

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 561 of 2013**

- State of Chhattisgarh through - Police Out Post Rajgamar ,
P.S. Balco Nagar , Distt. Korba C.G. --- **Petitioner**

Versus

- Chhotelal Patwa S/o Dukalu Ram Patwa Aged About 60 Years
R/o Village Bundeli Junapara , Balconagar , Distt. Korba C.G.
--- **Respondent**

For the State/ applicant : Mr. Sangharsh Pandey, Panel Lawyer
For the respondent : Mr. Sanjay Patel, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board**17.07.2017**

1. Heard on application for condonation of delay.
2. On due consideration, delay of 229 days in filing the appeal is condoned. Accordingly, I.A.No.2 is allowed.
3. Heard on application (Cr.M.P.No.561/2013) for grant of leave to appeal.
4. The Cr.M.P., has been filed against the order dated 30.07.2012 passed by the Special Judge (NDPS Act), Korba in Criminal Case No. 6/2012 wherein the respondent has been acquitted on the ground that the prosecution has failed to prove that the seizure was made in person from possession of the present applicant nor any document was filed showing the ownership of the accused in respect of the two wheelers in respect of the his vehicle.
5. Learned State Counsel would submit that the order of the Court below is completely illegal as it has failed to look into the fact that the seizure was made in person from the possession of the applicant. It is further submitted that there

is no dispute of the fact that the vehicle from which the Ganja was seized belonged to the accused, therefore, there was no necessity to prove the ownership of the vehicle and it is further submitted that the vehicle was being driven by the accused is also not in dispute. Consequently, the finding arrived at by the learned court below is illegal.

6. Per contra, learned counsel for the respondent supported the judgment of the court below.
7. Perused the statement of Investigating Officer (P.W.5) and the other witnesses of seizure. All other witnesses have not supported the case of prosecution except P.W.4 the constable who lodged the FIR. A perusal of the statement of P.W.5 would show that the cannabis was not seized in person from the present applicant. It is alleged that while the present applicant was taking some refreshment in a restaurant, his vehicle stands parked outside the hotel on which cannabis of 16 Kgs. & 900 grams was kept in a bag and it was seized. The statement of P.W.5, the Investigating Officer, prima facie shows that after receipt of the information, the same was recorded and the Panchnama was prepared vide Ex.P-1. It appears that there is gross violation of compliance of section 42(2) of the N.D.P.S. Act as no information appears to have been sent to the Higher Officers to make search and seizure of the goods without any warrant. There is no whisper about the preparation of Panchnama about the weighment of seized ganja and taking out samples there from. The sealed sample (Ex.P-20) was not certified by the seizure witness nor it bears the signature of independent witness. With respect to sending samples of sealed Ganja to the FSL for chemical examination, statement

of the constable was not recorded.

8. The records also show that the seizure was made from a TVS moped which was standing outside a hotel and the seizure memo is marked as Ex.P-9. Whether the vehicle which was parked outside the hotel belonged to accused has also not been proved by the prosecution. When the allegation is made that accused/non-applicant was taking refreshment inside the hotel and the vehicle was parked outside, the prosecution was required to prove the logical connection of the ownership of vehicle that it belonged to the present applicant and the Ganja was seized from his vehicle. The statement of P.W.5 would show that when the raid was conducted, the accused was not at his vehicle but was at a distance and it was quite natural that if certain vehicles were parked outside the restaurant, then in order to bring home the guilt of some of the person who is inside the hotel and taking his refreshment, the prosecution is required to prove the fact that the seizure was made in person from his own vehicle and the vehicle was owned by the accused.
9. Taking into such facts situation of the case and the evidence collected by the prosecution, I do not find any reason to allow the application for grant of leave to appeal. Accordingly, the Cr.M.P., is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE