

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 55 of 2013

State of Chhattisgarh, Through Station House Officer, Police Station-
Katghora, District Korba (C.G.).

---- Appellant

Versus

Ghasiram, S/o. Budhwar Singh Kanwar, Aged about 55 years, R/o. Gram
Banwar, Police Station- Katghora, District Korba (C.G.).

**---- Non-applicant
Respondent**

For Appellant : Mr. Anupam Dubey, Advocate

For Respondent : Mr. Ashutosh Shukla, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

07.09.2017

Heard on admission & application for condonation of delay.

1. The leave to appeal is preferred against the judgment dated 16.12.2011 passed in Special Criminal Case No.21/2007 wherein the non-applicant/respondent has been acquitted of the charges under Section 20(A) of NDPS Act.
2. Perusal of the record would show that three Cannabis plant, two big and one little-bit of small size were seized from the Badi i.e. place belong to appellant.
3. According to the prosecution, on 15.09.2006 on an information received that the non-applicant has cultivated Cannabis, his house was raided and from Badi, the Cannabis plants were recovered. PW-1, Satyanarayan, has stated that when he reached near the house of the non-applicant, at that time, he was not present. Subsequently, he came and on enquiry of the place of plant, the non-applicant disclosed that the Badi belong to them. The

evidence is on record that the non-applicant were six brothers and all were separately residing and the Courtyard & Badi is one. The map of the place is filed as Ex.P-9. Perusal of Ex.P-9 which has been proved by PW-4, J.S.Dhurve, the I.O. would show that it is an open place near Kotha and as per the statement of PW-6, the entire area belong to Ghasiram and other brothers Panchram, Santram, Dev Singh etc. Therefore, the Badi belong to whom, it has been not made clear. Consequently, the prosecution was not able to prove that the non-applicant/ accused was in exclusive possession of the land/ area wherefrom plants were recovered. It was also an open space as would be evident from the map. Therefore, the factum of recovery from exclusive possession of the accused was not proved by prosecution. Furthermore, enormous delay of 332 days in filing this petition has been caused and no reasonable explanation has been offered for such delay.

4. Considering the merits and facts of this case, I do not find that *prima facie* case is made out to allow the application for leave to appeal. Consequently, the same is dismissed.

Sd/-
(Goutam Bhaduri)
Judge