

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1934 of 2018**

- The State Of Chhattisgarh Through District Magistrate, District- Bastar, Chhattisgarh., District : Bastar (Jagdalpur), Chhattisgarh

---- Petitioner

**Versus**

1. Sarvesh Tiwari S/o Someshwar Tiwari Aged About 27 Years R/o Nevaiyya, Post And Police Station- Orai, District- Mishripur, Uttar Pradesh
2. Surendra S/o Jilesingh Aged About 23 Years R/o Damtan Sahib, Police Station- Gaddi, District- Jind Haryana
3. Deshraj S/o Dalbeer Aged About 25 Years R/o Jind, Haryana, District : Jind, Haryana
4. Rajpal S/o Ganga Bisand Kashyap Aged About 47 Years R/o Shivpuri, District- Jind, Haryana

---- Respondents

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For State / Petitioner : Shri Anil Pillai, Dy.A.G.

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**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 the seizure of contraband from the possession of the respondents / accused was proved from the reliable evidence of the investigating officer. Therefore, even if the independent witness of seizure have

not supported the case of the prosecution, there was no legal impediment in holding that the seizure is proved because the investigating officer has stated in detail regarding proceedings drawn by him right from the stage of inception i.e. seizure, sampling, safe custody and sending the contraband to the FSL. Learned State counsel would submit that while ordering acquittal of the accused, learned Trial Court has not taken into consideration the settled legal position that even if the independent witnesses did not support the case of the prosecution, seizure could be proved from the evidence of the investigating officer itself, once it is found to be reliable.

2. We have gone through the judgment of acquittal passed by the learned Trial Court and records of the case.

3. We find that the learned Trial Court, after close scrutiny of the evidence on record, found that the independent witnesses of the prosecution namely Waheed Ahmed (PW3) and Juber Ahmed (PW4) have not supported the case of the prosecution and have stated that they have signed only as per the directions of the police officers. The witness of weighment - Khurso @ Kurso Bharti (PW1) has also not supported the prosecution case and has denied that at the spot, he had weighed any contraband. Moreover, learned Trial Court has also found that the statement of two police officers – Patiram Agniwanshi (PW5) and Vinod Singh Thakur (PW6), who are said to have accompanied the investigating officer, have also made contradictory statement and not supported the version of the investigating officer - Saeed Akhtar (PW14) with regard to time of receipt of information and the time when they reached the spot. Moreover, the Assistant Sub-Inspector – Vinod Singh Thakur (PW6) has also stated that the accused were brought to the police station along with the vehicle and no proceeding had taken place at the spot. Learned Trial Court has also taken into consideration that the prosecution has failed to prove as to how and where the

seizure of ganja was made and samples were kept in safe custody and on this aspect also, the case of the prosecution has been found doubtful as there is no entry with regard to safe custody of allegedly prepared sample packets.

4. 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)**.

5. 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. The application for grant of leave to appeal is rejected. This petition is accordingly dismissed.

**Sd/-**  
**(Manindra Mohan Shrivastava)**  
**Judge**

**Sd/-**  
**(Rajani Dubey)**  
**Judge**