

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1185 of 2018**

State of Chhattisgarh, Through- Station House Officer, Police Station
Nawagarh, District- Janjgir-Champa (C.G.)

---- **Petitioner**

Versus

Dukharam Kashyap, S/o Kiriri Kashyap, Aged About 69 Years R/o-
Village Ranchabhata, Police Station Nawagarh, District- Janjgir-
Champa (C.G.)

---- **Respondent**

For State/ Petitioner : Mr. Vinod Kumar Tekam, PL.

For Respondent : Mr. Vivek Singhal, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

06/10/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition which is supported with an affidavit of R.G. Dewangan.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 40 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 08.01.2018 passed by Special Judge (NDPS Act), Janjgir-Champa (C.G.) in NDPS Case No. 16/2016, wherein the said court acquitted

the respondent for commission of offence under Section 20(b) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the NDPS Act").

5. As per case of the prosecution, Inspector Abhinavkant Singh (PW-8) who was posted in police station- Navagarh on 10.02.2017 received information that respondent was in illegal possession of contraband article ganja. He recorded the same in Rojnamcha Sanha and after recording, he proceeded towards the spot with police personnel and some other independent witnesses. Article was seized from possession of the respondent and the same was sent to laboratory for examination where test of ganja was found positive.
6. In the present case, seizure proceeding is performed by Inspector-Abhinavkant Singh (PW-8) and as per version of this witness, he prepared two sample packets from the seized article, but from his evidence, it is not clear whether the same were deposited in safe custody of police station as per section 55 of the NDPS Act. Head Constable- Amrit Minj (PW-5) was in-charge of malkhana and as per version of this witness, there is no entry in malkhana register regarding keeping the same samples. He further deposed that it is also not mentioned in acknowledgment that property was sealed and kept in malkhana. When sample was not kept in malkhana as per version of this witness, it is not clear whether the sample prepared by Inspector- Abhinavkant Singh (PW-8) was sent to laboratory. In absence of sending the samples to the laboratory seized in the case, the report of laboratory cannot be used

against the respondent. The prosecution was under obligation to prove that the samples were prepared from the seized article and the same was sent to laboratory for examination, but evidence on this part is lacking.

7. The trial court has assessed the entire evidence and came to conclusion that the charge leveled against the respondent is not established. After reassessing the entire evidence, this Court has no reason to substitute any contrary finding. It is not a fit case where respondent should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.
8. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge