

***NCB Vs Chima Martins Onyebuchi & Other***

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

**NCB Vs Chima Martins Onyebuchi & Other  
Case No. SC/174/2017**

05.06.2018

Present: Sh. B.S. Arora, Ld. SPP for NCB.

Accused Jan Harm Herbst already convicted vide order dated  
08.01.2018.

Accused Chima Martins Onyebuchi produced from JC.

Ms. Gunjan Gupta, Ld. Counsel for accused Chima Martins  
Onyebuchi.

1. PW1 Sh. Atul Kumar Sahi (sepoy), PW 2 Sh. Anand Kumar (Intelligence Officer) and PW 3 Sh. Ravi Shankar Sharma (Assistant Chemical Examiner) already examined and discharged. Today, Ld. Counsel for accused Chima Martins Onyebuchi submits that accused wants to plead guilty for the offences charged with.

2. Perusal of the file reveals that this accused Chima Martins Onyebuchi is facing trial for the offences punishable U/s 9A/25A/29 of NDPS Act.

3. It is stated by Ld. Defence Counsel for the accused Chima Martins Onyebuchi that the accused wants to plead guilty and he is prepared to face all the consequences and his statement may be recorded. Court has granted sometime to the accused to reflect upon his decision and he has stated before the court that he wishes to stick by his decision to plead guilty.

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4. In view of the same statement of accused Chima Martins Onyebuchi has been recorded separately in which he has pleaded guilty. He has also mentioned about the circumstances in which the offences were committed and the mitigating circumstances which the Court may take into consideration while sentencing him. He submits that he has already remained in custody for 1 year 1 month and 24 days in the present case. It is stated that co accused Jan Harm Herbst has already pleaded guilty and convicted. He was sentenced to undergo RI for a period of 10 months and to pay a fine of Rs. 50,000/-.

5. As per the case of the NCB, on or before 10.04.2017 at 15.40 hrs outside Terminal I-D, in conspiracy with each other, accused Chima Martins Onyebuchi delivered one trolley bag to accused Jan Harm Herbst (**already convicted**) and 14 kgs of 'ephedrine hydrochloride' was recovered from the said trolley bag.

6. In view of the voluntary plea of guilt of the accused Chima Martins Onyebuchi, he is convicted for the offences punishable U/s 9A/25A/29 of NDPS Act.

7. Ld. SPP for NCB Sh. B.S. Arora has contended that appropriate sentence may be imposed on the convict.

8. Ld. Defence Counsel has argued that the convict belongs to the poor strata of the society and he got involved in the present case due to extreme poverty. It is stated that convict was working in 'clothes' business. He is a married man and having responsibility to look after his wife, three minor children. He has also to look after his old aged parents. His father is aged about 104 years and his mother is 85 years of age and both were suffering from various ailments. The convict was only a carrier. Ld. Counsel for convict prays for mercy and requests

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that a lenient view may be taken. The convict was not previously involved in any other case. The convict undertakes not to indulge in any illegal activity in future.

9. I have given careful consideration to the submissions made by the Ld. Counsels. Dealing with the issue of sentencing, the Hon'ble Supreme Court in another case titled and reported as **Karamjeet Singh Vs. State (Delhi Admn.) (2001) 9SCC 161** has made the following observations:

***Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to***

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***have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.***

10. The aforementioned judicial dicta therefore makes it clear that the sole purpose of punishing an offender is not retribution alone and that the courts while sentencing an offender must make an attempt, within the parameters of the law, to afford an opportunity to the offender to reform himself/herself and lead the life of a normal, useful member of society. In the present case, the convict has no previous criminal antecedents and it does appear from the totality of the attendant circumstances and material on record that he is not a hardened criminal. He might have been forced due to his economic condition to indulge in the illegal trafficking of controlled substance. No doubt poverty is not a justification for commission of crimes but in the considered opinion of this court, imposing a harsh sentence will also not subserve the interests of justice. He being a foreign national is unnecessarily liability on our jail and he is required to be deported back to his country. Thus taking into consideration the nature of offences and social as well as economic status of the convict and the reason for which he appears to have committed the offences, this court hereby sentences the convict Chima Martins Onyebuchi to undergo rigorous imprisonment for the period already undergone by him and to pay a fine of Rs. 50,000/- and in default thereof to undergo simple imprisonment for a period of one month with direction to immediately deport him to his country following entire procedure and legal provisions in this regard. NCB to take all steps in this regard. Fine not paid. Benefit of section 428 Cr. PC be given to convict.

11. In view of the provisions of Section 437 A Cr. PC, convict Chima Martins

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Onyebuchi is directed to furnish bail bond in a sum of Rs. 20,000/- with one surety of like amount within a week.

12. Since, he has been convicted by this court, he is required to be deported back to his country. Let copy of the order be also sent to FRRO for making compliance in this respect.

13. On the request of Ld. Defence Counsel jamatalashi articles of the convict be handed over to FRRO.

14. The case property stands confiscated to the NCB and that they will be at liberty to dispose the same as per the prescribed rules after the expiry of period of appeal/revision.

15. Copy of this judgment and sentence be given to the convict.

**Announced in the open Court  
on this 5<sup>th</sup> day of June, 2018**

**(Sudesh Kumar II )  
Special Judge: NDPS/New Delhi**