

**IN THE COURT OF SH. SUDESH KUMAR-II: SPECIAL JUDGE
NDPS: PATIALA HOUSE COURTS: NEW DELHI**

SC No. 8555/16

ID No. 02403R0000852012

Narcotics Control Bureau

Delhi Zonal Unit,
West Block-1, Wing No. 7,
2nd Floor, R.K. Puram,
New Delhi

Versus

- 1. Ajah Ugorji John**
S/o Sh. Nezeugorji
R/o H.No. 163, Bhagwati Garden,
IIIrd floor, New Delhi

- 2 Samuel Onyema Anyanwu**
S/o Sh. James Anwanwu Onyema
R/o H.No. 163-A, IIIrd floor,
Bhagwati Garden,
New Delhi

- 3 Khalid**
S/o Sh. Osman
R/o H.No. K-47(B),
IIInd floor, Lajpat Nagar-II,
New Delhi

- 4 Celestian I Anozie**
s/o Sh. Anozie
R/o H.No. 163-A, IIIrd floor,
Bhagwati Garden,
New Delhi

5 Ahmad Neesar Shuja
S/o Sh. Mubarak Shuja
R/o H.No. 1410, Gali no. 13,
Govind Puri,
New Delhi

6 Clement Eboh
S/o Sh. Eboh
R/o H.No. 118, Pocket 12,
Sector 12, Rohini,
New Delhi

Date of Institution : 05.01.2012

Judgment reserved on : 20.11.2018

Date of pronouncement : 30.11.2018

JUDGMENT

1. The Narcotics Control Bureau (herein after referred to as NCB) through its Intelligence officer (IO) Sh. G.S.Bhinder has filed the present complaint against the aforementioned accused persons u/s 21, 23 read with Sections 29 of the Narcotic Drugs and Psychotropic Substances Act (herein after referred to as NDPS Act).

2. Briefly stated, the facts that can be culled out from the assertions made in the complaint and the documents filed therewith are as follows :

(a) On 2/8/2011, Sh. G.S. Bhinder, IO NCB received a secret information that one Nigerian national, namely Celestian I Anozie is involved in drug

trafficking and is running a drug cartel with his associates namely Clement Eboh and Ajah Ugorji John, Anyanwu Onyema from H.No. 163A, IIIrd floor, Bhagwati Garden Extension, New Delhi. The source further informed that one Afghan national namely Nissar Ahmad, fair complexion, height 160 cm. age around 25-27 years is going to deliver a consignment of contraband to Celestian I Anozie on 3/8/2011 at around 11:00 a.m. and that he would be coming to 163A Bhagwati Garden extension in a private taxi to hand over the drug to Celestian I Anozie.

(b) The information was reduced into writing and was put up by IO Sh. G.S. Bhinder before Sh. Y.R. Yadav, Superintendent, NCB and on his instructions a raiding team consisting of Intelligence Officers of NCB namely, Sh. G.S. Bhinder, Sh. Rajesh Kumar, Sh. Surender Singh, Sh. M.M.S. Bhandari, Ms. Kiran Bala, Sh. Narender Singh, Sepoy and Sh. Sanjeev Kumar, Sepoy and Sh. Malkeet Singh carried out verification of the address on 2/8/2011.

(c) Thereafter on 3/8/2011 a raiding team consisting of Intelligence Officers of NCB namely, G.S. Bhinder, Sh. Surender Singh, IO Sh. M.M.S. Bhandari, IO, Sh.Sanjeev Kumar, Sepoy and Sh. Malkeet Singh, IO proceeded from NCB office at about 9:30 a.m. in official vehicle and reached at Dwarka Mor Metro Station at about 10:15 a.m. where another team consisting of Sh. Rajesh Kumar, Ms. Kiran Bala and others were already present. Before leaving IO G.S. Bhinder collected the seal of

NARCOTICS CONTROL BUREAU DZU 4 at about 9:00 a.m. from Sh. Y.R. Yadav, Superintendent, NCB, DZU.

(d) On reaching the spot after small briefing on the metro station, the team members were deployed in the area and near the House No. 163A, IIIrd floor, Bhagwati Garden Extension, New Delhi. On reaching there Sh. G.S. Bhinder, IO introduced himself to a few local persons/passersby and requested them to join the raiding party pursuant to which two persons namely Pradeep Kumar Yadav and Sh. Vijay Kumar Yadav voluntarily agreed to do so. The surveillance was mounted on the abovesaid house.

(e) At about 4:00 p.m, Sh. Surender Singh, IO noticed one taxi carrying one passenger stopping near the said house in the street and also saw one person, carrying one blue colour bag on his shoulder, with similar features as was mentioned in the secret report deboarding from the taxi and moving towards the abovesaid house. That person then entered the abovementioned house and went to the third floor of the house. Immediately thereafter the NCB team rushed to the third floor of the abovementioned house and knocked the door and door was opened by one African who on inquiry revealed his name as Celestian I Anozie.

(f) The NCB officers then disclosed their identity and purpose of their visit. Thereafter the NCB team entered the premises and found three African national and one other person who recently entered into the house before the

NCB team were sitting in first room of the house and on inquiry the said persons revealed their names as Nissar Ahmad, Clement, Onyema and Ajah. Thereafter the NCB officers then disclosed their identity and purpose of their visit to them and notices U/s 50 of NDPS Act were given to them. They were also made to understand that they have a legal right to be searched before a Magistrate or a Gazetted Officer but the accused persons refused to exercise the said right and informed that any NCB officer could conduct their search.

(g) Thereafter on inquiry about the blue bag which was kept on the table in front of all of them, accused Nissar Ahmad informed that he had carried the bag and had handed over the same to Celestian I Anozie. The search of the bag was carried out and it was found to contain one pink colour bag. On opening the said pink colour bag, it was found containing 4 packets which were wrapped with transparent cello tape and when the cello tape was removed, all the packets were found further wrapped in light brownish colour tape. On removing the said tapes the packets were found containing an off white coloured substance. The said substance from all the packets was checked with the help of the field testing kit separately and it gave positive result for heroin. Since the recovered substance was similar in colour texture and contents, it was mixed homogeneously and weighed and its weight came out to be 4.4 kg.

(h) Two representative samples of 5 grams each were taken out from the

mixture and kept in two small polythene pouches and given mark A1 and A2. The remaining recovered drugs was kept in a polythene and converted into a parcel and given mark A. Similarly remaining packing material was also wrapped in a marking cloth and given mark A3. The parcels and the samples were duly sealed and paper slips having dated signature of the IO, witness and the accused persons were pasted on the parcels and the samples. A test memo in triplicate and panchnama was also prepared at the spot.

(i) Summon u/s 67 NDPS Act were then issued to the accused persons. During preliminary questioning from accused Ajah, he disclosed that he was staying at H.NO. 18 L2, Ist floor Mohan Garden Extension and that he had left the house recently but that his belongings were still kept with his Nigerian brother staying downstairs in the same house and were kept in a room on the ground floor and if the search of the said house at ground floor is conducted it may result into a recovery of huge quantity of narcotic drugs.

(j) Sh. G.S. Bhinder, IO made a telephonic call to Sh.Y.R. Yadav, Superintendent regarding the seizure of heroin and disclosure of accused Ajah about the House No. 18L2 Extension, Mohan Garden. Sh. Y.R. Yadav reached at Bhagwati Garden at about 1830-1845 hours along with search authorisation book and the said information was reduced into writing by Sh. G.S.Bhinder and was put up before Sh. Y.R. Yadav, Superintendent NCB who issued authorisation in his favour and directed him to constitute a team.

(k) In pursuance to the search authorisation Sh. G.S. Bhinder, IO along with Sh. Surender Singh, IO Ms. Kiran Bala, Sh. Narender Singh, Sepoy and Sh. Rajbir Singh, driver reached at H.No. 18, L-2 Extension, Mohan Garden at about 1915 hours in an official vehicle and after reaching the abovesaid address, Sh. G.S. Bhinder, IO contacted some persons in the street and informed them about his identity and the purpose of his visit and on his request two persons namely Chandar Ahlawat and Sh. Sriram voluntarily agreed to joined the raiding party. The house was found locked and since the owner was not having the key of the said premises it was collectively decided by the NCB team and the witnesses to break open the lock of the door of the ground floor premises. The lock was then broken and the door was opened and the premises was found consisting three rooms, one of which was also found locked.

(l) The lock of the said room was then broken and a single bed and some clothes, bags and suitcase were found kept inside the said room. On further search one lady handbag in a polythene bag was found lying under the bed. On suspicion it was torn and the side wall of the bag was found containing two pouches containing off white coloured coarse powder. Similarly the other side of the bag was also torn. Same was also found containing two pouches of same type of substance. Small quantity of the substance was tested with from each packet with the help of field testing kit and the same gave positive result for heroin. Since all the four packets were containing substance of same texture and colour, it was mixed homogeneously and

weighed with the help of electronic weighing machine and its weight came out to be 400 grams.

(m) Two representative samples of 5 grams each were taken out from the mixture and kept in two small polythene pouches and given mark B1 and B2. The remaining recovered powder was kept in a polythene and converted into a cloth parcel and given mark B. Similarly the remaining packing material was also converted into cloth parcel and was given mark B3. The parcels and the samples were duly sealed and paper slips having dated signature of the IO, witness and the accused persons were pasted on the parcels and the samples. A test memo in triplicate and panchnama was also prepared at the spot.

(n) After reaching NCB office at about 2235 hours Sh. G.S. Bhinder, IO deposited the case property with the malkhana incharge Sh. Sanjay Rawat who made an entry to this effect in the malkhana register. During preliminary questioning from accused Ahmad Nissar, he had also disclosed that he along with his another associate were residing at H.No. K-47 (B) 2nd floor Lajpat Nagar-II, Delhi and if search of the said premises is conducted, huge quantity of heroin can also be recovered from there. The said information was also reduced in writing and was produced by Sh. Rajesh Kumar, IO before Shri Y.R. Yadav, Superintendent NCB, who directed him to constitute a team and carried out search of the house and also issued search authorisation in favour of Sh. Rajesh Kumar, IO.

(o) Thereafter as per the direction of the Superintendent Sh. Y.R. Yadav, Sh. Rajesh Kumar, IO constituted a team comprising of himself, Sh. C.S.K. Singh, Sh. C.S. Rai, Sh. Dinesh Kumar and Mahender, Sepoy and also collected seal of Narcotic Control Bureau DZU no. 3 from Sh. Y.R. Yadav at about 1800 hours. Thereafter along with members of the raiding team left for the aforementioned house in govt. vehicle make Bolero bearing no. CH-01GA-5143 and reached there at about 1900 hours. On reaching there, Sh. Rajesh Kumar, IO contacted the landlord of the said house Sh. Ashok N. Bhjambari, who was residing on the ground floor of the said house and one passerby namely Sh. Sunil Kumar and gave his introduction and apprised them purpose of his visit. On the request of Sh. Rajesh Kumar, IO both of them were agreed to join the raiding team.

(p) Thereafter Sh. Rajesh Kumar, IO along with raiding party and both public witnesses reached the second floor of the aforementioned house and knocked the door and the door was opened by one person who on inquiry revealed his name as Khalid. The NCB officers then disclosed their identity and purpose of their visit and notice U/s 50 of NDPS Act was given to him. He was also made to understand that he has a legal right to be searched before a Magistrate or a Gazetted Officer but the accused refused to exercise the said right and informed that any NCB officer could conduct his search.

(q) Thereafter the search of the house was conducted and one white and orange coloured bag (thaila) on which 'twenty four seven' was written was

recovered from the box of the double bed lying in the bed room. On opening the said bag, six polythene packets wrapped with brown colour tape were recovered and the said packets were found containing off white coloured powder and the said powder on testing with the help of field testing kit gave positive result for heroin. After that the recovered off white powder from all the packets was transferred into a transparent polythene bag as the powder was similar in colour, texture and nature and it was mixed homogeneously and weighed and its weight came out to be 5.850 kg.

(r) Two representative samples of 5 grams each were taken out from the mixture and kept in two small zip locked pouches and further kept in white paper envelopes and given marks CI and CII. The remaining recovered powder was kept in a transparent polythene bag and converted into a parcel and given mark C. The white and orange coloured bag, packing material, polythene and tape were also kept together and converted into cloth pullanda and given mark D. The parcels and the samples were duly sealed and paper slips having dated signature of the IO, witness and the accused persons were pasted on the parcels and the samples. A test memo in triplicate and panchnama was also prepared at the spot. Summons were then issued to the accused Khalid and the independent witnesses u/s 67 NDPS Act.

(s) In pursuance of the summons all the accused persons and panch witnesses tendered their voluntary statements u/s 67 NDPS Act in the office of the NCB.

(t) The case property along with samples and test memo was deposited with the Malkhana Incharge. Reports under Section 57 NDPS Act with respect to the search and seizure were submitted by IOs to the Superintendent Sh. Y.R. Yadav. Thereafter the accused persons were arrested and their personal search was conducted and reports u/s 57 NDPS Act regarding their arrest were also submitted by IOs to Superintendent Sh. Y.R. Yadav.

(u) During the course of investigation, statements of various witnesses were recorded and the samples along with test memos were sent to the CRCL, New Delhi for testing. After receiving the report of the Chemical Examiner that the samples gave positive test for diacetylmorphine, the present complaint was filed.

3. Based on the material on record, the Ld. Predecessor of this court vide order dated 12/09/2012 had framed charges against accused Ajah Ugorji John, Samuel Onyema Anyanwu, Celestian I Anozie, Ahmad Neesar Shuja and Clement Eboh for the offences punishable under section 21(c) r.w.s 29 of the NDPS Act and against accused Ahmad Neesar Shuja and Khalid separately also for the offences punishable u/s 21 (c) r.w.s. 29 of the NDPS Act and against accused Ajah Ugorji John separately also for the offence punishable u/s 21 (c) r.w.s. 29 of the NDPS Act to which the accused persons pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case has examined 21 witnesses.

(i) **PW5 Sh. G.S. Bhinder, PW15 Sh. Surender, PW16 Rajesh Kumar and PW10 Ms. Kiran Bala**, the Intelligence Officers of the NCB, have deposed about the search and seizure proceedings conducted by them at H.No. 163A, Bhagwati Garden Extension, Near Dwarka Mor, New Delhi on 03/08/2011. The secret information deposed to have been received by PW5 has been exhibited as Ex.PW5/A. The notices u/s 50 of NDPS Act issued to accused Celestian I Anozie, Ajah, Onyema, Clement and Ahmad Nissar have been exhibited as ExPW5/B, Ex.PW15/A, ExPW15/B, ExPW16/B and ExPW16/A. Panchnama along with annexure and test memo have been exhibited as ExPW5/C, ExPW5/D and ExPW5/E. The summons given to accused Ahmad Nissar, Clement, Ajah and Onyma u/s 67 NDPS Act have been exhibited as Ex.PW5/DA, PW1/A, ExPW15/C, ExPW15/D respectively.

PW5 Sh. G.S. Bhinder, PW15 Sh. Surender and PW10 Ms. Kiran Bala, the Intelligence Officers of the NCB, have also deposed about the search and seizure proceedings conducted by them at H.NO. 18 L2, Ist floor Mohan Garden Extension on 03/08/2011. The information given by accused Ajah regarding H.NO. 18 L2, Ist floor Mohan Garden Extension has been reduced into writing and same has been exhibited as ExPW5/F. Search authorisation has been exhibited as ExPW5/G. Panchnama and test memo have been exhibited as ExPW3/F and ExPW5/H respectively.

(ii) PW16 Sh. Rajesh Kumar, PW1 Sh. C.S.K. Singh and PW14 Sh. C.S. Rai, the Intelligence Officers of the NCB, have also deposed about the search and seizure proceedings conducted by them at H.No. K-47 (B) 2nd floor Lajpat Nagar-II, Delhi on 03/08/2011. The information given by accused Ahmad Nissar regarding H.No. K-47 (B) 2nd floor Lajpat Nagar-II, Delhi has been reduced into writing and same has been exhibited as ExPW16/C. Search authorisation has been exhibited as ExPW8/A. The notices u/s 50 of NDPS Act issued to accused Khalid has been exhibited as ExPW16/D. Panchnama has been exhibited as ExPW8/B. The summons given to accused Khalid u/s 67 NDPS Act has been exhibited as Ex.PW16/H. The statement deposed to have been tendered by the accused persons have been duly exhibited. Arrest memo and arrest report submitted to the Superintendent have been duly exhibited. The case property and the samples were also duly produced before the court and were duly exhibited.

(iii) PW2 Sunil Kumar and PW8 Sh. Ashok N. Bhjambari, panch witnesses who are stated to have witnessed the entire recovery proceedings at H.No. K-47 (B) 2nd floor Lajpat Nagar-II, Delhi, have deposed about the said proceedings and have identified their signatures on the documents i.e. notice u/s 50 NDPS Act, on the panchnama and on the paper slips which had been affixed on the samples and the case property. They have also deposed that in pursuance of the summons served upon them, they had appeared in the office of the NCB and had tendered their statements Ex.PW2/F and Ex.PW8/C respectively.

(iv) **PW3 Sh. Chander Hass Ahlawat (public witness) and PW7 Sri Ram**, panch witnesses who are stated to have witnessed the entire recovery proceedings at H.No. 18, L-2 Extension Mohan Garden, Delhi, have deposed about the said proceedings and have identified their signatures on the documents i.e. notice u/s 50 NDPS Act, on the panchnama and on the paper slips which had been affixed on the samples and the case property. They have also deposed that in pursuance of the summons served upon them, they had appeared in the office of the NCB and had tendered their statements Ex.PW3/H and Ex.PW5/R respectively.

(v) **PW4 Sh. Vijay Kumar**, panch witness who is stated to have witnessed the entire recovery proceedings at H.No. 163A, IIIrd floor, Bhagwati Garden Extension, New Delhi, has deposed about the said proceedings and identified his signatures on the documents i.e. notice u/s 50 NDPS Act, on the panchnama and on the paper slips which had been affixed on the samples and the case property. He has also deposed that in pursuance to the summons served upon him, he had appeared in the office of the NCB and had tendered his statement Ex.PW4/A.

(vi) **PW6 Sh. S.K. Sharma** has inter alia deposed that the statement of accused Celestian I Anozie u/s 67 NDPS Act was recorded by him and this witness has proved the said statement as Ex.PW6/A. He further deposed that he had arrested the accused in the present case, had conducted his

jamatalashi and in pursuance of the arrest of the accused, had put up the report u/s 57 NDPS Act before the Superintendent.

(vii) PW9 Sh. V.B. Chaurasia, Chemical Examiner and PW11 Sh. A.K. Maurya, Assistant Chemical Examiner have deposed that the sample of the present seizure deposited with the CRCL, was examined by PW11 Sh. A.K. Maurya who was posted as Assistant Chemical Examiner at the time of examination, under the supervision of V.B. Chaurasia and the said witnesses have proved the chemical analysis reports prepared by them in this regard as Ex.PW9/A, ExPW9/B and ExPW9/C. As per their depositions, the samples in question had tested positive for heroin (diacetylmorphine). **PW11** has also inter alia deposed that he had received samples, test memo forms and forwarding letter ExPW11/A from Malkeet Singh, driver on 4/8/2011 and had issued receipt Ex.PW11/B.

(viii) PW12 Ms. Anita Ahlawat deposed that she is the owner of house bearing no. 18L Block, Part-II, Mohan Garden Uttam Nagar, New Delhi and she had rented out the ground floor of the said premises to one lady namely Chamaika and that accused Ajah used to frequently visit the said lady Chamaika. She further stated that on 03/08/2011 at about 7:00-7:30 p.m. NCB officials came to her house and in her presence they opened the lock of the ground floor premises and had made search and that she had tendered her statement ExPW5/T in the NCB office regarding the said proceedings

witnessed by her.

(ix) **PW13 Sh. Israr Babu**, Alternate Nodal Officer has proved on record the call details pertaining to mobile numbers 8447907845 and 9811917748 for the period 01/07/2011 to 10/8/2011 and the same have been exhibited as Ex.PW13/E and ExPW13/F respectively. He has also proved certificate u/s 65 B of the Evidence Act and CAFs and the same have been exhibited as Ex.PW13/A to ExPW13/D.

(x) **PW17 Sh. Manoranjan Kumar** has inter alia deposed that he had written a letter to Dy. Director (Operation) Sh. Yogesh Deshmukh related to accused Celestian I Anozie for further investigation/case report of previous detention/crime and antecedents to be obtained from the South African police through interpol. Same has been exhibited as ExPW17/A.

(xi) **PW18 Malkeet Singh** has deposed that on 3/8/2011 on the directions of G.S. Bhinder, IO, he had left the office of NCB along with the raiding team and had reached at Dwarka Mor and had dropped the raiding team at that place and had thereafter remained with the vehicle. This witness has further deposed that after completing the proceedings at about 6:15-6:20 PM, they had left the spot along with five more persons and had reached NCB office. According to this witness on 4/8/2011, he had carried the sample packet alongwith the forwarding letter Ex.PW11/A and test memo to the CRCL on the instructions of Sh. Y.R. Yadav, Superintendent, and had

deposited the same in CRCL. The acknowledgment issued in his name by CRCL has been exhibited as Ex.PW11/B.

(xii) PW19 Sh. Jai Bhagwan, IO has deposed that the statement of accused Khalid u/s 67 NDPS Act was recorded by him which was partly written by accused himself and partly written by Sh. C.S.K.Singh, IO on the request of accused Khalid and this witness has proved the said statement as Ex.PW1/A. This witness has further deposed that he had arrested the accused in the present case, had conducted his jamatalashi and in pursuance of the arrest of the accused, had put up the report u/s 57 NDPS Act before the Superintendent.

(xiii) PW20 Sh. Sanjay Rawat, IO deposed that he was also working as Intelligence Officer Malkhana Incharge in NCB, DZU, R.K. Puram and that in the present case, the entire case property, test memo in triplicate were deposited with him in the Malkhana and he had made an entry to this effect in the Malkhana register. He has also deposed that samples were sent to CRCL and that the remnant samples along with test report were deposited back with him in the Malkhana. According to this witness he had made relevant entries in the register. The relevant pages of the malkhana register containing the said entries have been exhibited as Ex.PW22/A.

(xiv) PW21 Sh. Y.R. Yadav, Superintendent has inter alia deposed that on the day of incident, he was posted as Superintendent, NCB DZU and on

that day, IO G.S. Bhinder had put up before him secret information Ex.PW5/A and after going through the same, he had directed the IO to take necessary action and had issued seal of NARCOTIC CONTROL BUREAU DZU-4, to him. As per this witness, he had signed on the seal movement register Ex.PW16/I with respect to the handing over and return of the seals to and from the IO. This witness has also deposed that at about 4:30 p.m. he went to Bhagwati Garden area where IO Rajesh Kumar put up before him an information ExPW16/C informing him about the disclosure made by accused Ahmad Nissar and after going through the same, he had directed the IO to take necessary action and had issued seal of NARCOTIC CONTROL BUREAU DZU-3, to him. As per this witness, he had signed on the seal movement register Ex.PW21/A with respect to the handing over and return of the seals to and from the IO. This witness has also deposed that after that he had received a telephonic call from G.S. Bhinder regarding the seizure of heroin and disclosure of accused Ajah, he immediately reached Bhagwati Garden with search authorisation where IO G.S. Bhinder put up before him an information ExPW5/F and after going through the same, he had directed the IO to take necessary action. He has then further deposed that IOs had put before him reports u/s 57 NDPS Act regarding seizure and arrest of accused persons. As per this witness, on 4/08/2011, he had forwarded the sample alongwith test memo Ex.PW5/E ExPW5/H and ExPW21/B to CRCL vide forwarding letter Ex.PW11/A and a letter ExPW21/C to Ministry of External Affairs regarding arrest of foreigners.

4. The entire aforementioned evidence was put to the accused persons at the time of recording of their statement u/s 313 Cr.PC which have been denied by them. In his statement Ajah Ugarji John has inter alia deposed that he had come on a business visa to India in the year 2010. In India he used to purchase clothes and then send the same to Nigeria. Though his visa had expired in the year 2010, he could not go back to his country because he did not have money to meet his travelling expenses and had thought that he would go back only after he had earned sufficient money. During his stay in India he was residing alongwith one Abuke in his tenanted premises in Navada. On 03.08.2011 he had left his premises to go to Vikaspuri to a church to offer his prayer. He was also carrying a Bible in his hand. Just as he had came out of the street to catch an auto, a group of persons standing near a vehicle stopped him and asked him about his identity. When he told them that he is a Nigerian they asked him to show them his passport and also told that they were from police and were looking for some criminals. He showed them his passport and they questioned him as to how he was staying in India after the expiration of his visa. He told them that his embassy had given him some extension but they were not satisfied and told him to accompany them to police station as they need to do some inquiry from him. They then took him to some building and put him in a room. In the said building they demanded that he should pay Rs.1 Lac or that they will deport him. He told them that he does not have this amount of money and that they can deport him if they so wish. They however then brought many documents before him and told him to sign the same. They were threatening him that if

he does not do as told they will register a criminal case against him and will put him in jail. Under the said threat he signed on many documents and also wrote a few lines as dictated by them. He has never dealt with drugs and I does not know any of his co-accused persons in this case before his arrest. He had also filed a letter in this court and had sent another letter from jail to this court stating therein that he had not given any confession and had not signed any document voluntarily. The said letters are mark R1 and R2.

5. In his statement U/s 313 Cr. PC, accused Clement Eboh has inter alia deposed that he had come on a business visa to India in the year 2009. One of his Nigerian friend who was already in India had called him with the promise that he will help him buying clothes from India which he could then sell in Nigeria. After he came to India the said friend of his namely Augustine took him to Tamil Nadu for purchase of clothes. On the way of Tamil Nadu somebody stole all his money and he could not purchase the clothes. He had borrowed a lot of money from his customers in Nigeria and therefore did not want to go back to Nigeria without earning sufficient money to return them. He therefore decided to stay in India along with his friend Augustine till he had earned sufficient money. He started residing with Augustine in his tenanted premises at house no. 118, Pocket 12, Sector 20, Rohini. On 3/8/2011 at about 3:00 p.m. he was walking on Jail Road as he had to meet another Nigerian friend of his namely Chubeku who stays near the Jail Road. He was going to deliver Rs.24,000/- to him as he owed him the said amount. He had called him from his mobile phone and he had

told him to come with the money on the Jail Road itself. He was carrying the said amount in a bag. While he was walking on the Jail Road, 4-5 persons in a vehicle stopped near him and introduced themselves as police officials and asked him about his identity and the reason for him to be present on the Jail Road. They also asked him for his passport. He told them his identity and the purpose of his visit to Jail Road and also showed them his passport. In the meanwhile his friend Chubuku also reached the spot. The said police officials also started questioning him and thereafter told both of them to accompany them in their vehicle. On their asking they stated that they are looking for some Nigerians and that they need to take them along with them to some office where they will be making inquiries from them. Thereafter he and Chubuku were taken to some office where they were put in a lock up. After a while the said officials took the spare keys of his tenanted premises from him and told him that they are going to search his tenanted premises. They returned back at night and told him that though they had not found anything incriminating in his residence, they will allow him to leave only if he will pay them Rs.2 lacs. he told them that he does not have that kind of amount with him. His friend Chubuku however told him that he has been able to arrange the money that the NCB officials were asking from him and that he will be allowed to leave soon. His friend was thereafter allowed to go and he was kept in the same lock up. During the night some more Nigerians were brought in the said office and even on the next day. The said Nigerians are his co-accused persons in the present case, however he did not know them before his apprehension in this case. On 4/8/2011 while he was in the

lock up the officials who had apprehended him brought many blank documents before him and told him to sign the same. They also told him to write some lines as dictated by them and they were continuously threatening him that if he does not do as told they will kill him. They were hitting him on his back and his legs with sticks. This was the first occasion he had ever been caught by the police and he was very scared. He therefore did as he was told and signed many documents and wrote as per the dictation of the said persons. He had also filed a letter in this court and had sent another letter from jail to this court stating therein that he had not given any confession and had not signed any document voluntarily. The said letters are mark R3 and R4.

6. In his statement U/s 313 Cr. PC, the accused Khalid has inter alia deposed that he is a native of Afghanistan and had come to India in the year 2010 for a hair transplant. After the hair transparent treatment he was advised to take medicines for four months. He therefore did not return back to his country even after the operation and decided to stay in India till his entire treatment was completed. His family from Afghanistan used to send him money to meet his household expenses. He was never present on the second floor of the K-47 (B), Lajpat Nagar-II, Delhi on 3/8/2011 and he had never resided in the said premises along with his co-accused Ahmad Nissar. He was not infact at all apprehended from the said house at all. He used to reside as a tenant in either C-20 or C-21 at Kasturba Niketan, Lajpat Nagar II and had taken the said premises on rent through a property dealer called

one Kamal. He only used to collect the rent from him. On 3/8/2011 at about 6:30 p.m. he had gone to Central Market, Lajpat Nagar to buy food from a shop called 'Afghani Roti'. When he was still there he got a telephone call from Kamal that he had come to his tenanted premises to collect rent and had found the same locked. He informed Kamal that he is present at the aforementioned shop and that he should wait for him to be back. After a while however 4 persons came to the said shop and started asking him about his identity. They told him that they are police officials and asked him for his visa. When he told them that his visa had expired they informed him that he will have to accompany them to their office for some inquiry. They first took him to his tenanted premises and collected his passport and his personal belongings and then took him to an office where they put him up in a lock up. There he was beaten up mercilessly and was forced to put his signatures on many blank documents and some written documents. He has never dealt with drugs and he did not know any of his co-accused persons in this case before his arrest. He had also sent letter from jail to this court stating therein that he had not given any confession and had not signed any document voluntarily. The said letter is mark R5.

7. In his statement U/s 313 Cr. PC, the accused Samuel Onyema Anyanwu deposed that he is a native of Nigeria and had come to India in the year 2009 for he wanted to study a course on tourism. His agent in Nigeria had however got him a business visa and told him that the student visa is not easily available. After coming to India he had stayed with his friend Nonoso

at his tenanted premises in Navada and he helped him to get in touch with an agent who promised that he will get him admitted in an University in Delhi. He was however unable to get admission anywhere for a long time and therefore in the meanwhile he started exporting artificial jewelry to Nigeria to earn his livelihood. After a while he also shifted to his separate tenanted premises at Bhagwati Garden and it is from the said tenanted premises that he was forcibly picked up by the NCB officials on 3/8/2011. At the NCB office he was beaten mercilessly by sticks and he had received grievous injury on his left shoulder and he had to take medical treatment for the same at Tihar Jail. He has never dealt with drugs and he did not know any of his co-accused persons in this case before his arrest. He had also filed a letter in this court and had sent another letter from jail to this court stating therein that he had not given any confession and had not signed any document voluntarily. The said letters are mark R6 and R7.

8. In his statement U/s 313 Cr. PC, the accused Celestian I Anozie stated that he had come on a business visa to India on 23.02.2010 to do the business/trading of scientific equipments from India to Nigeria. He used to purchase the said equipments from Chandni Chowk and used to send it through Cargo to Nigeria. His visa was valid for six months and before the said six months were over, he lost his passport when he had gone to visit a church in Vikas Puri. He had made a complaint in this regard to PS Vikas Puri but they could not trace the same. He has further deposed that he had also informed his embassy about the loss of his passport and they had told

him to wait and in the meantime had issued him identification documents. He had taken a room on rent in H.No. 10, Gali No.2, Bhagwati Garden Extension, New Delhi from one Mr. Sharma at a monthly rent of Rs.1500/-. On 03.08.2011 after he was forcibly picked up from the road in front of his house he was taken to an office where he saw that his co-accused persons Ajah, Samuel and Clement were present. He did not know their names then and he told the NCB officials that he did not know them but he was not heard and was forced to write a statement admitting therein that he knew them. At the NCB office he was beaten mercilessly by sticks and he had received grievous injury on his right upper side of his back and he had to take medical treatment for the same at Tihar Jail. He has never dealt with drugs and he did not know any of his co-accused persons in this case before his arrest. He had also filed a letter in this court and had sent another letter from jail to this court stating therein that he had not given any confession and had not signed any document voluntarily. The said letters are mark R8 and R9.

9. In his statement U/s 313 Cr. PC, the accused Ahmad Nissar has inter alia stated that he had come on a business visa to India on 23.02.2010. He had come to do the business/trading of scientific equipments from India to Nigeria and used to purchase the said equipments from Chandni Chowk and used to send it through Cargo to Nigeria. His visa was valid for six months and before the said six months were over, he lost his passport when he had gone to visit a church in Vikas Puri. He had made a complaint in this regard

to PS Vikas Puri but they could not trace the same. He had also informed his embassy about the loss of his passport and they had told him to wait and in the meantime had issued him identification documents. He had taken a room on rent in H. No. 10, Gali No.2, Bhagwati Garden Extension, New Delhi from one Mr. Sharma at a monthly rent of Rs.1500/-. On 03.08.2011 after he was forcibly picked up from the road in front of his house he was taken to an office where he saw that his co-accused persons Ajah, Samuel and Clement were present. He did not know their names then and he told the NCB officials that he did not know them but he was not heard and was forced to write a statement admitting therein that he knew them. At the NCB office he was beaten mercilessly by sticks and he had received grievous injury on his right upper side of his back and he had to take medical treatment for the same at Tihar Jail. He has further stated that he has never dealt with drugs and he did not know any of his co-accused persons in this case before his arrest. He had also filed a letter in this court and had sent another letter from jail to this court stating therein that I had not given any confession and had not signed any document voluntarily. The said letters have been marked as R10 and R11.

10. The accused Khalid and Ajah had also examined themselves u/s 315 CrPC as witnesses in their defence and narrated the same facts as narrated in their statement u/s 313 CrPC.

11. The Ld. SPP for NCB has argued that the prosecution has proved its

case beyond reasonable doubt as all the prosecution witnesses corroborated the investigation, recovery and other facts as narrated in the documents and complaint filed by the prosecution. Ld. SPP further argued that prosecution has complied with all the legal provisions as applicable in the present case.

12. On the other hand Sh. Yogesh Saxena counsel for the accused no. 2, 4 & 5 i.e. Samuel Onyema Anyanwu, Celestian I Anozie & Ahmad Nissar has submitted that the case of the prosecution is full of doubts and contradictions. Reply of the accused persons on the Notice U/s 50 of the NDPS Act is verbatim same which is not humanly possible. He further contended that the panchnama Ex. PW5/C was witnessed by two persons namely Pradeep Kumar Yadav & Vijay Kumar and panch witness Deepak Kumar has not been produced and Vijay Kumar has given a statement which is contradicting the case of the prosecution. PW4 Vijay Kumar in his testimony stated that he cannot identify 3-4 Nigerians who were sitting in the court as the incident was 1 and ½ year old. The Ld. Counsel for the accused further submitted that the statement made by the accused persons are not admissible in evidence and they were not informed about their right to remain silent and the said statements were retracted at the earliest available opportunity and are mark R-6 to R-11 and further submitted that the conviction cannot be based on retracted confession. He further submitted that there is non-compliance of section 42 (2) of the NDPS Act. He contended that the prosecution has failed to prove beyond reasonable doubt that from the time of seizure till the case property deposited in Malkhana

was sent to laboratory for testing and produced before the court there was no possibility of the tampering of the case property and of the samples. He further submitted that presumption as envisaged under section 35 and 54 of the NDPS Act was to be rebutted only after the prosecution has proved the joint possession against the accused persons beyond reasonable doubt.

13. Sh. Vikas Gautam, Ld. counsel for the accused Ajah Ugorji John and Khalid had submitted that sampling was not proper as the samples were not drawn from the each packet recovered from the bag from the third floor of Bhagwati Garden, from the packets recovered from the ladies hand bags recovered from Mohan Garden and packets found from Lajpat Nagar, New Delhi and relied on the following judgments: -

-Gauter Edwin Kricher Vs. State of Goa 1993(3) SCC 145

-Basant Rai Vs. State 2012 (VI) AD, Delhi, 707

-Net Ram Vs. State of Rajasthan 2014(2) WLW 394 (Raj)

-Edward Khimani Kricher Vs. NCB CrI. A. 1113/2011 dated 28.05.2015.

14. Ld. Counsel further submitted that NCB has failed to prove the rent agreement in respect of Khalid to connect him with premises K47, B, Lajpat Nagar and further submitted that NCB did not collect any rent agreement to show that the accused Ajah had resided at 1st floor of Mohan Garden or kept his luggage at ground floor of Mohan Garden. He further submitted that there is only one photograph which was single photo of the accused Ajah and the same was not correct way of identification of the person. He further

submitted that there were material contradictions in the evidence of the prosecution witnesses.

On the same grounds, the counsel for the accused no. 6 Clement Eboh has argued for the acquittal of the accused no. 6 Clement Eboh.

15. In rebuttal SPP for NCB had stated that the deposition of prosecution witnesses have more or less remained unrebutted with respect to the search and seizure proceedings, firstly at house no. 163A, 3rd Floor, Bhgwati Garden Ext., New Delhi from the joint possession of accused Celestian I Anozie, Ajah John Ugorji, Clement Eboh and Anyanwu Onyema and Afghan National Ahmed Nissar further on the basis of disclosure made by Ajah John Ugorji the house bearing no. 18-L-2 Extension, 1st floor, Mohan Garden, New Delhi was searched and 400 grams of Heroin was recovered at his instance. Further on the basis of disclosure made by accused Ahmed Nisar Shuja, 5.850 kg of Heroin was recovered from K-47 (B), 2nd Floor, Lajpat Nagar-II, New Delhi which was under the control and possession of Ahmed Nisar and Khalid. Therefore NCB has been able to prove beyond reasonable doubts that the contraband has been recovered from the conscious possession of the accused persons.

16. The Ld. SPP has further contended that the IO, Sh. G.S. Bhinder had taken the samples as per the manual provided by the NCB and no irregularity has been committed in taking samples. The judgments relied

upon by the accused persons are not applicable to the present case. He further submitted that section 42 of the NDPS Act has been duly complied with.

CONCLUSION: -

17. I have heard arguments at length on part of the Ld. SPP and all the defence counsels. One main contention raised on behalf of Ld. Counsel Sh. Y.K Saxena is that the provision of Section 42 of NDPS Act has not been complied with and the same being a mandatory provision, the search and seizure proceedings were vitiated. In this regard, reference can be made to the relevant provision of Section 42 of NDPS Act which provides as under:

SECTION 42 OF NDPS ACT

Power of entry, search, seizure and arrest without warrant or authorisation.—

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic

drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any

time between sunset and sunrise after recording the grounds of his belief.

18. In this regard testimony of PW 5 Sh. G.S. Bhinder has to be taken into consideration wherein he had stated that during the process on preliminary questioning from the accused Ajah Ugorji John he confessed that he was staying at H. No. 18, L2, 1st Floor, Mohan Garden Extension, but he had left the house recently. However his belongings, (Household articles and luggage) were kept with his Nigerian brother staying down stairs in the same house and his belongings were kept in a room on the ground floor. The witness further deposed that he reduced the said information into writing and produced it before Sh. Y.R. Yadav for directions on which, he directed him to constitute a team and carry out the search of the said house. He also issued search authorization for the search of the said house in the name of the witness then and there. The witness duly proved the said information as Ex. PW5/F bearing his signatures at point A alongwith the remarks of the superintendent Sh. Y.R. Yadav at point X to X. He also proved the authorization given by Sh. Y.R. Yadav as Ex. PW 5/G bearing his signatures at point A and those of Sh. Y.R. Yadav at point B. He also deposed that during that time, Sh. Y.R. Yadav has also reached at the spot and gave directions for constituting the team. This testimony of the witness hence clarified that the provisions of section 42 and 42 (1) of the NDPS Act have been duly complied with. There is nothing in his cross examination disputing the

production or exhibition of PW 5/F and Ex. PW 5/G.

19. The next contention raised by one of the defence counsels is that the samples have not been drawn properly. The Hon'ble Supreme Court of India in case titled as Sumit Tomar Vs. State of Punjab reported in 2013(1) SCC 395 held as under: -

“11. The next contention, according to the learned senior counsel for the appellant, is that the prosecution has committed an irregularity by mixing up the contraband found in the bags and taking samples thereafter. We find no substance in the said argument. The present appellant was driving the car in which two bags of contraband were loaded. He further pointed out that in view of Section 15 (c) of the NDPS Act, which prescribes minimum sentence of 10 years and which may extend to 20 years where the contravention involves commercial quantity, the mixing of two bags is a grave irregularity which affects the interest of the appellant. We are unable to accept the said contention.

12. Merely because different punishments have been prescribed depending on the quantity of contraband, we are satisfied that by mixing the said two bags, the same has not caused any prejudice to the appellant. Even after taking two samples of 250 grams each, the quantity measured comes to 69.50 kgs which is more than commercial quantity (small quantity 1000 gms/commercial quantity 50 kgs. and above). In view of the same, the contention that the police should have taken two samples each from the two bags without mixing is liable to be rejected.”

The judgment cited by the defense counsel are distinguishable.

In view of the above said, in the present case also in all recoveries material which was of same texture and colour was recovered and its mixing homogeneously and taking of samples does not seem to have caused any prejudice to the accused persons specially when the FSL reports filed also fully supported the case of the prosecution.

20. Another contention is regarding the non production of any rent agreement between accused Khalid, Ahmed Nisar to connect them with premises K-47(B) 2nd Floor, Lajpat Nagar, Delhi. The NCB has examined land lord of the said premises Sh. Ashok Bhambani as PW-8 wherein he had stated that the said premises had been let out by his mother to the accused Khalid and he was duly identified by him and a resident permit in respect of accused Khalid was also recovered and taken into possession by the NCB. Even the recovery had taken place on the disclosure of the accused Ahmed Nisar who had brought the Heroin to deliver at 163A, 3rd Floor, Bhagwati Garden Ext., New Delhi. This testimony of PW 8 is also supported by the statement of the accused Ahmed Nisar recorded U/s 67 of the NDPS Act wherein he has stated that he used to take drugs from Khalid and supply the same to Nigerian persons and used to pay back to the Khalid. He further disclosed that on 03.08.2011 he had taken 4 packets of drugs from the Khalid from his residence and had gone to 163A, 3rd Floor, Bhagwati Garden Ext., New Delhi. The above said statement is also corroborated by accused Khalid who also in his statement stated that on 03.08.2011 his friend Ahmed Nisar went to 163A, 3rd Floor, Bhagwati Garden Ext., New Delhi at 1500 hrs.

to supply some consignment to some Nigerian. Since the disclosures made by the accused persons has further led to recovery of the contraband, the same is admissible in evidence.

21. The next contention raised by accused persons was that the sub tenancy of Ground Floor of House No. 18-L-2 Extension, 1st floor, Mohan Garden, New Delhi in respect of accused Ajah John Ugorji was not proved. The NCB had examined one public witness Sh. Chander Ahlawat as PW- 3 and in his examination he had stated as under:

“I had seen the person, the witness has pointed out to accused Ajah coming to Chamaika’s residence many times and I enquired from Chamaika as to who he was, she had informed me that he belongs to her native place. Again said that he had also seen accused Celestian I Anozie (the witness has pointed out to him) also visiting the premises of Chamaika.”

This witness has categorically declined the suggestion that he had never seen the accused Ajah coming to the tenanted premises in question. He has also duly identified the accused Ajah and Celestian I Anozie as the persons regularly visiting the premises in question.

22. Furthermore, PW-12 Ms. Anita Ahlawat (public witness/owner of House No. 18-L-2 Extension, 1st Floor, Mohan Garden, New Delhi) had correctly identified the accused Ajah John Ugorji who used to visit House No. 18-L-2 Extension, 1st Floor, Mohan Garden, New Delhi and the plea

taken by the defense counsel that the statement of PW-12 Ms. Anita Ahlawat recorded U/s 67 of the NDPS Act had identified only one photograph which was single photo of the accused is rendered meaningless as the witness during her deposition on a court query has specifically deposed and stated as under:-

“I however did not know that the person who frequented Francis was having the name Ogori John. I can identify the said person even today. The witness has pointed out to accused Ajah John Ugorji.”

This witness hence has also corroborated the testimony of PW 3 and other official witnesses. This contention raised by the Ld. Defence Counsels hence cannot be taken into consideration.

23. The next contention raised by Ld. Defence Counsel Sh. Y.K. Saxena is in regard to the contradictions coming up in the testimonies of the witnesses. He stated that PW 4 in his statement stated that when a person of short height came who was identified as accused Ahmed Nissar by the witness, he had firstly made a call on his mobile on which another person from the tenanted house threw him the keys and he then opened the house and went inside but as per the case of NCB, no keys were thrown. He further submitted that when NCB officials reached at room, NCB persons searched the bag which accused Ahmed Nissar was holding. He further submitted that SPP in his cross examination had put a suggestion that Ajah, Clement, Khalid and Celestian I Anozie were present in the room. The contradiction

as pointed by the Ld. Counsel regarding the throwing of the keys does not effect the prosecution evidence. The contradictions in the statements as pointed out are minor in nature and due to lapse of time, such contradictions may come up. The evidence produced by the NCB squarely points out that the accused Khalid was apprehended from the house situated at K-47(B) 2nd Floor, Lajpat Nagar, Delhi and it might be possible as stated by the Ld. SPP also that due to large number of accused, a wrong suggestion might have come up because except for the said suggestion regarding accused Khalid, the entire PWs and the case of the prosecution is duly proved by the witnesses.

24. In this regard, observations made by the Hon'ble Supreme Court of India in case titled as Krishna Mochi & Ors Vs. State of Bihar & Anrs 2002 (2) CC Cases (SC) 58 can be taken into consideration wherein the Hon'ble Supreme Court has observed as under:

Stress was laid by the accused-appellants on the non- acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of falsus in uno falsus in omnibus. This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that

evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" (false in one thing, false in everything) has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See Nisar Alli v. The State of Uttar Pradesh (AIR 1957 SC 366). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. ([See Gurucharan Singh and Anr. v. State of Punjab](#) (AIR 1956 SC 460).The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers

the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh (1972) 3 SCC 751) and [Ugar Ahir and Ors. v. The State of Bihar](#) (AIR 1965 SC 277). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. ([See Zwinglee Ariel v. State of Madhya Pradesh](#) (AIR 1954 SC 15) and [Balaka Singh and Ors. v. The State of Punjab](#). (AIR 1975 SC1962). As observed by this Court in [State of Rajasthan v. Smt. Kalki and Anr.](#) (AIR 1981 SC 1390), normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal

discrepancies do not corrode the credibility of a party's case, material discrepancies do so. Accusations have been established against accused-appellants in the case at hand.

25. The next contention raised by the Ld. Defence Counsels is that the accused persons had not made their statements voluntarily and they had retracted their statements U/s 67 of the NDPS Act, but merely retracting their statements will not suffice because the disclosure made by the accused Ahmed Nisar and Ajah John Ugorji had lead to heavy recovery of the contraband. The case is not based merely on the statement U/s 67 of the NDPS Act but the said statements are also duly corroborated by the heavy recoveries of contraband from the accused persons.

26. Furthermore, PW- 4, Vijay Kumar Public Witness PW-5, Sh. G.S. Bhinder, PW-10 Ms. Kiran Bala, PW-15 Surinder Singh had duly described the search and seizure proceedings which took place at H. No. 163A, 3rd Floor, Bhgwati Garden Ext., New Delhi. Nothing material has come up in their cross examinations. It has been duly proved that in pursuance of the secret information received the members of the raiding party reached at 163A, 3rd Floor, Bhgwati Garden Ext., New Delhi and two persons were joined as independent witnesses. Their testimonies are corroborating and trustworthy.

27. Furthermore, the public witness Surinder Singh has specifically

deposed that one taxi carrying one passenger reached at the said house and features of the said person were similar to the person mentioned in the secret information and the said person moved up stairs and entered in 3rd floor and NCB officers knocked the door and accused Celestian I Anozie opened the said door. This witness duly identified the accused who went inside the house as accused Ahmed Nisar and he also identified 3 other accused persons Ajah John, Clement and Samuel. All the five accused were duly identified by this witness. He also deposed that all the five accused persons were served with notices U/s 50 of NDPS Act and blue bag containing contraband was searched which was found containing four packets and on opening the same, all were found containing white colour powder in polythene pouches. He also deposed that a small quantity of substance was taken from each packet and was tested with the field testing kit and the same gave positive test for Heroin and powder from all the pouches was mixed together and two samples of 5 grams each were drawn and total weight came out to be 4.4 kg of Heroin. This testimony of the witness also corroborates the testimonies of other witnesses and hence, strengthen the case of the prosecution.

28. Further, in their statements U/s 67 of the NDPS Act, the accused persons had given their detailed personal informations which could have been only revealed by them. Their statements clearly show their complicity in trafficking of Heroin. The MLC do not show that the accused persons were subjected to any torture or beating as there were no signs of injuries on

their persons. The accused persons did not complaint of their beating or obtaining their signatures on some blank papers when they were produced before the court for the first time during their judicial remand. No complaint was made to the senior officers or the authority that they did not give any statement or their signatures were obtained on blank papers. The fact and circumstances show that the statements were voluntarily made.

29. Also, the Hon'ble High Court in case of Rehmetullah Vs. NCB Supra made reference to the judgments concerning the interpretation of section 67 of the NDPS Act and also referred the case of Raj Kumar Karwal Vs. Union of India 1991 CrL LJ 97 (SC) which had held that such statements made to the officers of the department of revenue Intelligence were not hit by section 25 of the Evidence Act. The relevant portion of the said judgment is reproduced below: -

"20. As regards the submission that a statement of an accused made while in custody cannot be relied upon, the observations of the Supreme Court in Kanhaiyalal appear to indicate otherwise. In para 36 of the said judgment, it was explained as under (AIR, p. 1051):

"36. A parallel may be drawn between the provisions of Section 67 of the NDPS Act and Sections 107 and 108 of the Customs Act and to a large extent Section 32 of the Prevention of Terrorism Act, 2002 and Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. These are all special Acts meant to deal with special situations and

circumstances. While the provisions of the Prevention of Terrorism Act, 2002, and TADA Act, 1987, are much more stringent and excludes from its purview the provisions of Sections 24 to 27 of the Evidence Act with regard to confession made before a police officer, the provisions relating to statements made during inquiry under the Customs Act and under the NDPS Act are less stringent and continues to attract the provisions of the Evidence Act. In the case of both the latter enactments, initially an inquiry is contemplated during which a person may be called upon to provide any information relevant to the inquiry as to whether there has been any contravention of the provisions of the Act or any Rule or Order made thereunder. At that stage the person concerned is not an accused although he may be said to be in custody. But on the basis of the statements made by him he could be made an accused subsequently. What is important is whether the statement made by the person concerned is made during inquiry prior to his arrest or after he had been formally charged with the offence and made an accused in respect thereof. As long as such statement was made by the accused at a time when he was not under arrest, the bar under Sections 24 to 27 of the Evidence Act would not operate nor would the provisions of Article 20(3) of the Constitution be attracted. It is only after a person is placed in the position of an accused that the bar imposed under the aforesaid provision will come into play. Of course, this Court has also held in Pon Adithan's case (supra) that even if a person is placed under arrest and thereafter makes a statement which seeks to incriminate him, the bar under Article 20(3) of the Constitution would not operate against him if such statement was given voluntarily and without any threat or compulsion and if

supported by corroborating evidence." (emphasis supplied).

30. In *M. Prabhulal Vs. Asst Director, Supra* it has been held that if the confessional statement is found to be voluntary and free from pressure then conviction can be based simply on the basis of the statement made U/s 67 of the NDPS Act and it can be accepted. The Hon'ble Court observed as under:

"The confessional statements recorded by such officers are admissible in evidence..... Further it is also to be borne in mind that the appellants did not make any complaint before the Magistrate before whom they were produced complaining of any torture or harassment..... Under these circumstances, the confessional statements cannot be held to be involuntary. The statements were voluntarily made and can, thus, be made the basis of appellants' conviction."

31. In *State (NCT of Delhi) Vs. Navjot Sandhu @ Afasan Guru (2005) 11 SCC 600 (34)* it was held;

"A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made"

32. The next contention raised by the counsel for the accused is that the log book has not been produced by the NCB. In this regard, however,

reference can be made to the observations made by the Hon'ble Justice Mukta Gupta in case titled as *Jai Yodhad Vs. State* reported in 2014 [1] JCC [Narcotic] 18 wherein it was held as under:-

“10. In support of his first contention the learned counsel for the appellant relies upon the decision of this Court in *Eze Val Okeke @ Val Eze Vs. Narcotic Control Bureau 116 (2005) DLT 399*. In the aforesaid case, the team of NCB claimed to have gone to the spot in a Government vehicle. In para 12 of the judgement it was observed that the absence of entries in the log book of the official vehicle used by the raiding party also cast a shadow of doubt on the prosecution case inasmuch as the log books are meant for recording of the movement of the vehicles and if no entries are found there, it becomes doubtful as to whether the vehicle was actually used or not as represented by the prosecution. However, in the present case though the log book has not been produced, there is nothing on record to suggest that the said log book contained no entry with respect to the raiding party visiting the place where the appellant is alleged to have been apprehended, while carrying contraband in a bag on his shoulder. In my view, mere non-production of the log book by itself cannot be a good ground to throw away the entire case of the prosecution even if it is proved on the basis of the evidence led by the prosecution. No doubt, had the log book been produced, that would have bolstered the case of the prosecution, but if the version given by the prosecution inspires confidence and the testimonies of the witnesses could not be assailed during their cross-examination, mere non-production of the log book of the vehicle shall not be fatal to the prosecution.”

33. The next contention raised by the Ld. defence counsel was that the prosecution has to prove that the case property and samples were deposited in the Malkhana, and sent to laboratory and there was no tampering with the case property and samples.

34. I have gone through the entire record. It is found that the case property and the samples were sealed by using the paper slips with the seal of Narcotics Control Bureau/DZU- 4 and were taken into possession vide seizure memo Ex. PW5/C along with other documents and the seizure memo bears the signature of all the accused persons and 2 public witnesses.

35. The fact that after seizure the property was kept in the safe custody has been proved by PW-20 Sh. Sanjay Rawat, IO who was working as Malkhana Incharge in NCB/DZU Delhi and he deposed that the entire case property and test memo in triplicate were deposited with him in the Malkhana and entry to this effect was made in the Malkhana register, he proved copy of the same as Ex. PW-20/A.

36. Further, PW-5 Sh. G. S Bhinder, IO also furnished the report U/s 57 of the NDPS Act regarding the seizure of both recoveries to Sh. Y.R. Yadav, Superintendent, NCB. PW 16 Sh. Rajesh Kumar, IO submitted a report U/s 67 of NDPS Act to Sh. Y.R. Yadav regarding the recoveries made from Lajpat Nagar.

37. Also, the deposition of PW-18 Sh. Malkeet Singh makes it clear that the samples drawn out from the substance were taken to CRCL, Pusa Road, New Delhi in proper custody for examination vide forwarding letter Ex. PW-11/A and he brought back the receipt issued by CRCL which he proved as Ex PW-11/B.

38. PW-11 Sh. A.K Maurya, Chemical Examiner at CRCL, New Delhi had proved that the samples received had tested positive result for Heroin and proved his report as Ex. PW-9/A bearing his signatures at point B.

39. The testimony of witnesses is trustworthy and believable and nothing had emerged in their cross examination which could create doubt on the veracity of their statements or impeach their credit worthiness.

40. Another contention raised by the Ld. Defense counsel is that there is no joint possession or conspiracy between the accused persons. In the instant case, all the accused persons except Khalid were present at H. No. 163A, 3rd Floor, Bhgwati Garden Ext., New Delhi and recovery was effected from their joint possession, they knew each other and were in conscious possession of the contraband. In their statements U/s 67 of the NDPS Act they admitted about their joint and conscious possession. In a case of criminal conspiracy or abetting, the direct evidence is seldom available. Generally, a conspiracy is hatched in secrecy and it may be difficult to

adduce direct evidence to prove the same. The prosecution often relies on evidence or acts of various parties to infer that they were done in reference to their common intention. The conspiracies can undoubtedly be proved by such circumstantial evidence.

41. In the present case besides the statements recorded U/s 67 of the NDPS Act of the accused persons, there is a recovery of 4.4 kg of Heroin which was made from H. No. 163A, 3rd Floor, Bhagwati Garden Ext., New Delhi and further on the disclosure made by the accused Ajah John Ugorji 400 grams of Heroin was recovered from the house bearing no. 18-L-2 Extension, 1st floor, Mohan Garden, New Delhi and further on disclosure made by another accused Ahmed Nisar 5.850 kg of Heroin was also recovered from H. No. K-47 (B), 2nd Floor, Lajpat Nagar-II, New Delhi which was under the control and possession of Ahmed Nisar and Khalid. It is highly unconceivable that the NCB authorities would plant such a huge quantity of Heroin with a view to falsely implicate the accused persons.

In this regard, reference can be made to observations made in Sumit Tomar Vs. State of Punjab Reported in 2013(1) SCC 395 wherein it was observed by the Hon'ble Supreme Court that:

“In view of the above discussion, we hold that though it is desirable to examine independent witness, however, in the absence of any such witness, if the statements of police officers are reliable and when there is no animosity established against them by the

accused, conviction based on their statement cannot be faulted with. On the other hand, the procedure adopted by the prosecution is acceptable and permissible, particularly, in respect of the offences under the NDPS Act. Accordingly, we reject both the contentions.”

42. In another case titled as P.P. Fathima Vs. State of Kerala Reported in 2013(8) SCC 726, it was held as under: -

“7. Learned counsel then contended that in view of the fact that Panch witness to the seizure has not supported the prosecution case, the seizure cannot be accepted. We have repeatedly held that the mere fact that a Panch witness does not support the prosecution case by itself would not make the prosecution case any less acceptable if otherwise the court is satisfied from the material on record and from the evidence of the seizing authority that such seizure was genuinely made. In the instant case also we are satisfied that from the evidence of PWs 1 and 2 the seizure has been proved by the prosecution. Therefore, this argument also fails.”

43. It was held in the case of Madan Lal and Anr. Vs. State of HP 2003 (3) JCC 1330 that once the possession is established the person who claimed that it was not the conscious possession has to establish it as to how he came into possession as it is within his special knowledge. Section 35 of the Act give a statutory recognition to the presumption of possession and similar is the position in terms of section 54 where also presumption can be drawn from the possession if illicit articles and recovered. The relevant paras of the

judgment are reproduced below: -

“ The expression `possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52), to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes. The word `conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended. As noted in Gunwantlal v. The State of M.P. (AIR 1972 SC 1756) possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control. The word `possession' means the legal right to possession (See Health v. Drown (1972) (2) All ER 561 (HL). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD). Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. In the factual scenario of the present case not only

possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act. In fact the evidence clearly establishes that they knew about transportation of charas, and each had a role in the transportation and possession with conscious knowledge of what they are doing. The accused-appellant Manjit Singh does not stand on a different footing merely because he was a driver of the vehicle. The logic applicable to other accused-appellants also applies to Manjit Singh. Therefore, the presumption available by application of logic flowing from Sections 35 and 54 of the Act clearly applies to the facts of the present case. The judgments of the Trial Court and the High Court suffer from no infirmity to warrant interference. The appeals deserve dismissal, which we direct.”

44. In view of the above, it can be said that the accused in the present case even by preponderance of probability of evidence have failed to prove that they were not in conscious possession of the same.

45. Minor contradictions occurring in the testimonies of PW's are quite possible during a prolonged trial. The prosecution has proved the recovery of 4.4 kg of Heroin from the joint possession of accused Ajah Ugorji John, Samuel Onyema Anyanwu, Celestian I Anozie, Ahmad Neesar Shuja and Clement Eboh in conspiracy with each other. The prosecution also proved the recovery of 5.850 kg of Heroin from the possession of accused Khalid and Ahmed Nissar Shuja in conspiracy with each other. The prosecution also

proved recovery of 400 grams of Heroin from the possession of accused Ajah Ugorji John and the presumption U/s 35 and 54 of the NDPS Act also arises against all the accused persons.

46. On considering the facts; case laws, the documents and the testimony of witnesses after its detailed scrutiny no doubt is left that accused persons were party to the criminal conspiracy in acquiring/possessing Heroin and in pursuant thereto they were found in conscious possession of Heroin in contravention of provision of the act, its rules and order.

47. Further, all the prosecution witnesses in their testimonies are on coherence with each other and has deposed in a manner which inspires confidence with respect to the sanctity and integrity of the samples/case property seized or collected. Ld. defense counsel through cross examination or through examination in chief of the prosecution witnesses have not been able to draw any inference which may show or suggest that samples and /or case property seized/collected by the investigating agency was tampered during the investigation proceedings.

48. I am satisfied that the prosecution has proved its case against the accused Ajay Ugorji John, Samuel Onyema Anyanwu, Celestian I Anozie, Ahmad Neesar Shuja and Clement Eboh beyond any reasonable doubt and

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therefore the accused Ajay Ugorji John, Samuel Onyema Anyanwu, Celestian I Anozie, Ahmad Neesar Shuja and Clement Eboh are held guilty for the offences U/s 21(c) r.w.s 29 of the NDPS Act as they were charged. The prosecution has also proved its case against the accused Ajay Ugorji John beyond reasonable doubts and he is also convicted for the offence U/s 21(c) of the NDPS Act for which he was charged.

49. The prosecution has also proved its case against the accused Ahmad Neesar Shuja and Khalid beyond reasonable doubts and both of them are convicted U/s 21(c) rws 29 of the NDPS Act as they were charged.

50. The case property and samples are confiscated to the state and the same be disposed of as per rules.

**ANNOUNCED IN THE OPEN COURT (SUDESH KUMAR II)
ON 30th November, 2018 SPECIAL JUDGE/NDPS
NEW DELHI**