

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1034 OF 2013

Musa Abdul Wimumuni Kenneth ... Appellant
Age : 33 Yrs.
Permanent Address : 16, Agbor Road,
Delta State, Nigeria

Versus

1. Sunil D. Dalvi, Air Customs Officer,
Air Intelligence Unit, Sahar Internation Airport,
Mumbai. Union of India

2. State of Maharashtra. ... Respondents

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Mr. Ayaz Khan, Advocate for the Appellant.
Mr. N. Natarajan, Spl. PP for Respondent No.1.
Mr. S. S. Pednekar, APP for Respondent No.2 – State.

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CORAM	: PRAKASH D. NAIK, J.
RESERVED ON	: 16th OCTOBER, 2020.
PRONOUNCED ON	: 6th NOVEMBER, 2020.

JUDGMENT :

1. The appellant has been convicted vide Judgment and order dated 16th July, 2013 passed by Special Judge under N.D.P.S. Act in N.D.P.S. Special Case No. 140 of 2009. He has been convicted for offence under Section 21(c) r/w Section 8(c) of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced to suffer rigorous imprisonment for the term of Fifteen years and to pay fine of Rs. 1,00,000/- and in default to suffer simple

imprisonment for Six months. He is also convicted for the offence under Section 23(c) r/w Sections 21(c) and 8(c) of NDPS Act and sentenced to suffer rigorous imprisonment for Fifteen years and to pay fine of Rs.1,00,000/- in default to suffer simple imprisonment for Six months. The substantive sentences were directed to run consecutively.

2. The brief facts of the prosecution case are as under :-

a) The complainant was working as officer with Uniform Air Customs in Mumbai. On 20th August, 2009, passenger by name Musa Abdul Wimumuni Kenneth arrived at CSI Airport, Mumbai by Emirates Airlines flight from Dubai. After clearing immigration formalities, he made inquiry with complainant for exiting the Airport. The complainant noticed two hand bags with the passenger and also noticed unusual images in one briefcase on screening it. He informed about the same to his superiors.

b) As per instructions of superior officers, complainant summoned two panchas and on making inquiry with the passenger, in the presence of panchas, bag was opened and it was found containing capsules.

c) The contents in one of the capsule was tested with the help of drug identification kit and the test gave positive indication for

Cocaine. The passenger was taken to the office of A.I.U. along with baggage and panchas. Search was conducted in which 83 capsules were found to be containing 980 grams of Cocaine. Samples were drawn and the property came to be seized under Panchanama along with travelling documents found with the passenger. Memo of arrest was prepared. Statement of the passenger was recorded. Samples were sent for analysis to chemical analyzers and on completing investigation, the complaint was filed.

3. Charge was framed vide Exh.6 on 20th January, 2011. Subsequently, the charge was amended on 2nd May, 2013.

4. Learned advocate for the appellant urged two grounds. Firstly, it is contended that the appellant does not challenge the conviction, however, the learned Judge has committed error in directing that the sentences shall run consecutively. Secondly, the sentence of imprisonment awarded by the trial Court is harsh and the same to be reduced to the period undergone by the appellant.

5. Learned advocate for the appellant had relied upon several decisions which are as under :

- i) *Benson Vs. State of Kerala 2017 (1) SCC (Cri) 108.*
- ii) *Balwinder Singh Vs. Assistant Commissioner and Central Excise 2005 AIR (SC) 2917.*

- iii) *Yasihey Yobin & Anr. Vs. The Department of Customs, Shillong 2014(5) SCC (Cri) 661.*
- iv) *Baldev Singh Vs. State of Haryana 2015(12) Scale 308 .*
- v) *Shahejadhkhan Mahebubkhan Pathan Vs. State of Gujarat 2013(1) SCC (Cri) 558.*
- vi) *Dadu @ Tulsidas Vs. State of Maharashtra [2000 AIR (SC) 3203].*
- vii) *Shakeel Habib Khan @ Papu Pager S/o. Habibkhan Vs. A. B. Kodnani & Anr. in Criminal Appeal No.456 of 2010 passed by this Court in order dated 9th February, 2018.*
- viii) *Manoj @ Panu Vs. State of Haryana* passed by the Hon'ble Supreme Court in Criminal Appeal No. 2063 of 2013 in order dated. 9th December, 2013.
- ix) *Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and Ors. [AIR 1988 (SC) 2143].*

6. Learned counsel for the respondent submitted that there is no infirmity in awarding the punishment to the appellant by the trial Court. The offence is of serious nature and the sentence of Fifteen years imposed by the Court on each count is just and proper. No reduction be granted in the sentences of imprisonment. No case is made out to set aside the order directing that sentences to run consecutively. The sentence is awarded by the trial Court taking into consideration the menace of Narcotic Drugs and Psychotropic Substance on the society. The offences were proved against the appellant. It is further submitted that, in view of Section 32(A) no

sentence awarded shall be suspended, remitted or commuted. It is not permissible to reduce the sentence or make it concurrent.

7. Although the appellant is not serious about the conviction, this being the appeal challenging the Judgment of conviction, it would be appropriate to see whether the conviction of the appellant is justified, since the question of modification of sentence sought by the appellant would arise, in the event, conviction is confirmed.

8. The prosecution has examined Sanjay Mahipatrao Pawar, Immigration Officer as PW-1, Shri Sunil Dattaram Dalvi, the Seizure Officer as PW-2, Shri Bipin Sudhakar Jadhav, the Intelligence Officer who deposited the seized property in the warehouse as PW-3, Shri Prashant Badrinath Koli, Superintendent in D.S.-I warehouse who accepted the property as PW-4, Shri. Nandkishor Singh Negi, the Superintendent who transferred the property from DS-I warehouse to the strong room as PW-5, Shri. Prakash Nathu Shardul, the superintendent in the strong room who received and handed over the samples as PW-6, Shri. Sameer Songra, the officer who carried the samples as PW-7, Ms. Madhumathy Menan, the Investigating Officer, who prepared the arrest report as PW-8, Shri. Kishor Khot, the Intelligence Officer in the warehouse who accepted

the packets containing mobile and articles as PW-9, Shri. Vinod Kumar Harilal Prasad, who deposited one sealed envelope in the warehouse as PW-10. Shri. P.S. Manoharan, superintendent of Uniform Department on the date of incident as PW-11, Shri. Subodh Kumar, the Superintendent of A.I.U. and the batch in charge on the date of incident as PW-12, Shri. Bharat Laxmanrao Gade, the Superintendent who recorded the statement of accused as PW-13, Shri. Ricarlus Richard Aguiar, the independent Panch witness as PW-14 and Shri. Rakesh Baboo Saxena, the Assistant Chemical Examiner as PW-15.

9. The prosecution produced several documents and articles during the course of trial. The prosecution led evidence through the aforesaid witnesses. The evidence of PW-2 shows that, on 20th August, 2009, one passenger came to his counter, who is identified as accused Musa. While screening his baggage, doubtful images were noticed. He was having two bags. There were tags of Kenyan Airlines and Emirates Airlines. Name of the accused was mentioned on the bags. The bag was found containing capsules powder in the form of capsule was tested with the testing kit which showed that it was Cocaine. 83 capsules were recovered from the bag. The weight was 980 grams. Travel documents were seized from

the accused. The samples were drawn. Evidence of PW-14 shows that five samples were collected from the powder. They were separately kept in envelope and sealed. The evidence of the other witnesses corroborates the case of the prosecution. Accused was arrested. PW-6 deposed that, he handed over the sealed cover for depositing the same in DS-1 warehouse and subsequently they were taken to CFSL Hyderabad and the acknowledgment was obtained in the register accordingly. Evidence of PW-7 shows that, he was working as Intelligence Officer in 2009 at CSI Airport, Mumbai. He was given the samples and test memos for depositing the same. Evidence of PW-12 shows that, sample was in their possession and he had given the seal for using the same to PW-7. PW-15 was working as Assistant Chemical Examiner. The baggage was in sealed condition which tallied with facsimile. Cocaine was detected on examination of samples by CFSL Hyderabad. The report was exhibited in evidence. The witnesses were cross examined. The trial Court on appreciation of evidence found that, the prosecution has proved the charge against the accused. The accused was also held liable for importing the contraband article in India. The trial Court has analyzed the evidence in detail. The trial Court considered submissions advanced by both the sides and also considered the decisions placed for consideration by both the sides. The Court also noted the defense of

the accused under Section 313 of Cr.P.C. The accused had contended that, his statement was forcibly obtained. He was assaulted. The Court observed that there was no supportive and corroborative evidence to the allegations by accused. The Court observed that the prosecution has independently led evidence to show that, the accused was found in possession of contraband, article Cocaine weighing 980 grams. Besides the evidence of official witnesses, there is corroboration of independent witness. The prosecution has successfully established that, the accused was found in possession of 980 grams of Cocaine. The trial Court gave findings that, the evidence led by prosecution is cogent, consistent and inspire confidence to treat it trustworthy. The trial Court however gave findings that, there is no evidence to prove the charge of conspiracy, hence, the accused was acquitted for offence under Section 29 of the NDPS Act. I find that, the evidence on record establishes the charge against the accused, for which he has been convicted. The conviction of the appellant is justifiable.

10. The appellant has urged that sentence of imprisonment be reduced and that the order directing the sentences to run consecutively be set aside and the sentence of imprisonment imposed by trial Court may be directed to run concurrently. Learned advocate

for the appellant had submitted that the accused was charged for single transaction. The offences may be different but under the same statute. All charges were connected with same quantity of Cocaine. There was no reason to direct that the sentences shall run consecutively. The trial Court has not applied its mind to Section 32(B) of the NDPS Act. The sentence of Fifteen years was unreasonable. The conduct of the accused was polite. He is in custody for Eleven years, Two months. Whereas the contention of counsel for the respondent is that, the trial Court has taken into consideration the effects of trafficking in Narcotics has on the society and the sentence was imposed on accused is justifiable. The Judgments relied upon by the learned counsel for the appellant are not applicable in the present case. Most of them are relating to offence under IPC.

11. The appellant was charged for the offences under Section 29 r/w Section 8(c) and 29 of the NDPS Act, 21(c) r/w Section 8(c) and 29 of NDPS Act and Section 23 r/w 21, 8(c) and 29 of NDPS Act. The charges emanate from the fact that the appellant had acquired, possessed, transported the seized 980 grams of Cocaine which was recovered from him. The appellant arrived at CSI Airport on 20th August, 2009 from Dubai. On search of his bag it was

found containing contraband. It is a single transaction. As far as charge of conspiracy is concerned. The trial Court has observed that the accused has been charged for the offence under Section 29 of NDPS Act for being a party to the criminal conspiracy for committing an offence under NDPS Act. The evidence on record shows that, the accused landed alone in India and he was found in possession of Narcotic Drug Cocaine. There is no evidence to show that, besides the accused, any other person is involved in commission of the offences. The only evidence on record is statement of the accused under Section 67 of the NDPS Act. The same cannot be used for awarding the conviction but as a matter of prudence some general corroboration is required. There is no corroboration to the statement of the accused regarding involvement of any other person. The appellant was thereby acquitted for the offences under Sections 29 r/w 21(c), r/w 8(c) and Sections 23, 21(c) and 8(c) and 29 of NDPS Act. The appellant was however convicted for the other charges framed against him.

12. As stated above, the trial Court has imposed sentences of 15 years each for the offences in which the appellant was convicted. The trial Court also directed that, the substantive sentences to run concurrently.

13. While awarding the sentences, it was observed that accused had travelled from Lagos Nigeria to Mumbai. There is no explanation for halt by the accused at Dubai. The documents show that he was having the direct flight to Mumbai but he made unschedule break at Dubai. There is no explanation for halt by accused at Dubai. The statement under Section 67 shows that, he had successfully imported article to India on previous occasion. It is quite probable that the accused may have made the unschedule halt at Dubai to avoid arrest, if any, in case the information leaks and reaches to the investigating agency. He has experience in the field. The Court also referred to the effect of Narcotic Drug and Psychotropic Substance on the society and observed that taking lenient view, would not have the desired effect.

14. There are two provisions in the code namely Sections 31 and 427 which speak of consecutive and concurrent running of sentences. Section 427 deals with cases where a person already undergoing a sentence is latter imposed sentence in respect of an offence tried at subsequent trial.

15. Section 31 of Cr.P.C. relates to sentence in cases of conviction of several offence at one trial reads as follows :

“1) When a person is convicted at one trial of two or

more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments, prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court;

Provided that—

a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

16. Section 31 gives discretion to the Court to direct running of punishment either concurrently or consecutively. The proviso to

the said provision stipulates two conditions;

- i) In no case shall such person be sentenced to imprisonment for a longer period than Fourteen years.
- ii) The aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

17. The minimum punishment prescribed for the offences for which the appellant was convicted is 10 years which may extend to 20 years. The fine shall not be less than Rs. 1,00,000/- which may extend to 2,00,000/-.

18. Section 32(A) stipulates that no sentence awarded under NPDS Act. (Other than Section 27) shall be suspended, or remitted or commuted. In the Case of *Dadu @ Tulsidas Vs. State of Maharashtra* (Supra), it was held that the appellate Court has jurisdiction to suspend the sentence. Section 32A of NPDS Act, so far it ousts the jurisdiction of Court to suspend the sentence is unconstitutional. The question for consideration before this Court is whether the sentence of imprisonment awarded to the accused can be reduced or that consecutive sentences awarded by the Court can be made concurrent. The Code of Criminal Procedure provides for suspension, remission and commutation of sentences. Sections 432,

433, 433(A), 434 and 435 of Cr.P.C. empower the government to suspend or remit or commute sentence. Section 432 of Cr.P.C. prescribes power to suspend or remit sentences. This provision, when any person has been sentenced to punishment for an offence, the appropriate Government may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of punishment to which he has been sentenced. Section 433 relates to power to commute sentence. The appropriate Government, may without consent of the person sentenced, commute sentence of death, for any other punishment provided by IPC, a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine, a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced or for fine. Section 433 A relates to restrictions on powers of remissions or commutation in certain cases. Section 434 is about concurrent power of central government in case of death sentences. Section 435 relates to exercise of powers under Sections 432 and 433 to be exercised by State Government in consultation with Central Government. Suspension means Stay of execution of sentence. Remission means that the rest of the sentences need not be undergone leaving the order of conviction and the sentences passed

by the Court untouched that is reduction of the amount of sentences without changing its character effect of an order of remission is to entitle the prisoner to his frame of certain date once that they arrives, he is entitled to be released. The power to remit the whole or any part of the sentences belongs to executive. The remissions and suspension under Section 432 does not in any way interfere with the order of conviction. Thus, question of prohibition incorporated in Section 32A is not attracted in this appeal.

19. Section 32B of NDPS Act inserted by amendment Act 9 of 2001 deals with factors to be taken into account for imposing higher than minimum punishment. The provision reads as follows

“ 32B. Factors to be taken into account for imposing higher than the minimum punishment – Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the Court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely :-

- a) the use or threat of use of violence or arms by the offence;*
- b) the fact that the offender holds a public office and that he has take advantage of that office in committing the offence;*
- c) The fact that the minors are affected by the offence or the minors are used for the commission of an offence; and*
- d) The fact that the offence is committed in an*

educational institution or social service facility or in their immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities;

e) the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offence; and

f) the fact that the offender is involved in other illegal activities facilitated by commission of the offences. ”

20. The decision of this Court in Criminal Appeal No. 456 of 2010 dated 9th February, 2018, in the case of *Shakeel Habib Khan Vs. A.B. Kodnani and Another*, deals with reduction of sentence of default in payment of fine. In the present case, I am not inclined to reduce the sentence of default in payment of fine. In this case, the appellant is sentenced to pay fine of Rs. 1,00,000/- on each count, which is minimum prescribed by law and in default, he has been sentenced to undergo imprisonment of 6 months on each count. I do not find it arbitrary. In the case of *Benson Vs. State of Kerala* (Supra) the Court had dealt with the effect of Section 427 of Cr.P.C. The accused therein was convicted for several offences committed on the same day. However, he was prosecuted vide different cases. The Court directed that the sentences in last four cases shall run concurrently with the case which was currently operative. In this appeal before me applicability of Section 427 of Cr.P.C. does not

arise. In the case of *Balwinder Singh Vs. Asstt. Commr., Customs and Central Excise* (Supra), it was observed that, the accused were convicted for various offences under the NDPS Act. Conviction of one of the accused was set aside and the other accused was confirmed. The convicted accused was sentenced to suffer imprisonment of 14 years. Having regard to the facts and circumstances of the case, the sentence was reduced from 14 years to 10 years for each of the offences under NDPS Act and Section 120-B of IPC. The sentences to run concurrently. In the case of *Yasihey Yobin and Anr. Vs. The Department of Customs, Shillong* (Supra), the Supreme Court considered the fact that, the accused No.1 was old and suffering from ailments. The sentence was modified. It was reduced from 13 years to 10 years. In the case of *Baldev Singh Vs. State of Haryana* (Supra), the Court confirmed the conviction under Section 15 of the NDPS Act. However, the sentence of imprisonment of twelve years was reduced to Ten years. In the case of *Shahejadhkhan Mahebubkhan Pathan Vs. State of Gujrat* (Supra), the Apex Court was dealing with appeals challenging the conviction of the accused under the provisions of NDPS Act. The accused were convicted under Sections 8(c), 21 and 29 of NDPS Act and sentenced to suffer rigorous imprisonment for Fifteen years. They were found in possession of Brown Sugar which was of commercial quantity. The trial Court had

imposed a fine of 1.5 Lakhs and in default to further undergo rigorous imprisonment for three years. The appellants had not seriously canvassed the conviction. The Supreme Court referred to earlier decision of apex Court in *Balwinder Singh Vs. Assistant Commissioner and Central Excise* (Supra). The Supreme Court considered that the appellant, were first time offenders and there were no past antecedents about their involvement in offence of like nature on earlier occasions. The appellants had served sentence of nearly 12 years in Jail. In view of the same and in the light of the decision, in the case of *Balwinder Singh Vs. Assistant Commissioner and Central Excise* (Supra), while confirming the conviction, the sentence was reduced to 10 years which is the minimum prescribed sentence under the provisions of NDPS Act. The order of fine of Rs.1.5 Lakhs each was upheld but the default sentence was reduced to six months from three years. The Court observed that, the appellants had served 12 years in jail and the Court was of the view that as per modified period of sentence in respect of default in payment of fine, there is no need for them to continue in prison. They were set at liberty forthwith. In the case of *Manoj @ Panu Vs. State of Hariyana*, (Supra) the Apex Court was dealing with the issue relating to sentences awarded to the accused and whether it should be concurrent or consecutive. The appeal was filed by an accused

who was convicted for the offence under Section 307 of IPC and Sections 25 and 27 of the Arms Act. The appellant was directed to undergo rigorous imprisonment for 10 years under Section 307 of IPC and to pay fine of Rs. 5,000/- and in default of payment of fine to undergo further rigorous imprisonment for 6 months. He was sentenced to rigorous imprisonment for 3 years each under Sections 25 and 27 of the Arms Act. The sentences imposed were directed to run consecutively, on the ground that, the accused was previously convicted for committing identical offence and in the present case he has committed the heinous crime of shooting in the Court premises. Thus, it was ordered that the sentences imposed on him shall not run concurrently but consecutively. The High Court confirmed the sentence with observation that the accused do not deserve any mercy in the matter of sentence as he has tendency of repeating commission of similar offences. He cannot be permitted to use the Court premises as a battle ground, and the trial Court having given cogent reasons for the sentences to run consecutively in terms of Section 31 of Cr.P.C., the High Court was not inclined to reduce the sentence or to lift the consecutive sentences passed by the trial Court. The Supreme Court referred to several decisions on the issue viz. *Chatar Singh Vs. State of M.P.(2006) 12 SCC 37*; *Mohd. Akhtar hussain alias Ibrahim Ahmed Bhatti Vs. Asst. Collector of Customs (Prevention)*,

Ahmedabad and Anr. (Supra), State of Punjab Vs. Madan Lal 2009(5) SCC 238; State of Maharashtra Vs. Najakat Alia Mubarak Ali, (2001) 6 SCC 311. The Apex Court observed that, the ground on which the appellant was awarded the sentence which was to run consecutively was due to previous criminal record for similar type of offence of shooting in the Court premises, which charge was proved. In view of the legal position laid down by Court regarding concurrent and consecutive sentences, the sentences imposed upon the appellant for different offences to run consecutively under IPC and the Arms Act are erroneous in law. The same are contrary to the law laid down by this Court as per cases referred to Supra upon which reliance has been rightly placed by the advocate for the appellant. It was then observed that, having regard to the age of the appellant at the time of committing the offences, it would not be just and proper to allow the sentences to run consecutively. As the offences committed by the appellant have been committed under a single transaction, it is well settled position of law that the sentences must run concurrently and not consecutively.

21. In the case of *Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Asst. Collector of Customs (Prevention), Ahmedabad and Anr. (Supra)*, it was observed as follows :-

“ The basic Rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.”

22. In *State of Maharashtra Vs. Najakat Alia Mubarak Ali*, (Supra), the majority view was similar. It was held in paragraph 17 as follows:

“17. In the above context it is apposite to point out that very often it happens, when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other counts as well.”

23. The case of prosecution is that, the appellant was apprehended at Airport. The bag in his possession was containing Cocaine. He travelled from Lagos Nigeria to Mumbai with a halt at Dubai. Hence he was charged for possession and import of same contraband. Thus, it was a single transaction which constitutes two

different offences. While hearing on point of sentence before trial Court, it was submitted by appellant that, the accused is having two school going sisters and old parents depending on him. There are no criminal antecedents against him. The trial Court considered the effect of narcotics on society. The trial Court had also drawn adverse inference on the fact that appellant had halted at Dubai and it is probable that he wanted to avoid arrest, if any in case the information leaks and reaches to the investigating agency. This shows that accused is experienced in this field. His statement under Section 67 of NDPS Act shows that he had successfully imported the contraband article to India on previous occasion. The observation of the trial Court about halt of accused at Dubai is based on inference which is not supported by evidence. There is no material on record to show that appellant has antecedents. The inference of previous import is based on statement under Section 67 of NDPS Act. The apex Court has recently in the case of *Tofan Singh V/s. State of Tamilnadu* held that, confession under Section 67 of NDPS Act are inadmissible in evidence. The trial Court, while dealing with charge of conspiracy in paragraph 50 of the Judgment had observed that, the only evidence on record is the statement of the accused under Section 67 of NDPS Act. Considering various Judgments on the point of admissibility and reliance, general corroboration is required. Since

there was no corroboration accused was acquitted for offence under Section 29 of the Act.

24. Applying the principle enunciated in the aforesaid decisions relating to reduction of sentence and concurrency of sentence, I find that, there was no reason to direct the sentences to run consecutively. The Judgment of the trial Court does not satisfy any reasons for deviating from the general rule, while directing the accused to undergo sentences consecutively. The trial Court had observed that the conduct of appellant during trial was polite. From the Judgment it does not appear that the trial Court had resorted to Section 32B of the Act. The appellant has undergone Eleven years and Two months in custody. The sentences imposed upon him can be modified by reducing it and directing it to run concurrently.

25. It is also pertinent to note that, apart from the aforesaid aspects, Section 31 of Cr.P.C. stipulates condition that, in no case, the convicted person be sentenced to imprisonment for a longer period than Fourteen Years. In *Chatar Singh V State of M.P* (Supra) Supreme Court had dealt with interpretation of Section 31 of Cr.P.C. it was observed that, provisos appended to Section 31 of Cr.P.C. clearly mandate that accused could not have been sentenced to imprisonment for a period longer than Fourteen years. Thus, the

Courts had committed serious illegality in the passing impugned Judgment. Paragraph 10 & 11 of the said decision reads as under :-

“10. The question, however, came up for consideration in Zulfiwar Ali and Anr. Vs. State of U.P. (1986 ALL.L.J. 1177], wherein it was held :

“ The opening words in the case of consecutive sentences” in sub-s.31(2) make it clear that this sub section refers to a case in which consecutive sentences” are ordered. After providing that in such a case if an aggregate of punishment for several offences is found to be in excess of punishment which the court is competent to inflict on a conviction of single offence. It shall not be necessary for the court to sent the offender for trial before a higher court. After making such a provision, proviso(a) is added to this sub-section to limit the aggregate of sentences which such a court pass while making the sentences consecutive. That is this proviso has provided that in no case the aggregate of consecutive sentences passed against an accused shall exceed 14 years. In the instant case the aggregate of the two sentences passed against the appellant being 28 years clearly infringes the above proviso. It is accordingly not liable to be sustained.”

11. In view of the proviso appended to Section 31 of the Criminal Procedure Code, we are of the opinion that the High Court committed a manifest error in sentencing the appellant for 20 years’ Rigorous Imprisonment. The

maximum sentence imposable being 14 years and having regard to the fact that the appellant is in custody for more than 12 years. Now, we are of the opinion that interest of justice would be subserved if the appellant is directed to be sentenced to the period already undergone.”

26. In view of direction of trial Court to undergo sentences consecutively the appellant was required to suffer rigorous imprisonment of 30 years. The appellant has undergone sentence of about 11 years and 2 months. Considering the law laid down in aforesaid decisions and the circumstances referred herein above, it would be appropriate to reduce the sentence of 15 years on each count to the sentence of 12 years. Both the sentences shall run concurrently and not consecutively. The sentences of fine and the sentences for default in payment of fine does not warrant any interference and the same is confirmed. Hence, I pass the following order :

ORDER

- i) Criminal Appeal No. 1034 of 2013 is partly allowed.
- ii) Conviction awarded vide impugned Judgment is confirmed.

- iii) The sentence of imprisonment for conviction under Section 21(c) r/w 8(c) of NDPS Act for a term of 15 years imprisonment is reduced to period of 12 years.
- iv) The sentence of imprisonment for conviction under Section 23(c) r/w 21(c) and 8(c) of NDPS Act to suffer imprisonment for 15 years is reduced to period of 12 years.
- v) Reduced Sentences of imprisonment on both the counts to run concurrently.
- vi) The appellant shall undergo the remaining sentence of imprisonment in accordance with this order.
- vii) The appeal stands disposed of accordingly.

27. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)