

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 674 of 2014

State Of Chhattisgarh, Through PS Gaurela, Distt. Bilaspur C.G.

---- Applicant

Versus

1. Durjan Singh Masram S/o Chhotelal Masram, Aged About 22 Years, R/o Daujra, PS Gaurela, Distt. Bilaspur C.G.

2. Rajendra Prasad Rathore @ Mandal S/o Lakhnailal Rathore, Aged About 33 Years, R/o Daujra, PS Gaurela, Distt. Bilaspur C.G.

3. Durgesh Rathore S/o Mithailal Rathore Aged About 19 Years R/o Daujra, PS Gaurela, Presently residing at Jail Dindori, Distt. Dindori (M.P.).

---- Respondents

For State/applicant - Shri Sangarsh Pandey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

12/09/2017

1. Heard on application for grant of leave to appeal.
2. Learned counsel for the applicant submits that as per statement of PW-2 Kamal Sahu constable he has seen the appellants were driving the motorcycle, when he followed them, they fled away. He has proved those facts before the court. Therefore, the finding of the court below in not believing the statement of PW-2 is completely erroneous and leave to appeal is to be granted on this account only.
3. Perusal of the record would show that as per statement of PW-11 on 21/01/2010 when Kamal Sahu went to serve summons, he on apprehension that two persons who were travelling in motorcycle bearing number CG 10 E/7016, were carrying ganja he followed them, thereafter they fled away by leaving the motorcycle. In the court PW-2

has stated that Durjan Singh was the person who was in motorcycle and Durgesh Singh was also with him, whereas PW-2 Kamal Sahu in statement under section 161 Cr.P.C. have not disclosed the identity of the accused so that he could identify the accused after many months of the incident. After a period of time the accused/respondents were arrested. Admittedly there is no test identification parade in the case. Statement of Kamal Sahu was recorded before the court on 19/03/2012 i.e. after more than one year. Further Kamal Sahu PW-2 stated in 161 statement that he went alongwith Mohd. Shafi Khan for service of summons whereas Mohd Shafi Khan who is examined as PW-11 has not corroborated this fact. Instead he has stated that Kamal Sahu alone had went for service of summons and he received information from Kamal Sahu which was recorded in rojnamcha sanha Ex.P-22. Therefore, there is serious contradiction in the statement of PW-2 and PW-11 who are police witness. Admittedly, independent witness PW-8 Gudda @ Hamid and PW-12 Sonu Baghel have not supported the case of the prosecution. Record suggest that ownership of the vehicle belong to one Rajendra for which sale agreement was entered with Durjan Singh. As per PW-11 Mohd. Shafi Khan when the cannabis were seized by Ex.P-15 and the sample was taken out of that packet, no panchnama was prepared, though it was stated that cannabis was separately kept in polythene bag and the malkhana register Ex.P-7 do not support the same as separately seized cannabis were deposited in the malkhana. Ex.P-9 is the receipt whereby alleged cannabis was sent to the FSL on 4/05/2010. Ex.P-7 which is malkhana register shows that cannabis were deposited and sample packets were deposited on 21/01/2010, therefore this fact is missing that when the sample packets

were taken out from the malkhana. No evidence is placed by the prosecution as to when the packets were taken out from malkhana to send it to FSL. The sample packets which was sent to the FSL has been shown it was taken out on 4/05/2010 by Ex.P-34 i.e. the memo of sending samples to FSL. The document Ex.P-8 and Ex.P-9 shows that it was deposited with the FSL Raipur on 10/05/2010. No explanation is on record as to why such packets were in hold for such time. Further if there is no evidence that sample packets were taken out from the malkhana then it cannot be stated that packets which were alleged to have been seized and deposited with malkhana were sent for FSL. Consequently, serious inconsistency in the evidence is on record. In view of this, the finding recorded by the learned court below appears to be just and legal which do not require any interference or re-appreciation of fact. Accordingly, I am not inclined to allow the application for grant of leave to appeal and same is dismissed.

4. Consequently, Cr.M.P. is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE