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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1924 of 2018**

- State Of Chhattisgarh Through Police Station- Khadgawan, District- Rajnandgaon, Chhattisgarh

---- Petitioner**Versus**

1. Dukalu Alias Umesh Gawade S/o Maniram Gawade Aged About 28 Years R/o Village- Munjal, Madanwada, Thana- Madanwada, District- Rajnandgaon, Chhattisgarh
2. Dhanay @ Anila Markam S/o Mahar Singh Aged About 24 Years R/o Khursekala, Thana- Manpur, District- Rajnandgaon, Chhattisgarh

---- Respondents

For State / Petitioner : Shri Ramakant Mishra, Dy.A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Order On Board****05/12/2018**

There is an application (I.A.No.1) for condonation of delay in filing application for grant of leave.

Upon due consideration of the grounds urged in the application, the same is allowed. Delay is condoned.

1. Heard on prayer for grant of leave to appeal.

Learned State counsel would submit that despite there being clinching evidence of recovery of explosives on the memorandum statement of the accused proved by the evidence of the investigating officer and the witnesses, the respondents / accused have been acquitted by the learned Trial Court raising doubt with regard to the recovery proceedings.

2. We have perused the impugned judgment as also the material of the case

before us.

3. The only evidence brought against the respondents is of recovery of explosives on the disclosure / memorandum statement of the appellants said to be recorded by the police at 7:30 hrs. in police station – Khadgaon on 22/03/2017.

Learned Trial Court has recorded a finding based on evidence that these accused were produced before the Judicial Magistrate, 1st Class, Ambagarh Chowki on 21/03/2017 under a production warrant and on that day, they were sent to judicial custody up to 04/04/2017 under a jail warrant in District Jail, Durg. Learned Trial Court has taken into consideration that the memorandum statement of the accused (Ex.P/14 and P/15) are said to be prepared at 7:30 hrs. on 22/03/2017 at police station – Khadgaon whereas on that day, they were under judicial custody in District Jail, Durg and there is no material brought before the Court that the police had taken remand of these accused from the competent Court and thereafter, their memorandum was prepared and then they were taken to a place in jungle as stated in the memorandum wherefrom the recovery of explosives at their instance was made. Except this, there is no other evidence led by the prosecution to involve the respondents in the case.

4. We find that the learned Trial Court has acquitted the accused in view of the serious doubt with regard to the recovery proceedings. It is also not clear from the records of the case as to how the memorandum could be prepared and recovery could be made when the accused were kept in judicial custody in District Jail, Durg between the period from 21/03/2017 to 04/04/2017, there being no material brought before the Court to show that any police remand was taken for the purpose from any competent Court. Therefore, we do not find that the learned Trial Court has committed any patent illegality, perversity or ignored material evidence on record in arriving at the conclusion. Accordingly, no case for grant of leave is made out. The petition is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge