

NCB Vs. Charlse Howell @ Abel Kom and ors.

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

Case No. 8626/2016

(Old No. SC No. 13/2012)

Narcotics Control Bureau

Delhi Zonal Unit, West Block-I,
Wing No. VII, R.K. Puram, New Delhi

Through:

Sh. Surender Singh, Intelligence Officer,
Narcotics Control Bureau

Versus

- 1. Charlse Howell @ Abel Kom**
S/o Sh. Shangpu
R/o 6D, 4th floor, H.No. 53,
Munirka, New Delhi
- 2. Franklin Mumbasa**
S/o Sh. Mumbasa
R/o S-2, Mahavir Nagar, New Delhi
- 3. Obumuneme Nwachukwu**
S/o Sh. Casethaw Nwachukwu
R/o 147/ C/9, Kishan Gargh Apartments
Vasant Kunj, New Delhi

Date of Institution : 04.08.2012

Judgment reserved on : 30.07.2018

Date of pronouncement : 31.07.2018

JUDGMENT

1. The Narcotics Control Bureau (herein after referred to as NCB) through its

Intelligence officer (IO) Sh. Surender Singh has filed the present complaint against the aforementioned accused u/s 8(C), 21 and 23 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the NDPS Act).

2. Briefly stated the allegations that can be culled out from the contents of the complaint and the documents filed with the same are as follows:

(a) On 16/04/2012 at about 1:00 p.m. Sh. Surender Singh, Intelligence Officer, received a secret information that a parcel bearing airway bill no. 1473982 is concealing some narcotics drug i.e. heroin and lying at Overseas Courier Office, Somdutt Chamber, Bhikaji Cama Place, New Delhi.

(b) The information was reduced into writing and was put up before Sh. Y.R. Yadav, Superintendent, NCB who directed him to take action as per law. On his direction, he constituted a raiding team consisting of himself, IO Sh. Jai Bhawan and Sh. Malkeet Singh, driver. The said team proceeded from NCB office in an official vehicle bearing no. DL 9CG 1442 and reached the office of Overseas Courier Office at about 1:50 p.m. On reaching the said office, IO Surender Singh and the team met Mr. Abdul Khan, Official, at Overseas Courier and disclosed his identity to him and the purpose of their visit and requested him to produce the parcel bearing airway bill no. 1473982. The parcel was brought by Mr. Gulshan, official at Overseas Courier which is in the form of cardboard box and having one airway bill, one invoice and one copy of driving license in the name of Charlse Howell and the consignee was Steve Harris of New York. The cardboard box was pasted with brown adhesive tape and a white paper printed with the On the request of Sh. Surender Singh Sh. Abdul Khan and Mr. Gulshan voluntarily agreed to join as independent witnesses to the search proceedings of the parcel.

(c) On opening the cardboard box it was found to contain one gasket set, five rubber belt sets and six JCV bolt boxes. On checking gasket set and rubber belt set, nothing incriminating was found. On opening one bolt box, it was found to contain 12 brass nut bolt. One nut bolt was broke open and was found to contain some off white substance. A small quantity of which was tested with field testing kit which gave positive for heroin. Thereafter all the remaining five bolt boxes were opened and found to contain similar brass nut bolt in each box totaling 72 in number. All the nuts were broke open and were found to contain similar type of off white substance. The whole substance was put in a separate transparent polythene and on weighing its weight came out to be 410 grams.

(d) Two representative samples of 5 grams each were then drawn out from the heroin recovered and were put separately in small polythene ziplock pouches and further kept in white paper envelopes and the same were given marks A1 and A2 and the remaining substance was converted into a parcel with the help of a markin cloth and was given mark A. All the packing material and other material found in the cardboard box were kept in the same cardboard box and stitched in white polybag and was given mark A3.

(e) All the parcels and the samples were duly sealed and paper slips having dated signature of the IO Surender Singh and both panch witnesses were pasted on them. A test memo in triplicate and the panchnama were also prepared at the spot. The airway bill, invoice and driving license were also taken into possession. Sh. Abdul Khan apprised NCB officials that the parcel was sent to their office by Blazeflash Courier Office, Mohta Building, Bhikaji Cama Place. Summons were then issued to the panch witnesses u/s 67 NDPS Act .

(f) Thereafter, the NCB team left the office of courier company at 4:00 p.m. and reached BlazeFlash courier Office, Bhikaji Cama Place at about 4:10 p.m. and met Sh. Deepak Kumar, Official of BlazeFlash Courier and disclosed his identity to him and disclosed him about the seizure of heroin from the parcel in reply of which Mr. Deepak told that one person namely Charlse Howell booked that parcel on 14/4/2012 and further told that the person who booked the parcel is about to come to collect his receipt of booking the parcel and UPS number of that parcel.

(g) At about 4:20 p.m. accused Charlse came to BlazeFlash courier office and asked about his receipt to Mr. Deepak Kumar and took the receipt from him. On asking he revealed his name as Charlse Howell and that he had come to collect the booking receipt and UPS number of a parcel which he had booked on 14/4/2012. Sh. Surender Singh, IO introduced themselves to him and told about the seizure of 410 grams of heroin from the parcel which accused Charlse had booked on 14/4/2012.

(h) Thereafter, he was then apprised about his legal rights and was issued notice U/s 50 of NDPS Act and was made to understand that he has legal right to be searched before a Magistrate or a Gazetted Officer. The accused refused to exercise the said right and informed that any NCB officer could conduct his search. Personal search of accused was taken but nothing incriminating was recovered from his personal search. Summons were then issued to the accused Charlse and panch witnesses u/s 67 NDPS Act

(i) The case property along with samples and test memo was deposited with the Malkhana Incharge. Report under Section 57 NDPS Act with respect to the search and seizure was submitted to Superintendent Sh. Y.R. Yadav. House of accused Charlse was also searched but nothing incriminating was

recovered.

(j) In pursuance of the summon accused Charlse tendered his voluntary statement u/s 67 of NDPS Act and in the said statement he revealed that the parcel booked by him was given to him by his friend Franklin whose mobile no. is 8860336526 and that his friend contacted him on telephone and called him at DDA park, Munirka at 1:00 p.m.

(k) The abovesaid information was reduced into writing at about 1030 hours by Sh. Rajesh Kumar, IO and put up before Sh. Y.R. Yadav, Superintendent. Thereafter a raiding party was formed consisting of Sh. Jai Bhagwan, IO Sh. Surender Singh, IO, Sh. Narendra, Sepoy and the team along with accused Charlse left the NCB office at about in a govt. vehicle being driven by driver Malkeet Singh and reached the DDA park, Munirka at about 1:00 p.m.

(l) On reaching, on the pointing of accused Charlse, accused Franklin Mumbasa was apprehended. Accused Franklin Mumbasa was then apprised about his legal rights and was issued notice U/s 50 of NDPS Act and was made to understand that he has legal right to be searched before a Magistrate or a Gazetted Officer. The accused refused to exercise the said right and informed that any NCB officer could conduct his search. Personal search of accused was taken but nothing incriminating was recovered from his personal search. Summon was then issued to the accused Franklin u/s 67 NDPS Act. On verbal inquiry accused Franklin informed that the said parcel in question was given to him by his friend who resides at 147 C/9 IVth floor, Kishan Garh, Vasant Kunj, Delhi. Sh. Jai Bhagwan, IO passed on this information on phone to Superintendent who directed him to take necessary action as per law.

(m) Thereafter, at about 1:40-1:50 p.m. all the members of raiding party left

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for Kishan Garh along with accused Charlse and Franklin and reached there at about 2:30-2:40 p.m. As the house was found locked surveillance near the said house was mounted. On request, Sachin Kumar and Rajender Kumar voluntarily agreed to join the team as independent witnesses. At about 4:00 p.m. one black person entered the said house and accused Franklin pointed out towards him and revealed that his name is Obununeme Nwachukwu and that he is the same person who had handed over the said parcel in question to him.. IO introduced themselves to the said person and disclosed the purpose of their visit. On inquiry the said person revealed his name as Obununeme Nwachukwu.

(n) Accused Obununeme Nwachukwu was then apprised about his legal rights and was issued notice U/s 50 of NDPS Act and was made to understand that he has legal right to be searched before a Magistrate or a Gazetted Officer. The accused refused to exercise the said right and informed that any NCB officer could conduct his search. Personal search of accused was taken but nothing incriminating was recovered from his personal search. Summon was then issued to the accused Franklin u/s 67 NDPS Act.

(o) Thereafter search of the house was carried out. During the search one polythene bag containing off white colour powder was recovered from an almirah lying on the left side room of the house and 25 brass nut bolts were also found from the almirah which were similar to the nut bolts earlier seized from the parcels. A small quantity of the substance was tested with the field testing kit which gave positive result for heroin. The substance was transferred into a separate transparent polythene and weighed on an electronic weighing machine and its weight came out to be 1.700 kg.

(p) Two samples of 5 grams each were drawn and kept in two separate zip

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lock pouches which were further kept in two separate white paper envelopes and were given mark A1 and A2. The remaining substance was wrapped and stitched in a white cloth and was converted into pullanda and was given mark A. The polythene bag and the 25 brass nut bolts were converted into pullanda with the help of marking clothes and was given mark B.

(q) All the parcels and the samples were duly sealed and paper slips were pasted on them. A test memo in triplicate and the panchnama were also prepared at the spot. Some documents i.e. SBI passbook, one identification letter, and one document relating to marriage and laptop were also seized. Summons were then issued to accused Obumuneme Nwachukwu and witness Sachin Kumar, panch witnesses u/s 67 NDPS Act.

(r) The case property along with samples and test memo was deposited with the Malkhana Incharge. Report under Section 57 NDPS Act with respect to the search and seizure was submitted to Superintendent Sh. Y.R. Yadav.

(s) In pursuance of the summon accused Franklin and Obumuneme Nwachukwu tendered their voluntary statement u/s 67 of NDPS Act admitting their complicity in the present case. The accused persons were thereafter arrested and their personal search were conducted. A report u/s 57 NDPS Act regarding their arrest was submitted to Superintendent.

(t) On 17.04.2012, the sample mark A alongwith the test memo was sent to CRCL, Pusa for analysis and on 10.05.2011, the report was received from CRCL to the effect that the sample in question had tested positive for heroin, the present complaint was filed.

3. On the basis of the material on record vide order dated 19.10.2012 charges were framed against all the accused persons u/s 21, 23 r.w.s. 28 and 29 of

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NDPS At and against accused Obumuneme Nwachukwu u/s 21 (c) of NDPS Act 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 19 witnesses.
5. **PW1 Sh. Surender Singh and PW19 Sh. Jai Bhagwan**, both Intelligence Officers of NCB and members of the raiding team have deposed about the search and seizure proceedings conducted by them at the office of the Overseas Courier Office, Somdutt Chamber, Bhikaji Cama Place on 16.04.2012. The secret information deposed to have been received by PW1 has been exhibited as Ex.PW1/A. Panchnama prepared by PW1 has been exhibited as Ex.PW1/B and the documents that were annexed with the parcel in question have been collectively exhibited as Ex.PW1/C. Notice u/s 50 of NDPS Act issued to accused Charlse has been exhibited as ExPW1/E. Summons issued by the IO to the accused Charlse, panch witnesses and other witnesses who were called for enquiry and who tendered their statements u/s 67 of NDPS Act have also been duly exhibited. The search authorisation issued to search the residential address of accused Charlse Howell i.e. Room no. 6D, H.No. 52, Fourth Floor, Munirka near Gurudwara, New Delhi has been exhibited as ExPW1/I, nil panchnama has been exhibited as ExPW1/J and search authorisation execution report has been exhibited as ExPW1/K. Notices u/s 50 of NDPS Act issued to accused Franklin and Obumuneme Nwachukwu have been exhibited as ExPW19/A and ExPW19/B respectively. Summons issued by the IO to the accused Frankline, Obumuneme Nwachukwu, panch witnesses and other witnesses who were called for enquiry and who tendered their statements u/s 67 of NDPS Act have also 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.

6. **PW2 Sh. Sanjay Rawat, Malkhana Incharge** has inter alia deposed that he was also working as malkhana incharge during the said period and he has got exhibited the entries made by him in the malkhana register with respect to the deposit of case property.
7. **PW3 Sh. Azad Singh** has inter alia deposed that the statement of accused Franklin Mumbasa u/s 67 NDPS Act was recorded in his presence by PW2 Sh. Sanjay Rawat and this witness has proved the said statements as Ex.PW2/B. 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.
8. **PW4 Sh. G.S. Bhinder** has inter alia deposed that the statement of accused Obumuneme Nwachukwu u/s 67 NDPS Act was recorded by him and this witness has proved the said statements as Ex.PW4/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.
9. **PW5 Sh. R.K. Ibungosana Singh**, Superintendent, NCB, Imphal has inter alia deposed that he had received a letter from Superintendent, DZU, NCB for verification of driving license of one Charlse Howell and a copy of the driving license was attached with the letter. According to him he sent the photocopy of the driving license to District Transport Office and record from the district transport office was received in the month of June, 2011 and he further

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forwarded the report from District Transport office along with letter to NCB, DZU. The letter has been exhibited as ExPW5/A. The letter from M. Manisingh, District Transport Office, Imphal West District has been exhibited as ExPW5/B

10. **PW6 Sh. Rohit Basoya** has inter alia deposed that on 25/6/2012 he went to office of R.K. Puram on receipt of summon and met Sh. Surender Singh who inquired from him whether one African person named Sunday had been a tenant in his premises at 105, Prakash Mohalla, Garhi, East of Kailash, New Delhi. According to him he told him that no such person resided at the abovementioned house. The summon u/s 67 of NDPS Act and his statement have been exhibited as ExPW1/U and ExPW1/V respectively.

11. **PW7 Sh. Buvan Ram, Chemical Examiner and PW8 Sh. Rajeev Anand, Assistant Chemical Examiner** have inter alia deposed that the samples of the present seizure deposited with the CRCL, were examined by PW8 Sh. Rajiv Anand, Asst. Chemical Examiner under the supervision of PW7 and the said witnesses have proved the chemical analysis report prepared by them in this regard as Ex.PW7/A. As per their depositions, the sample in question had tested positive for heroin. The samples analysis reports have been examined as ExPW7/A and ExPW7/X.

12. **PW9 Sh. Anuj Bhatia**, Nodal Officer Vodafone Mobile services has proved the call detail records of the mobile number 9654943552, 7838891176, 8860336526 and 9711129114 for the period . 1/4/2012 to 17/04/2012. The call detail records, CAF, Voter I card and certificate u/s 65 B Evidence Act have been exhibited as ExPW9/B, ExPW9/E, ExPW9/H and ExPW9/K of mobile numbers 9654943552, 7838891176, 8860336526 and 9711129114 ExPW9/A,

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ExPW9/D, ExPW9/G and ExPW9/J respectively. As per CAF ExPW9/A the mobile number 9654943552 was subscribed in the name of Santosh Kumar, CAF ExPW9/E the mobile number 7838891176 was subscribed in the name of Sh. Leivon Abel Kom, CAF ExPW9/H the mobile number 8860336526 was subscribed in the name of Ms.Chuimila Jajo and CAF ExPW9/K the mobile number 9711129114 was subscribed in the name of Ms. Kelechi Onyema Sunday.

13.PW10 Sh. Abdul Khan, the employee of Overseas Logistics Pvt. Ltd. who is stated to have witnessed the entire recovery proceedings, has deposed about the said proceedings and has identified his signatures on the documents i.e. 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 of the summons served upon him, he had appeared in the office of the NCB and had tendered his statement Ex.PW1/R in which he inter alia informed the NCB officials that the parcel in question had been received by their office from Blaze-flash Courier Office, Mohta Building, Bhikaji Cama Place.

14.PW11 Sh. Deepak Kumar, the employee of Blaze-flash Courier, has inter alia deposed before the court that on 14/4/2012 at about 3:00-4:00 p.m. one person had booked with him the parcel in question and had also given him a copy of his driving license as identity proof document and on the instruction of that person he prepared the invoice on computer and had also prepared the airways bill of the parcel and that he thereafter had forwarded the parcel to Overseas Logistics in Bhikaji Cama Place. Thereafter this witness has described the proceedings conducted in Blaze-flash Courier office. This witness has also identified accused Charlse in the court as the person who had booked the

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parcel with him. He has also deposed that in pursuance of the summons served upon him, he had appeared in the office of the NCB and had tendered his statements Ex.PW1/Q. Airway bill, invoice and copy of the driving license has been exhibited as ExPW1/C colly.

15.PW12 Sh. Rajender Kumar, panch witnesses who is stated to have witnessed the search and seizure proceedings conducted by NCB with respect to the heroin recovered from the house of accused Obununeme Nwachukwu at Kishan Garh, has deposed about the said proceedings and has identified his signatures on the documents i.e. 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 of the summons served upon him, he had appeared in the office of the NCB and had tendered his statement Ex.PW1/P.

16.PW13 IO Sh. C.S.K. Singh has inter alia deposed that the statement of Sh. Rajender Kumar, panch witness u/s 67 NDPS Act was wrote down by him on the request of Rajender Kumar and this witness has proved the said statement as ExPW1/E.

17.PW14 Sh. Amar Nath Singh, Nodal Officer Idea Cellular Ltd. has proved the call detail records of the mobile number 9911058992 for the period . 12/4/2012 to 17/04/2012. The call detail records, CAF and certificate u/s 65 B Evidence Act have been exhibited as ExPW14/A to ExPW14/C As per CAF ExPW14/A the mobile was subscribed in the name of Charlse Howell.

18.PW15 Sh. Malkeet Singh, driver has merely deposed that on 16/4/2012 he had left the office along with the raiding team and had reached at Bhikaji Cama Place, Mohta Building and Munirka Village near Gurdwara had thereafter remained near the vehicle. According to this witness on 17/4/2012

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also he had left the office along with the raiding team and accused Charles and had reached at Munirka Park, and had thereafter remained near the vehicle along with accused Charlse. Thereafter he along with raiding team and accused Charlse and Franklin left the Munirka park and had reached Krishan Garh and had thereafter remained near the vehicle along with accused Charlse and Franklin. As per this witness on 18/4/2012 on the directions of Sh. Y.R. Yadav, he had gone to CRCL New Delhi to deposit the sample mark A1 along with duplicate test memo forms and forwarding letter and had deposited the same against receipt issued by CRCL.

19.PW16 Sh. Y.R. Yadav, Superintendent has deposed that on 16/4/2012, he was posted as Superintendent NCB and on the said day, he had been shown a secret information Ex.PW1/A and he had issued a departmental seal of Narcotics Control Bureau DZU 4 to IO Sh. Surender Singh at about 0130 hours and that entry to this effect was made by him in the seal movement register. According to this witness, the said seal was returned to him by IO Sh. Surender Kumar at 1700 hours on the same day and that a corresponding entry with respect to the same was again made by him in the seal movement register and at the same time, he had been shown a secret information Ex.PW1/H he had issued a search authorisation ExPW1/I for search of residence of accused Charlse Howell and had issued a departmental seal of Narcotics Control Bureau DZU 5 to IO Surender Singh and the said seal was returned to him by IO Surender Singh at 1900 hours on the same day and that entry to this effect was made by him in the seal movement register. As per this witness on 17/4/2012, he had been shown a secret information Ex.PW16/A and had issued a departmental seal of Narcotics Control Bureau DZU 1 to IO Jai

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Bhagwan and the said seal was returned to him by IO Jai Bhagwan on the same day and that entry to this effect was made by him in the seal movement register. The relevant pages of the seal movement register containing the said entries have been exhibited as Ex.PW4/D. He has then further deposed that IOs had put before him report u/s 57 NDPS Act regarding seizure and arrest of accused persons. As per this witness, on 17/4/2012 and 18/4/2012, he had forwarded the samples and test memo to CRCL.

20. **PW17 Sh. Rajesh Kumar, IO** has inter alia deposed that on 16/4/2012 he has recorded statement of accused Charlse Howell u/s 67 of NDPS Act on two subsequent days and this witness has proved the said statements as Ex.PW17/A and PW17/B. 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 information given by Charlse Howell and report u/s 57 NDPS Act before the Superintendent.

21. **PW18 Sh. Narendra Kumar** has inter alia deposed that on 16/4/2012 he left the office alongwith IO Sh. Surender Singh, driver Malkeet Singh and accused Charlse Howell and reached munirka near Gurdwara where one person was joined by the IO in the team and they all went to H.No. 52, Fourth Floor, Munirka village. He kept standing outside the house. According to this witness on 17.04.2012 on the instructions of Superintendent Sh. Y.R. Yadav, he had taken the sample alongwith the relevant documents to CRCL for analysis and after depositing the same with CRCL, he had handed over the receipt to the Superintendent, NCB.

22. After the closure of the prosecution evidence, statement of accused persons were recorded u/s 313 of Cr.PC. All of three accused denied all the

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incriminating facts and circumstances appearing against them and stated that they have been falsely implicated in this case. Accused Charlse Howell @ Abel Kom denied that he had ever booked any parcel on 14.04.2012 at Blaze Flash courier office, Bikhaji Gama Place. He also denied that the copy of the license found with the parcel in question belonged to him and stated that somebody had forged the said copy and must have used it. It is further stated by him that on 16.04.2012 he had gone to visit various offices at Bhikaji Gama Place to find customers for the juice company for which he worked and at that time he was surrounded by 4-5 persons who forcibly took him inside an office of a courier company on the first floor of the said building at Bhikaji Cama Place stating that they had lost an expensive mobile and they wanted to search him. After taking him to the said place, they thoroughly searched him and thereafter falsely implicated in the present case.

23. Accused Obumuneme Nwachukwn has stated that he has been falsely implicated in the present case by stating that he was picked from Katwaria Sarai Junction while he was coming back to his house at Mukherjee Nagar where he was staying with his family. He further stated that he had never given any statement to NCB rather his signatures were taken on various semi typed, blank papers, small slips which were manipulated by the officials to implicate him in the present case. He further stated he does not know his co-accused prior to this case and had not given any contraband to them and no contraband was recovered from his premises where he was staying and from his possession. He further stated that he has no concern with the contraband found from Kishan Garh, Delhi. He had retracted his statement in the court on the first day when he was produced in the court and also sent his retraction from Jail which is Mark DA, bearing his

signatures at point A. He further stated that he is facing this trouble because he is Nigerian National and contraband was planted upon him because of his nationality in the NCB office and the documents were also manipulated at the same place and he categorically stated that he was not involved in the dealing of any contraband.

24. Sh Mukesh Malik, Ld. SPP for NCB and all the defence counsels have advanced final arguments at length. Written submissions have also been filed on record by all the accused.

25. I have gone through the record.

26. It has come in evidence of PW11, Deepak Kumar who was working with BlazeFlash Courier that on 14.04.2012, Accused Charles Howell had come to their office to book a parcel for abroad. The said parcel was collected by him and then he prepared invoice as per details provided by accused Charles Howell. Accused Charles Howell had signed the said proforma invoice and also handed over his driving license. The said parcel was forwarded to Overseas Logistic Pvt. Ltd. for onward booking. Accused No.1 was apprehended on 16.04.2012 when NCB Official had reached to the office of BlazeFlash Courier after affecting seizure of 410 Gram of Heroin from parcel bearing Airway bill No.1473982, Ex.PW1/A. Accused Charles Howell is the consigner.

27. Accused Charles Howell was apprehended from the office of BlazeFlash in the presence of PW11 Deepak Kumar when he had gone there to collect the receipt towards the booking and to collect UPS number. The receipt was handed over to accused Charles Howell and the same was recovered from his Jamatalasi which is Ex.PW17/C and copy of Airway Bill number i.e. 1473982 is mentioned at Serial No.6.

28. Accused Charles Howell has been correctly identified by PW11. In the

cross-examination there is no specific denial that the parcel was not booked by him on 14.04.2012 and he did not sign on the proforma invoice.

29. Recovery has been duly proved by the testimony of PW1 Surender Singh, PW10 Abdukhan.

30. Defence has not been able to get any material to doubt the interception of accused Charles Howell on 16.04.2012 from the office of Blazeflash Courier in the presence of PW11 Deepak Kumar.

31. Nothing substantial has come in the cross-examination of prosecution witnesses to shake their veracity.

32. Accused has not led any evidence to disapprove the case of prosecution or that he was not apprehended from the place as alleged by the prosecution.

33. Furthermore, his statement recorded U/s.67 of the NDPS Act is a voluntary statement which is written by him in his own handwriting and containing various details which could be in the knowledge of accused only. In the said statement he has categorically stated that the parcel from which contraband was recovered was handed over to him by one Nigerian National namely Franklin and then he booked the same on his identity. The said statement may be retracted but there is nothing on the record to show that it was obtained under pressure, threat or coercion. Rather, the statement of accused Charles Howell Ex. PW 17/A and Ex. PW 17/B are voluntary as pursuant to the said statement accused No.2 Franklin was apprehended from a DDA Park, Munirka on 17.04.2012. In the said statement Charles Howell admitted that he was aware that the parcel was containing heroin inside.

34. In regard to accused Franklin, he was apprehended pursuant to voluntary statement recorded U/s.67 of the NDPS Act of Accused Charles Howell in which he categorically stated that the parcel, from which contraband was seized was

handed over to him by accused Franklin for booking. Accused Franklin had informed the accused Charles Howell when he handed over the parcel to Charles Howell that the parcel contained heroin inside.

35. Accused Franklin was apprehended at the instance and pointing out of accused Charles Howell.

36. Accused Franklin in his voluntary statement recorded U/s.67 of the NDPS Act has admitted that he handed over the parcel containing heroin to accused Charles Howell after receiving the same from accused No.3 Obumeneme. Accused Franklin has disclosed the residential address of accused No.3 i.e. House No.147-C/9, 4th Floor, Vasant Kunj, Kishangarh, New Delhi from where accused No.3 was apprehended, contraband and brass nut bolts of the same type from which contraband was recovered from the office of Overseas Logistic on 16.04.2012 were seized.

37. There is nothing on the record to show that the statement of Accused Franklin recorded U/s.67 of the NDPS Act was not voluntary statement. Accused has not led any evidence to disapprove the case of prosecution.

38. Accused No.3 Obumeneme was apprehended at the instance and pointing out of accused No.2. Accused No.2 was residing at House No.147-C/9, Vasant Kunj, Kishangarh, New Delhi was not in the knowledge of NCB official. They came to know about him as well as his residential address from the statement of accused No.2 Franklin wherein he voluntary disclosed that he received the parcel from accused No.3 which he handed over to Accused Charles Howell for the purpose of booking. All the accused persons were aware of the fact that the parcel was containing heroin inside.

39. Accused No.3 has taken a stand that he never resided at House No.147-C/9, Vasant Kunj, Kishangarh, New Delhi and was not apprehended from the said

house. However, the fact that accused No.3 was residing at the aforesaid address has been corroborated by the testimony of PW12 Rajender Kumar. It is further corroborated by the documents i.e. Passbook of Lalmalsawmi, original Certificate of marriage issued by St. Thomas Baptist Church Mark-D, letter of identification in the name of A-3 issued by Nigerian High Commission Mark-C.

40. A perusal of Marriage Certificate clearly shows the name of parties are recorded as Obumeneme and Lalmalsawmi, having residential address as 147-C/9, Vasant Kunj, Kishangarh New Delhi.

41. Further, accused No.3 for the first time when his statement was recorded U/s.313 Cr.P.C. in reply to question No.27 has stated inter alia as under:

“Ans. No.27 it is incorrect. I was not present however I was picked up from Katwaria Sarai Junction while I was coming back to my house at Dhirpur Village, House No.B-1 Opp. Nirankari Colony, Mukharji Nagar Delhi and I was not carrying anything incriminating with me.” In reply to Ans No.28, accused No.3 stated inter alia as under:

42. “Ans 28. It is incorrect, nothing was recovered from my possession or from my premises at Mukharji Nagar, where I was living with my family and my documents were also not recovered from the above said house at Kishan Garh as I never resided at the said place and my documents were taken away from the back, I was carrying while I was taken away from Katwaria Sarai Junction.”

43. It is pertinent to mention herein that the aforesaid two replies were given by the accused No.3 in respect of the search, seizure proceedings and recovery of documents i.e. passbook, marriage certificate and identification documents. In the said reply accused No.3 did not dispute that the documents which have been filed on the record did not belong to him however he stated that they were not seized from 147-C/9, Vasant Kunj, Kishangarh, New Delhi but they were removed from

the bag which he was carrying. However, He did not give any explanation as to how on the marriage certificate, the address of 147-C/9, Vasant Kunj, Kishangarh, New Delhi is appearing. Since accused No.3 was residing at House No.147-C/9, Vasant Kunj, Kishangarh New Delhi as such the same address is found mentioned on the Marriage Certificate, since on the Marriage Certificate which accused No.3 did not dispute the same address from which the contraband was recovered is found mentioned, the only inference which could be drawn is that the accused No.3 was residing and was in occupation of 4th Floor of 147-C/9, Vasant Kunj, Kishangarh, New Delhi.

44. In view of the aforesaid discussion, it is clear that non-examination of the landlord or non production of the copy of rent agreement is not fatal to the prosecution case. It is also clear that there is nothing on record to show that accused No.3 was not residing on the aforesaid address on the contrary, his presence and occupation of the aforesaid premises has been corroborated by the testimony of independent witness Rajender Kumar. Furthermore, accused No.3 did not place any documents or examined any person to show that he was residing at Dhirpur Village House No.B-1, Opp. Nirankari Colony, Mukharji Nagar, Delhi.

45. Accused No.3 in his voluntary statement written by him in his own handwriting U/s 67 of the NDPS Act has admitted that he was married to Lalmalsawmi. He further admitted about recovery of contraband and nut bolts from his premises. There is nothing on the record to show that the statement of the accused recorded U/s.67 of the NDPS Act was obtained under pressure, threat or coercion.

46. It has been argued by Ld. Defence Counsel that as per statement of PW12 Rajender Kumar, he saw one person who was tenant in the said floor was handcuffed to a chair and officials told him that they have recovered some

aluminum nut bolts and on opening the said bolts white colour powder was recovered. From Almirah some nut bolts, white powder was recovered, which is in contrast to the prosecution case. In this regard, PW12 was cross-examined by the Ld. SPP wherein PW12 has admitted his entire statement recorded U/s.67 of the NDPS Act given each and every detail of the search and seizure affected on 18.04.2012 except two facts i.e. timing of proceedings and in his presence, the gate was knocked by the officials. PW12 in his statement has categorically stated that about 12 years back he met with an accident and suffered head injury and still he was having some problem in recalling some facts. It is to be noted that statement of PW12 was recorded after a gap of about 2 years and therefore some minor discrepancies are bound to happen. It is settled proposition of law that the statement of Panch witness has to be seen in totality. A perusal of statement of PW12 clearly shows that he categorically stated that accused No.3 was residing as a tenant on 4th Floor of 147-C/9, Vasant Kunj, New Delhi and he was found present in the house when NCB Official visited there and contraband and nut bolts were seized from the said house. Accused is not entitled to claim any benefit of minor discrepancies in the statement of PW12 as his own stand already proved belied in the Court.

47. Recovery of contraband and documents has been duly proved beyond reasonable doubt by the testimony of official witnesses also corroborated by PW12.

48. The judgment relied upon by the counsel for accused in the case of Mohd. Alam Khan Vs. NCB JT 1996 (2) SC 636, Gurcharan Singh @ Channi Vs. State decided on 17.02.1993 are not applicable to the facts and circumstances of the present case as there is sufficient evidence, material and admission by accused No.3 that he was residing at 4th Floor, 147-C/9 Vasant Kunj, New Delhi.

49. It has further been argued by Ld. Counsels that the sampling has not been done as per standing order no. 1/88, dated 15.03.1998 issued by Narcotics Control Bureau. My attention has been invited to guideline No.1.5, 1.6 and 1.7 which deals with Place and time of drawl of sample, quantity of different drugs required in the sample and number of samples to be drawn in each seizure case. Aslo in the case of Charles Howell @ Abel Kom Vs. NCB, Crl. Appeal No.755 of 2016 decided by Hon'ble High Court on 13.08.2018 and in Edward Khimani Kamau Vs. NCB Crl. Appeal No.1113 of 2011 decided on 28.05.2015. I have carefully gone through the aforesaid judgment. In my considered view, in the present case there is no violation of any of the guidelines in respect of sampling. In the present case there are two seizures. First Seizure was affected on 16.04.2012 from the office of Overseas Logistic from Airway Bill No.1473982. From the said parcel six packets of JCB V-Bold were recovered and one packet was found to contain 12 Brass Nut Bolts and thus total 72 (6x12) Brass Nut Bolts were recovered and when they were broken, they were found concealed same type of powder of off-white colour. As per Panchnama Ex.PW1/B all the powder was of same colour and texture was collected in a transparent polythene. It was properly mixed and thereafter two samples of 5 gram each were drawn. It is argued by Ld. Counsel that entire powder was to be tested and duplicate samples were to be drawn from 72 Nut Bolts. In my view the procedure adopted by PW1 Surender Singh IO is in conformity with guideline No.1.6. Guidelines No.1.6 is reproduced hereunder:

“1.6 Quantity of different drugs required in the sample-The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of opium, Ganja and Charas/Hashish where a quantity of 24 Grams in each case is required for

chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the package/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.”

50. Guidelines No.1.7 is also reproduced hereunder:

“1.7 Number of samples to be drawn in each seizure case:-

In the case of seizure of single package/container one sample in duplicate is to be drawn. Normally it is advisable to draw one sample in duplicate from each package/container in case of seizure of more than one package/container.

51. However, when the package/container seized together are of identical size and weight, bearing identical marking and the contents of each package give identical results on colour test by U.N. Kit, conclusively indicating that the packages are identical in all respect/the packages/container may be carefully bunched in lots of 10 packages/containers may be bunched in lots of 40 such packages such packages/containers. For each such lot of packages/containers, one sample in duplicate may be drawn.

52. Where after making such lots, in the case of Hashish and Ganja, less than 20 packages/containers remains, and in case of other drugs less than 5 packages/container remain, no bunching would be necessary and no samples need be drawn.

53. If it is 5 or more in case of other drugs and substances and 20 or more in case of Ganja and Hashish one more sample in duplicate may be drawn for such remainder package/containers.

54. While drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from

which the samples are drawn for that lot.”

55. In the present case sampling has been done as per guideline No.1.6. As per the said guideline 2 samples of 5 grams were to be drawn in respect of narcotic drugs and psychotropic substances. The seized drugs in the packages/containers should be well mixed to make it Homogeneous and representative before the sample in duplicate is drawn. In the present case there were 6 packets from which 72 similar type of Brass Nut Bolts were recovered and after breaking the same '*off white colour*' powder was recovered and the same was properly mixed and then 2 samples of 5 Grams each were drawn, which is in conformity with guideline 1.6, it is clear that guideline No.1.7 is not applicable to the facts and circumstances of the present case as the number of packages were 6 which is less than 10 and as such the same cannot be bunched in lots of 10 packages/containers. PW1 Surender Singh in his deposition has clearly deposed that 2 representative samples were drawn from the entire powder which was properly mixed as it was of same colour and texture.

56. As far as the second recovery which was affected from the house of accused No.3 is concerned which is of 1.7 Kg., it is clear that the representative samples were drawn from the said seizure. It has further come up that only one polythene packet was recovered from the Almirah which was found to contain '*off white colour*' powder which was transferred to transparent polythene from which two representative samples of 5 gram each were drawn. PW19 Jai Bhagwan IO has deposed in this regard and thus there is no violation of any guidelines of standing order 1/88, dated 15.03.1998

57. In view of the above, in my considered view, the prosecution has been able to prove beyond reasonable doubt that all the three accused entered into a criminal conspiracy to illegally export heroin outside India. All the three accused hence

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stand convicted for the offences punishable U/s 21, 23 r/w section 28 & 29 of NDPS Act having contravened the provisions of section 8 (c) of NDPS Act. In addition, the accused Obumuneme Nwachukwu who was further found in possession of 1.7 kgs of heroin also stands convicted for the offence U/s 21 (c) of NDPS Act.

**Announced in the open Court
on this 31th day of July, 2018**

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