

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1887 of 2018**

- State of Chhattisgarh, Through : Station House Officer,
Police Station Darbha, District Bastar (C.G.)

---- Appellant**Versus**

1. Ansari Din Mohammad Narul Ain S/o Narul, aged about 30 years, Caste : Mohammadan, Occupation : Driver R/o Lal Jhanda Chowk, House No.466, Peelinadi, Yashodhra Nagar, police Station Yashodhra Nagar, Nagpur (Maharashtra)
2. Mohammad Habib Abdul Gaffar Sheikh S/o Abdul Gaffar Sheikh, aged about 45 year, Occupation : Labour, Caste : Mohammadan R/o Gaddi Godam, Mohan Nagar, Police Station Sadar, Nagpur (Maharashtra)

---- Respondents

For Appellant/State : Ms. K. Tripti Rao, P.L.
For Respondents : None

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt Justice Rajani Dubey

Order on Board by Rajani Dubey, J**06/12/2018**

1. Heard on prayer for grant of leave to appeal.
2. Application for grant of leave to appeal has been filed by the State in the matter of acquittal of respondents vide judgment dated 30.05.2018 passed in Special Case No.24/2016 by Special Judge (N.D.P.S. Act), Jagdalpur, District Bastar (C.G.)

3. Learned counsel for the State submits that the Court below has failed to appreciate reliable evidence of seizure of cannabis from the car i.e. Swift Desire white colour bearing registration No.CG-04-FD-1005 which was being driven by respondents. He has further submitted that the Investigating Officer has duly complied with the mandatory provisions of Sections 42, 52, 55 and 57 of the N.D.P.S. Act, but the trial Court recording its finding that that provision of Sections 42 (2) and 57 of the N.D.P.S. Act have not been complied with, has acquitted the accused/respondents.

4. We have gone through the impugned judgment of acquittal passed by the learned trial Court and records of the case.

5. We find that the learned trial Court, after close scrutiny of the evidence on record, found that Surendra Pambhoi (PW/8)- Investigating officer, has not sent the information with regard to entry, search, seizure and arrest without warrant of authorisation in writing to his immediate official superior within the stipulated time. Thus, the trial Court recorded its finding that the prosecution has failed to prove its case beyond all reasonable doubt.

6. Moreover, learned State counsel could not dispute the factual aspect of the case that the officer who carried out investigation is one who is the informant of the case, for which reason also, the investigation becomes tainted in view of the recent judicial pronouncement of the Supreme Court in the

case of **Mohanlal v. State of Punjab, (2018 SCC Online SC 974).**

7. In view of above consideration, we do not find that there is any patent illegality or perversity committed by the learned trial Court or to say that any material evidence have been ignored before passing judgment of acquittal. The view taken by the trial Court is a plausible view and there does not appear to be a scope of interference by this Court. We, accordingly, do not consider present to be a fit case to grant leave to appeal.

8. Accordingly, CRMP is dismissed at the admission stage itself.

Sd/-

(Manindra Mohan Shrivastava)

Judge

Sd/-

(Rajani Dubey)

Judge