

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.865 of 2018**

- State Of Chhattisgarh Through Police Station Sakti, District Janjgir Champa, Chhattisgarh.

---- **Petitioner****Versus**

- Ashok Kumar Chandra S/o Shri Shiv Prasad Chandra Aged About 27 Years R/o Karigaon, Police Station Malkharoda, Outpost- Adbhar, District Janjgir Champa, Chhattisgarh.

---- **Respondent**

 For the Petitioner/State : Shri Suryakant Mishra, Panel Lawyer
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

07.9.2018.

1. This is an application for grant of leave to appeal under Section 378(1) of CrPC against judgment of acquittal dated 17.01.2018 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), Janjgir Champa (CG) in NDPS Case No.12/2017 wherein the said Court acquitted the respondent of the charges under Section 20(b)(ii)(B) of the NDPS Act.

2. In the present case Asst. Sub Inspector BN Banafar (PW-12) was posted at Police Station Sakti and on 02.5.2017 he seized contraband article ganja from the respondent. As per the version of this witness, he seized one packet from the dickey of the motor cycle of the respondent. The article seized was sealed and it was given to incharge of Malkhana of the said Police Station. Head Constable Amar Singh (PW-8) was the incharge of

the Malkhana and as per the version of this witness he deposited the sealed packet given by the incharge of the police station and it was registered at Sl. No.47 of the Malkhana register. As per the evidence of the prosecution, seized article was kept in the Malkhana of the Police Station Sakti but there is no evidence that the said article was withdrawn for sending the same to Forensic Science Laboratory. As per the report of Forensic Science Laboratory, Constable 833 Sahdev brought two packets for examination but there is no evidence on record that the article which was seized and kept in the Malkhana of the Police Station Sakti was withdrawn by the incharge of the Police Station and the same was given to Constable 833 Sahdev. In absence of evidence, it is not proved that the article which was seized was sent to the FSL. It is also not clear whether the article kept in the safe custody of the Malkhana is still in the Malkhana or it was withdrawn from there. In absence of evidence of withdrawal of the said article it is not proved that the report of the FSL is regarding to the seized article in the present case. If the report is not of the seized article then the said report cannot be used against the respondent.

3. The trial Court elaborately discussed all the issues and came to a conclusion that it is not proved that the report of the FSL is the report of the article seized in the present case. This Court has no reason to interfere with the finding of the trial Court.

4. Accordingly, the application for leave to appeal is rejected.
Consequently, the CrMP stands dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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