

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1377 of 2018**

State of Chhattisgarh, Through: Station House Officer, Police Station
Sakti, District -Janjgir Champa (C.G.) **---- Petitioner**

Versus

Chandranath @ Chotu Dewangan, S/o Fatteram Dewangan, Aged
About 43 Years, R/o Kaserpara, Ward No. 2, Sakti, Police Station Sakti,
District-Janjgir- Champa (C.G.) **---- Respondent**

For State/ Petitioner : Mr. Ramakant Pandey, PL.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****24/09/2018**

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition.
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 87 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. In the present case, it is alleged that the respondent was in illegal possession of contraband article ganja measuring 2 Kg. on 02.08.2016 at 17.25 p.m. at village- Kaserpara, Sakti, District-Janjgir-Champa (C.G.). As per the evidence, after seizure, the contraband article was handed over to Malkhana Moharrir of said police station. Head Constable-Samaylal, (PW-8) was the Malkhana Moharrir. He deposed before the trial court that the seized articles were trusted to him for safe custody in Malkhana,

but from his evidence and Malkhana register, it is not established that any sample which was taken from the seized article was withdrawn from Malkhana and it was sent for forensic science laboratory.

5. There is no evidence of withdrawing sample in the register and this witness has also not deposed that he handed over the sample to any constable to produce before the laboratory for examination. In absence of evidence of handing over the property for examination in laboratory, it is not established that the property which was seized and sample which was taken, was sent for examination. The case of the prosecution is based on report of the laboratory, but when it is not proved that any sample of article which was seized was sent to laboratory, it cannot be said that the report is prepared from the sample seized in the case, therefore, laboratory report is not proved to be report of sample of this case.
6. The trial court has elaborately discussed the entire evidence and came to conclusion that the respondent is not liable to be convicted. Looking to the entire evidence, this Court has no reason to substitute contrary finding and it is not a case where leave to appeal should be granted. Accordingly, application for grant of leave to appeal is rejected.
7. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge