

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 867 of 2018**

- State of Chhattisgarh Through The Station House Officer, Police Station Vijay Nagar, District Surguja (Ambikapur) Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner

Versus

- Jugeshwar Gupta S/o Late Shivnarayan Gupta Aged About 47 Years R/o Village Lawa, Chowki-Vijay Nagar, Police Station Ramanujganj District Balrampur Ramanujganj Chhattisgarh, District : Balrampur, Chhattisgarh

---- Respondent

 For the petitioner/State : Ms. K. Tripti Rao, Panel Lawyer
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****29-08-2018.**

1. Heard on application for grant of leave to appeal under Section 378(3) of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 27-1-2018 passed by the Special Judge under Narcotic Drugs and Psychotropic Substance Act, 1989 (for short, "the Act, 1985") Ambikapur, District Surguja in Special Criminal Case No. 20 of 2015, wherein the said court acquitted the respondent for commission of offence under Section 20(A)(i) of the Act, 1985 for cultivating Ganja plant on or before 11-10-2015 at village Lawa, Police Station Ramanujganj.

2. The case of the prosecution is based on seizure of one plant of cannabis. It is alleged that same was planted in the house of the non-applicant. The said seizure is performed on 11-10-2015.
3. The core issue for consideration of this court is whether non-applicant cultivated one plant of cannabis. From the evidence it is established that said plant was found in the court-yard of the house which was open and it is accessible to anyone. There is no evidence on record regarding cultivation of said plant by the non-applicant. Plantation of cannabis is not one day job but it takes time to grow, therefore, the matter ought to have been investigated on the line as to when the said plant is cultivated and how it is grown and whether the non-applicant has any role to play in cultivation from day one to grow up. In cases of this nature conscious possession has to be established. It is not the case of the prosecution that non-applicant was having any knowledge regarding cannabis plant in his house. He has not contacted anyone for selling Ganja to anyone. Therefore, in absence of cogent evidence, it cannot be held that non-applicant participated in cultivation of the said cannabis plant.
4. In the matter of **Alakh Ram vs. State of Uttar Pradesh, reported in AIR 2004 SC 2907**, Hon'ble the Apex Court held that in absence of cultivation of Ganja plant by the accused, charge is not established. Again, it is held that it is not enough

that few plants were found in the property of the accused. It is quite reasonable to assume that sometimes the plants may sprout up, if seeds happened to be embedded in earth due to natural process. If plants are sprouted by natural growth, it cannot be said that it amounts to cultivation.

5. In the present case, there is no satisfactory evidence or oral and documentary evidence to show that it is the non-applicant who planted the cannabis plant. The trial Court has elaborately discussed all the evidence adduced by the prosecution and came to conclusion that offence of charge is not established. This court has no reason to interfere with the finding recorded by the said court.
6. Accordingly, the application for grant of leave to appeal is rejected and consequently, the petition filed by the applicant/State is also dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju