HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1724 of 2018

State of Chhattisgarh, Through The Incharge Police Station- Sitapur, District- Surguja (C.G.)

---- Petitioner

Versus

1. Shivcharan @ Nanbaba, S/o Parkhit Sahu, aged about 38 Years.
2. Ganesh Sahu @ Bablu, S/o Siyaram Sahu, aged about 19 Years.

   Both R/o Village- Beneya, Junapara, Police Station- Sitapur, District- Surguja (C.G.)

---- Respondents

For State/ Petitioner : Mr. Lav Sharma, Panel Lawyer.

For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

30/11/2018

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 03 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 30.04.2018 passed by Special Judge (NDPS Act), Ambikapur (C.G.) in

Special Criminal (NDPS) Case No. 12/2015, wherein the said court acquitted both the respondents for commission of offence under Sections 20(b)(ii)(B) of the Narcotic Drugs & Psychotropic Substances Act, 1985.

5. As per case of the prosecution, on 27.07.2015, V.K. Awasthi (PW-10)-Inspector of Police Station- Sitapur received an information from the secret informer that one Shivcharan Sahu @ Nan Baba of Village- Beneya, Junapara has kept cannabis in vehicle- Chhota Hathi and going to Radhapur for the purpose of selling the said cannabis as he used to sell by way of roaming in the area. Upon receiving the said secret information, after completing necessary legal formalities, the police officer along with staff reached to the spot and seized the contraband from the said vehicle. Formalities of seizure was complied with. The matter was investigated and the respondents were charge-sheeted who were later on acquitted by the trial court as mentioned above.

6. Learned counsel for the State/petitioner submits as under:-

(i) Statement of investigating officer and other corroborative piece of evidence goes to show that respondents were in possession of contraband article to the tune of 9 Kg., but the trial court acquitted on minor contradiction and omission which is not liable to be sustained.

(ii) Version of other witnesses is supported by report of Forensic Science Laboratory which found test of ganja

positive, but the trial court recorded finding of acquittal contrary to law which is liable to be set aside.

7. From statement of V.K. Awasthi (PW-10), it is established that contraband article was seized from vehicle of the respondents and the same was handed over to head constable-Balmukund Singh (PW-2) who is incharge of malkhana. From evidence of Balmukund Singh (PW-2), it is established that the seized article was given for chemical examination to constable-Pramod Tigga on 29.07.2015, but as per version of constable- Satyaprakash Rathore (PW-11) contraband article was handed over by him on 30.07.2015 to incharge of malkhana and he deposited the same on 31.07.2015 in the laboratory.

8. From memo dated 30.07.2015 of Superintendent of Police, Surguja, it is clear that earlier contraband article was sent for test to laboratory, but it was returned due to absence of draft, seizure and weight report. In that report, it is mentioned that seized article was kept for drying and thereafter, it was again sent to forensic science laboratory. In the malkhana register, it is not mentioned that the said article was deposited in malkhana after returning by the laboratory and it was again sent for examination on 30.07.2015.

9. Once the property was returned and it was not deposited in malkhana, the statement of Satyaprakash Rathore (PW-11) established the fact that the seized article was not returned in malkhana, but article was handed over to him on 30.07.2015.

10. Looking to the factual aspect of the matter, the trial court opined that when the seized article was not returned in the malkhana, therefore, it cannot be said that the same article was sent to laboratory by constable-Satyaprakash Rathore (PW-11) on 30.07.2015. It is under cloud as to whether the article which was seized is really sent to laboratory for test. The trial court opined that it is doubtful whether the seized article was sent to laboratory, therefore, benefit of doubt extended to the respondents and they have been acquitted of the charges mentioned above.

11. After reassessing the entire evidence and documents on record, this Court has no reason to record contrary finding. It is not a case where respondents should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.

12. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun