

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1394 of 2016

State Of Chhattisgarh Through District Magistrate Jashpur, Chhattisgarh.

---- Appellant

Versus

1. Laxmikant Yadav S/o Madhusudan Yadav Aged About 22 Years R/o - Madwakani, Chowki - Dokda, Police Station Kansabel District - Jashpur Chhattisgarh,
2. Lata Sahu W/o Ashish Agrawal, Aged About 22 Years R/o - Mangari, Police Station - Sitapur, District - Surguja Chhattisgarh
3. Marshal Bhagat S/o Shindo Bhagat, Aged About 24 Years R/o Kurumkela, Police Station - Bagicha District - Jashpur Chhattisgarh
4. Jeevan Manju Vishwas W/o - Goutam Vishwas Aged About 42 Years R/o. Rouni Road Bagicha, Police Station - Baghicha, District - Jashpur Chhattisgarh

---- Respondents

For Appellant/State	:	Mr. Anil Pillai, Dy. A.G.
For respondents No.1 & 3	:	Mr. Harish Khuntiya, Advocate
For respondent No.2.	:	Mr. Vivek Pandey, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board

28/11/2018

Heard on application for condonation of delay in filing appeal.

Upon due consideration, the application is allowed.

Delay is condoned.

Heard on application for grant of leave to appeal.

1. Learned State counsel would argue that even though the independent witnesses of prosecution in the matter of receipt of information regarding transport of ganja and all proceedings drawn at the spot including seizure have not supported the case of the prosecution, the Investigating Officer Anita Prabha Minj (PW6) has proved the entire proceeding which included compliance of Section 42, 50 & 57 of the Narcotics Drugs and Psychotropics Substances Act, 1985 and also that at the spot, the ganja was seized from the possession of the respondents who were traveling in the vehicle. Therefore, the trial

Court ought to have convicted the respondents because there is no requirement of law that conviction cannot be ordered on the basis of the testimony of the Investigating Officer. He would submit that on the basis of the evidence led by the prosecution and proof with regard to sampling, sealing, safe custody and report of the FIR, a full proof of case of conviction is made out.

2. We have gone through the impugned judgment and material on record. Learned Trial Court having found that the independent witnesses of prosecution namely Nandkishore Yadav (PW1), Joseph (PW2), Pitamber (PW3) & Hajibul Sheikh (PW4) have not supported the prosecution case, examined in detail the evidence of the Investigating Officer, Anita Prabha Minj (PW6) keeping in view the settled legal position that even if the independent witnesses have not supported the case of the prosecution, seizure and other proceeding could be proved from the reliable evidence of Investigating Officer and the conviction could be ordered. However, after detailed consideration of the evidence of the Investigating Officer, learned Trial Court has recorded a finding that on account of violation of various mandatory provision including Section 50 of NDPS Act and also that the very seizure is doubtful and that the proof with regard to safe custody and sending sample is also not free from doubt, has held that the respondents are entitled to benefit of doubt. The view which has been taken by learned trial Court does not appear to be suffering from any patent illegality, perversity or in ignorance of any clinching material incriminating evidence on record. Moreover, during the course of argument, learned State counsel could not dispute that present is a case where the first informant and the investigating officer are one and the same. We, therefore, find that even on that aspect, the conviction of the appellant could not be ordered, in view of recent judicial pronouncement in the case of **Mohanlal Vs. State of Punjab, (2018 SCC Online SC 974)**. Therefore, the application for grant of leave to appeal is rejected.

3. The present CRMP is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge