

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**CRMP No. 502 of 2010**

The State of Chhattisgarh

---- Applicant

**Versus**

Rajesh Kumar aged about 36 years S/o Vishwanath Prasad Jaiswal  
 Occupation Cultivation R/o village Janakpur Police Station Anuppur Tehsil  
 Anuppur District Koriya Chhattisgarh

---- Respondent

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| For Applicant/State | : Shri Satish Gupta, Government Advocate. |
| For Respondent      | : None.                                   |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**06/10/2016**

1. The present Cr.M.P. had been filed on 5.3.2001 seeking permission for grant of leave to appeal assailing the judgment of acquittal dated 17.10.2000 passed by the Special Judge, Shahdol, District Shahdol in Special Case No.29 of 1998.

2. It is pertinent to mention here that before going into the merits of the case, it would be proper to mention that the State is now asking this Court to test the veracity of the judgment passed on 17.10.2000 i.e. 16 years ago and the State is praying for setting aside the said finding of acquittal and seeking for conviction of the accused. Though the Cr.M.P. was filed on 5.3.2001 by the Office of the Advocate General, on 9.3.2001 this Court had ordered for calling of the records of the Court below. However, since 9.3.2001 onwards there appears to be absolutely no efforts made by the State to pursue the present Cr.M.P. and after 9.3.2001 the present case is being listed for the

first time before the Bench today itself i.e. after about more than 16½ years.

3. Brief facts of the case are that Police personals of Police Station Janakpur, District Koriya on 27.7.1998 at around 7 O'clock said to have found Respondent Rajesh Kumar in possession of 1 Kg. Ganja. After completion of formality under the provisions of NDPS Act, charge-sheet was filed and the matter was put to trial before the Special Judge, NDPS Act where the case was registered as Special Case No.29 of 1998 and the trial Court finally vide its impugned order dated 17.10.2000 reached to the conclusion that the prosecution has not been able to prove its case beyond all reasonable doubt against the respondent-accused so as to prove the offence under Section 20(b)(i) of the NDPS Act and has finally acquitted the respondent-accused from all the charges levelled against him. It is this judgment which is under challenge and the State by way of filing the present Cr.M.P. has sought leave to appeal.

4. A bare perusal of the impugned order clearly reflects that the prosecution had examined as many as six witnesses. PW1 Purshottam and PW2 Bihari Ram both are the seizure witnesses and they have not supported the case of the prosecution to the extent that they have denied their signatures being put in the seizure memo at the time of seizure. They have stated that they had signed the seizure memo within the premise of the Police Station. There has been no effective cross-examination from these two witnesses, by which their earlier statement which was recorded during the course of investigation could have been proved.

5. PW3 Uddal Singh was the witness of weighment *panchnama* too has not supported the case of the prosecution and turned hostile. PW4 Laxman is the Head Constable, who has entered appearance before the Court below and have stated about the entries made in the *rojnamcha*. The entire case of

the prosecution rests upon the statements of PW5 Bodhi Kujur and PW6 Budheshwar Sai. PW5 is Naib Tahsildar and PW6 is Investigating Officer. There is a categorical finding by the trial Court that there is material contradiction between the statements of PW5 and PW6. Both of them giving different version so far as entries made in seizure memo (Exhibit P/5) is concerned. According to PW5, at the time of seizure memo being made, copy of the same was not handed over to the accused whereas according to PW6, copy of seizure memo has been handed over immediately to the accused at the time of preparation of seizure memo itself. Thus, there is material contradiction between the two witnesses of the prosecution.

6. Likewise, another contradiction detected was that in the statement of PW5, he had stated that seizure witnesses were searched in the presence of Naib Tahsildar before they were sent for the seizure proceedings whereas PW5 has contradicted the same, who has stated that Station House Officer and Constable were not examined before him. This also creates a great element of doubt on the prosecution story. Likewise, the statement of PW6 that the crime number was recorded subsequent to the registration of the complaint whereas when I look into the seizure *panchnama* as well as seizure memo (Exhibit P/5), both these documents had the crime number entered upon it. Thus, there is material contradiction in the statement of PW5 and PW6. Likewise, in the weighment *panchnama* as well as weighment memo, crime number is not mentioned and at the same time arrest memo shows that there is a crime number. This creates a great element of doubt as to whether proceedings were drawn at the place of incident or whether it was drawn in the Police Station.

7. In view of these discrepancies and contradictions in the prosecution story, Court below had granted benefit of doubt to the respondent-accused

and acquitted him from all the charges levelled against him under Section 20(b)(i) of the NDPS Act.

8. Having considered the facts and circumstances of the case and also on consideration of the finding arrived at by the Court below, the State has not been able to make out a strong case for interfering with the finding given by the Court below for reaching to a different conclusion.

9. During the course of arguments, Learned State Counsel could not point out any perversity or there being any infirmity in reaching to said conclusion.

10. In view of the above, this Court does not find a strong case to have been made out by the Petitioner-State for grant of leave to appeal. Accordingly, Cr.M.P. deserves to be and is hereby dismissed. As a consequence, acquittal appeal is also rejected.

**Sd/-  
(P. Sam Koshy)  
Judge**