

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 58 of 2017**

- State Of Chhattisgarh Through District Magistrate Durg Chhattisgarh

---- **Petitioner**

Versus

- Rupesh Meshram S/o Rajesh Meshram, Aged About 21 Years R/o Harnabandha, Behind Shivam Mall, Durg District Durg Chhattisgarh

---- **Respondent**

For Petitioner/State

Mr. Ashish Shukla, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy

Order On Board

16.01.2017

1. The present Cr.M.P. has been filed seeking for leave to appeal against the judgment of acquittal dated 20.07.2016 in N.D.P.S. Act No. 06/2015 by the Court of Special Judge (N.D.P.S.) at Durg (C.G.).
2. Heard on I.A. No. 1/2017 which is an application for condonation of delay. The present Cr.M.P. is barred by 65 days.
3. For the reasons assigned in the said application and also found them to be satisfactory I.A. No.1 is allowed. The delay of 65 days in filing the present Cr.M.P. is condoned.
4. Learned Counsel for the Petitioner State submits that the present is a case where the Respondent was found in possession of 11.08 grams of brown sugar packed in 52 small packets kept in pockets of his trouser which he was wearing.
5. Learned Counsel for the Petitioner State submits that it is the case

where the prosecution has been able to prove its case sufficiently before the Court below, but the Court below has erroneously not appreciated the evidence which was brought before the Court below and has acquitted the Respondent. According to the State Counsel the Court below has not taken into consideration the evidence of the investigating officer and other witnesses whose statement were recorded during the course of the trial with which the charges against the Respondent have been properly established by the prosecution and thus sought leave to appeal to challenge the impugned order.

6. However from the perusal of the record, considering the evidence which have come on record and also taking into consideration the reason assigned by the Court below in acquitting the Respondent, this Court does not find any strong case made out by the State calling for interference with the impugned order.
7. The evidence which have come on record shows that there was discrepancy in the seal put on the sample which was sent for chemical examination to the F.S.L, Raipur as compared with the seal on the sample which has come back from the F.S.L. Raipur in as much as seal on the sample which were sent for F.S.L. Raipur the code was 'RLV CGP' whereas the seal which has come back from the F.S.L. Raipur bore code of 'PLV CGP'. Thus there was prima facie difference in the seal which was sent for chemical analysis. Likewise it is also reflected from the evidence of the investigating officer so far as safe custody of the contraband is concerned. There was a doubt created in the mind of the Court in as much as document reflects that the Malkhana Register which was maintained did not show endorsement of the sample being taken from the Malkhana and being submitted back to the Malkhana on

different dates.

8. The Court below has also relied upon the judgment of acquittal passed by the Supreme Court in case of **KamalJeet @ Kamal v. State of Himachal Pradesh** reported in **2016 Cr.L.J. 115 (H.P.)** for reaching to the said conclusion. Thus from the discrepancies which have come before the Court below prima facie there was sufficient ground for the Court below to have granted benefit of doubt to the accused person.
9. Thus, this Court does not find any illegality while the Court below reaching to the said conclusion and acquitting the accused person for the offence under Section 21 (B) of the N.D.P.S. Act.
10. Thus, for the foregoing reasons this Court does not find any strong ground raised for grant of leave to appeal and accordingly the present Cr.M.P. being devoid of merits stands rejected.

Sd/-
(P. Sam Koshy)
JUDGE