lying inside the bag. Ld. Counsel submits that there is no inquiry from the airlines whether in fact any bag was lost or not.

- 25.Ld. Counsel submits that PW 2 IO Vikas Yadav stated that he did not obtain the signature of Sh. K.L. Gujjar who took the sample to CRCL and whereas PW 4 K.L. Gujjar deposed in cross examination that the sample and documents were given to him by Jai Kishan, whereas PW 6 Jai Kishan stated that same were given to him by IO, Malkhana. The malkhana register only bears the signatures of IO against the rules that it should be of the rank of superintendent. Therefore possibility of tampering of sample is not ruled out.
- 26.Ld. Counsel further submits that the hotel has CCTV footage for showing the entire incident, but the NCB officials did not collect the CCTV footage. Further accused was not produced before the gazetted officer in compliance of service of notice under section 50 NDPS and on this ground alone he is entitled to be discharged (*relied upon Arif Khan @ Aga Khan vs. State of Uttarakhand 2018 SC 459, Dharamvir vs. State Crl. Appeal No. 658/2017 dated 13.11.2008 Delhi High Court*). Ld. Counsel submits that there is an infirmity in taking samples and the samples were not drawn from all the pullandas. Furthermore there is non-production of log books of the government vehicles used in the raid. Furthermore there is no handing over of the seals to the public witness. Besides oral submissions written submissions are also filed on behalf of accused.
- 27.Ld. SPP for NCB on the other hand submitted that the recovery of the contraband at the instance of accused from the trolley bag carried by him is duly proved through independent witnesses. There is nothing material in cross-examination of these witnesses that the recovery of contraband in the manner relied by the prosecution has not taken place. The CFSL report gave positive test for metamphetamine. Ld. SPP submits that Apex Court in *Kanhaiya Lal Vs. Union of India AIR 2008 1004* held that conviction can be maintained solely on the basis of



statement u/s 67 NDPS Act. The statement given u/s 67 by the accused is voluntary and nothing can be inferred that it was given under coercion. There is a presumption in favour of prosecution u/s 35 and 54 NDPS Act however accused unable to rebut the said presumption. Ld. SPP submits that the prosecution has been able to prove its case beyond reasonable doubt and accused is liable to be convicted for offence charged.

28. Arguments heard. Record perused.

29. The brief sequence of facts is that the accused arrived in India from Lagos via Dubai in the morning of 26.09.2013 thereafter, stayed at room no. 316, Hilton Garden Inn, Saket. On a secret information recorded on 27.09.2013 a team was constituted headed by PW1 IO Ajay Dahiya after obtaining the authorization, the team reached the hotel at around 12.55 PM. On inquiry at the reception it was found that the accused was staying in room no. 316. Two independent witnesses i.e. the staff of hotel PW11 Rakesh Dabas, head of the security and PW13 Ganesh Singh, security executive was joined in the raid and thereafter the entire team in presence of these independent witnesses entered into room no. 316 where accused Obianika was found. He was apprised of the search authorisation warrants u/s 41 NDPS Act. His signatures were obtained on the said warrants in presence of independent witnesses. Thereafter, he was given notice u/s 50 NDPS Act by PW12 IO Pradeep Singh apprising him his rights to be examined before the magistrate or gazetted officer however he declined. Thereafter his search was conducted. Nothing found on the search over his person. A small Levi's handbag was also searched which contained his personal belongings. Thereafter the trolley bag of the accused was searched which found to have concealed the contraband cocaine on the sides as well as on the bottom. The plywood which is used for concealment is removed and the aluminum foil containing the contraband on all sides was removed and found to be containing the cocaine on testing. Thereafter, as the entire material was of the same colour and size mixed. Then samples of 5 gm each were drawn. The remaining contraband was also sealed and the bag alongwith remaining articles was also sealed and seized. The samples were sent for testing.





As per the CFSL Hyderabad testing report Ex.PW6/F metamphetamine is detected.

30. The witness to the entire proceedings of seizing of the contraband are the raiding team members and the independent witness PW11 Rakesh Dabas and PW13 Ganesh Singh. PW11 Rakesh Dabas in his testimony categorically stated that in his presence the trolley bag was searched found to be containing some motor parts and on minute checking there was some bulge noticed at bottom. Some plywood was found affixed which was removed and aluminum foil containing white colour substance was recovered. The bag opened from its sides also containing the same material and total weight around 7-8 kg which on testing found to be cocaine. PW13 Ganesh also stated that from the trolley bag some motor parts found and on removing the plywood aluminum foil containing white colour powder recovered and the total weight was around 8 kg. Both these witnesses are consistent and appear credible on the factum of recovery of the contraband around 8 kg from the said trolley bag. The said recovery is also corroborated through the statement of raiding party members i.e. PW1 IO Ajay Dahiya, PW2 IO Vikas Yadav, PW3 IO Azad Singh, PW4 IO Rajesh Kumar and PW12 IO Pradeep Singh. There is nothing material in their testimony to discredit their presence during the time of search of the bag, the manner of search, the recovery of contraband after removing of the plywood and the quantity of contraband, removing of samples of contraband and the testing of contraband at the spot

31. Now, it is pertinent to appreciate the documents recovered during the search. The inventory /annexure A (Ex.PW1/C) was prepared duly signed by the accused as well as the independent witnesses showing the recovery of passport, boarding pass economy class from Dubai to Delhi, baggage tag, immigration slip on arrival, bill of Hilton Garden, PIR (lost report) at Emirates, delivery receipt of lost baggage, online tickets, paper etc. The tickets (Ex.PW1/C6-C9) seized categorically show that accused left the Lagos, Nigeria through Emirates Airlines and thereafter changed the flight at Dubai and on 26.09.2013 from Dubai came to India in flight no. EK0510, left Dubai International Airport at 04.35 in them morning and reached Delhi at around 09.25 AM. The factum of arrival in India in this manner is



also confirmed by the accused in his testimony as DW1 in which he categorically stated that he had come to India in the morning of 26.09.2013 and moved to Hotel Hilton. The accused categorically admitted that he was staying in the Hotel Hilton from 26.09.2013 till he was apprehended by the NCB team on 27.09.2013. Accused in his defence as DW1 in cross-examination categorically stated that on arrival in India he filled the Custom Declaration Form/immigration slip (Ex.PW1/C2) and also stated that it was in his handwriting, however denied suggestion that as per declaration form there were two baggages, one is checked in and other is handbag. This witness admitted the recovery of said immigration slip however took the plea that he only filled the hand baggage. But the slip Ex.PW1/C2 categorically show the checked in bag as well as the handbag. It is not suggested to any of the witnesses that they themselves had filled the entry of checked in bag. In cross-examination admitted that his boarding card, tickets, the copy of passport and also stated that the said was taken from his possession.

32. At this stage, it is pertinent to examine the baggage tag Ex.PW1/DA which was found to be on the recovered trolley bag (checked in bag). During the cross-examination of PW1 the trolley bag was again produced and on opening the said bag the handle was taken out and the handle was having baggage tag Ex.PW1/DA. Ex.PW1/DA categorically showing flight no. EK 784 as well as EK 510 and the name of the accused as Obianika therefore, corroborating the immigration slip Ex.PW1/C2 which also shows that hand baggage as well as checked in baggage PW1 not even was suggested that the said baggage tag was planted later on through airlines officials. This tag on trolley bag suggest the checked in bag belong to accused and duly corroborates the admitted immigration slip Ex. PW1/C2 by accused and falsifying the plea of accused that in immigration slip Ex.PW1/C2 checked in baggage entry was not filed by him.

33. In this scenario, it is also pertinent to examine the property irregularity report (lost report) of checked in baggage Ex.PW1/C4. This document was also recovered at the time of search. In this document the details of flights, timing of flights, the articles in the checked in baggage i.e. spare parts, cloth shoes also mentioned.



However accused denied the recovery of the said Property irregularity report. Now it is pertinent to peruse the emirate baggage delivery receipt Ex PW1/C5. The said baggage delivery receipt showing that the said baggage was handed over to Delhi Airport Services to deliver to the accused. As per this receipt, the reference number AHLDEL EK 33012, the contact number 39191919, the flight no. EK512 and the tag number EK 028822 were mentioned, and these numbers except the flight number found mentioned in the tag Ex PW1/DA are matched. These are also found matched with the details in the PIR report. Therefore, the plea of accused that the said trolley bag which was checked in do not belong to him appears false. The case of the prosecution from the nature of the documents, the details in documents and recovery of these documents in presence of the independent as well as the official witness appears fully credible.

34.Ld. counsel for accused vehemently argued that this baggage receipt Ex PW1/C5 showing that it was received by the accused at around 1 pm on 27.09.2013. He submits that the raiding party officials reached the hotel at around 12.55 pm i.e. five minutes prior to this time and it is not the case of prosecution that this bag was delivered in their presence. Therefore, the recovery of the bag in the manner relied by the prosecution becomes doubtful. This plea of the Ld. Counsel for accused appears impressive on its face however the court has to judge every fact in context of the entire facts and circumstances. The accused categorically admitted in his defence evidence that he was present in the hotel when the officials raided the hotel however stated that he had only one hand bag and this trolley bag was planted over him. The accused in his statement u/s 67 of NDPS Act Ex DW1/DA categorically stated that he is resident of Nigeria having one son and daughter and he is having a business of spare parts which was failed therefore he indulged in the activity of supplying of drugs to India. Accused though retracted the statement over the fact that he was under pressure made the statement to write after obtaining details of his family. This witness however in his statement categorically stated that he deals in the spare parts at Nigeria. The spare parts are also found mentioned in the lost report Ex PW1/C4 and on search also besides contraband,



the motor parts were also found to be recovered therefore confirming the fact that accused was dealing in motor spare parts in Nigeria, it is nowhere suggested by this accused that these spare parts are also planted in the said baggage on the basis of this statement u/s 67 of NDPS Act.

35. As far as flight no. EK 512 is concerned found mentioned in the delivery receipt Ex PW1/C5, this is natural that the said baggage was must have been delivered to Delhi in some subsequent flight, and this anomaly on the other hand fortifies the case of prosecution that the accused lost the bag, therefore, it cannot reach with his flight EK 510 and delivered him later. As far as the recording of time if 1 pm is concerned, it can be inferred that it might be sometime prior to arriving of NCB officials. These timings when mentioned is usually mentioned as an approximate time. Therefore merely on the basis of this infirmity, this baggage delivery receipt cannot be disbelieved and it cannot be held that this baggage was planted by the NCB officials later on particularly when both the independent witnesses i.e. PW11 and PW13 have categorically denied the suggestion this bag was brought later on. Nothing could be deducted from the testimony of PW11 and PW13 that they have deposed under the pressure of NCB. They categorically denied of being witness to any proceedings prior to this case. Furthermore, the admission of accused about the raid also do not create any doubt that these witnesses are not present. On overall appreciation of the evidence, the plea that the trolley bag was planted by the NCB officials do not appear to be at all credible.

36. Ld. counsel for accused also raised a plea that no notice u/s 50 of NDPS Act was served upon the accused at the spot and it was given only in the NCB office and furthermore there is non compliance of procedure u/s 50 of NDPS Act as the search was not conducted in presence of Gazetted officer/Magistrate. Both the independent witnesses have categorically stated that notice was given to accused and accused allowed to be searched by the NCB officials. PW12 IO Pradeep Kumar stated that he has given the notice u/s 50 of NDPS Act apprising the accused about his legal right to be examined before Magistrate/Gazetted officer however accused denied. Other witnesses also stated that the notice u/s 50 of NDPS Act was given.



Accused even in his cross examination as DW1 admitted that section 50 of NDPS Act was issued at hotel, but again stated that it was issued in the office but considering the testimony of the independent witnesses and the NCB officials, there is no doubt over the issuance of section 50 of NDPS Act to accused prior to his search or search of the bags.

37. The main contention of the Ld. Counsel for the accused is non compliance of the formalities under Section 50 NDPS Act. Ld. Counsel for accused submitted that for taking the personal search the accused is required to be produced before the Gazette Officer or the Magistrate. However, the recovery proceedings are not carried in presence of any Magistrate or any Gazette Officer, therefore, the accused is entitled to be acquitted on this ground alone and in this regard relied upon the judgment of Apex Court in case titled "Arif Khan vs Aga Khan (supra) and Dharamvir (supra). However, as per the notice u/s 50 NDPS Act, the accused categorically written that he do not need any gazetted officer or magistrate and NCB officer can search him. Delhi High Court in case titled as *Sayaed Md. Ridwan @ Munna to state CrI.A.785/2014 dated 22.02.2019* held as under:

11. A Constitution Bench of Supreme Court in *Vijaysinh Chandubha Jadeja (supra)* has ruled that Section 50 of the NDPS Act itself gives an option to the raiding officer to search any person and if such person requires, then such person ought to be produced before the nearest gazetted officer. In the instant case, appellants had refused to exercise their option to be searched in the presence of a gazetted officer. Supreme Court in *Arif Khan (supra)* has taken note of the afore-referred legal position, but has chosen to acquit accused on facts of said case. While relying upon the dictum of Constitution bench in *Vijaysinh Chandubha Jadeja (supra)*, this Court holds that the giving of option to appellants to be produced before a gazetted officer is sufficient compliance of Section 50 of the NDPS Act. As far as appellant -*Sayaed Md. Ridwan @ Munna* signing notice under Section 50



of NDPS Act in English is concerned, I find that though he claims to be illiterate, still such persons can and do sign in English and on this count also, benefit of doubt cannot be extended to appellant -Syaed Md. Ridwan @ Munna.

12. As regards appellant -Gulzar Sheikh @ Sonu, he had clearly written on the Notice under Section 50 of the NDPS Act that he does not want to be searched in the presence of a gazetted officer. So, on this count, conviction of appellants cannot be faulted with.

38. Further, in case titled as Ram Gopal Vs. State CrI.A. 676/2016 dated 16.10.2018, the Hon'ble Delhi High Court held as under:

11. The Supreme Court therefore, has held that while the obligation of the authorised officer under Section 50(1) of the Act is mandatory and requires strict compliance, the suspect may or may not choose to exercise the right provided to him under the said provision. It was further held that the question whether or not the procedure prescribed under Section 50(1) of the Act has been followed and the requirement prescribed therein has been met, is a matter of trial.

12. In the present case, PW-7 Ct.Kheta Ramse, PW-8 HC Jagdish and PW-10 Inspector Satyawar have duly proved the service of mandatory notice under Section 50 of the Act (Ex.PW7/A) on the Appellant and refusal of the Appellant to exercise his legal right to be searched before a Gazetted Officer or the Magistrate, in his own handwriting (Ex.PW7/B). In the statement of the Appellant recorded under Section 313 Cr.P.C., the Appellant had not denied his reply in Ex.PW7/B. Therefore in my opinion, the requirement of Section 50(1) of the Act has been duly complied with by the prosecution.



13. In *Arif Khan (supra)* on the facts of that case, the Court found that the mandatory procedure under Section 50 of the Act had not been satisfied. The said case was peculiar on its own facts and therefore, is distinguishable from the facts of the present case. In the present case, the prosecution has been able to prove its case through the testimonies of its witnesses and the documents produced on record.

39. Therefore, in view of the mandate of above judgment, it cannot be held that there is any violation of procedure envisaged u/s 50 in the present case.

40. Accused in his statement u/s 67 NDPS Act recorded in his own handwriting has categorically stated that the entire proceedings and the factum of recovery of contraband from his bag. Though he has retracted his statement later on but the retraction do not appear to be credible. The statement u/s 67 of NDPS Act corroborates the entire proceedings as deposed by the witnesses examined and recovery of the documents as well as the contraband from the possession of accused. Even otherwise, the prosecution is not entirely dependent upon the statement u/s 67 of NDPS Act. Prosecution case, dehorning the statement of accused u/s 67 NDPS Act is also sufficient for ascertaining the culpability of accused.

41. There is strict compliance of proceedings u/s 41, 50, 57 by the NCB officials and there is no infirmity in compliance of the mandatory provisions. The accused is found to be in conscious possession of contraband in question and the presumption also arose in favour of the prosecution. The accused not able to rebut the said presumption either through prosecution evidence or through evidence led by him. It is pertinent to notice that the main plea of accused is that the said trolley bag do not belong to him. As per the prosecution case, this bag was lost and delivered to the accused later on in the hotel. The accused can rebut the said factum easily by calling the officials of the airlines that no such bag was carried by him and this bag is thus planted by the NCB officials however accused not opted to do so. Accused duly admitted the custom clearance/immigration clearance slip Ex



PW1/C2 which recorded the fact that accused was having both hand baggage and checked in baggage. This is duly corroborated by baggage tag Ex.PW1/DA as discussed.

42.Ld. Counsel for accused raised the pleas that witnesses could not categorically states the routes of the vehicle even the drivers were not examined, the departure/arrival register of hotel entry was not produced and there is no CCTV footage seized to show that the accused was apprehended in the hotel in the manner relied by the prosecution. The accused himself admitted that he was apprehended from the hotel and his sole plea is that the trolley bag was not recovered from him, and the contraband along with trolley bag is planted over him, therefore, in this scenario these discrepancies hardly material.

43.Ld. counsel for the accused submits that IO Vikas Yadav (PW2) stated that he had not obtained the signature of K.L. Gurjar who took the sample to CRCL and PW4 K.L. Gurjar on the other hand submitted that the sample and documents given by PW6 Jai Kishan. PW6 Jai Kishan on the other hand stated that these were given to PW4 by the IO. Ld. Counsel submits that malkhana register bears the signature of IO which is against the procedure that it should be of the rank of Superintendent. There is no infirmity pointed out over the fact that whether the said samples were deposited in malkhana or not. There is no tampering on the seals found. The samples are duly deposited by PW4 at CRCL. The sanctity of the samples do not found to have been breached. Accordingly, infirmities as pointed out by defence counsel do not at all affect the prosecution case.

44.Ld. counsel for accused also raised a plea that as per the testimony of witnesses the location of bag found in the room is different. Some says bag was around the bed and some says it was under the bed. Ld. Counsel for accused further submits that there is a inconsistency in the testimony of witnesses over the factum of whether it was locked or number locked or not locked. He also submitted that there is also inconsistency whether the contraband recovered from all the sides or not. As discussed, the testimony of officials as well as the independent witnesses found fully credible over the aspect of raid conducted, of search including trolley






bag, recovery of documents. It is natural that every witness cannot remember the exact details of what happened and only could tell the material aspect particularly when he was examined after long time. Such kind of discrepancies in the statement of witnesses on the other hand makes them natural. There appears to be no occasion for the NCB officials in present facts and circumstances to falsely implicate this accused. These submissions not able to derail in any manner the prosecution case over the conduct of the proceedings. The bag was duly produced before the court and opened and there is nothing in cross examination of the witnesses that the said bag is not the bag which was seized and from which the contraband was recovered. The case property i.e. the bag is not found inconsistent over the aspect of the material found inside i.e. plywood, motor spare parts etc after removal of contraband.

45. On overall appreciation of evidence on record, the prosecution able to prove that the Amphetamine weighing around 8 kg i.e. commercial quantity found in possession of the accused, therefore, there is presumption under section 35 and 54 NDPS Act in favour of prosecution and accused utterly failed to rebut the same. Accordingly, prosecution able to prove its case beyond reasonable doubt. Hence, accused is found guilty for commission of offence under section 23 (c) NDPS Act. Accused **Obianika Amobi Chijioke** is thus convicted for offence under section 23 (c) NDPS Act.

Announced in the open Court  
on this 22<sup>nd</sup> day of August, 2019



  
(Ajay Kumar Jain)  
Special Judge NDPS  
Patiala House Courts  
Special Courts  
New Delhi  
NDPS Act.  
Patiala House Courts  
New Delhi