

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.662 of 2019**

- State Of Chhattisgarh Through Its Station House Officer, Police Station Fastarpur, District Mungeli Chhattisgarh.

---- **Petitioner****Versus**

- Sonwa Prajapati S/o Gayadin, Aged About 50 Years R/o Village Chhatan, Police Station Fastarpur, District Mungeli Chhattisgarh.

---- **Respondent**

For the Petitioner/State : Smt. Subha Shrivastava, Panel
Lawyer
For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****26.4.2019.**

1. Heard on IA No.01/2019 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by Hon'ble Supreme Court in the matter of **State of Haryana Vs. Chandra Mani & Ors.** reported in **1996 3 SCC 132**, the delay of 50 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This petition is preferred against the judgment of acquittal dated 06.10.2018 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'Act 1985'), Mungeli (CG) in Special Criminal Case No.01/2018 wherein the said Court acquitted the respondent for the charges under Section 20(a)(i) of the Act, 1985 for illegally cultivating

contraband article ganja/cannabis on 11.11.2017 at about 16.55 hours at village Chattan, Police Station Fastarpur, Distt. Mungeli (CG).

5. To substantiate the charges, the prosecution has examined as many as 11 witnesses. No one deposed before the trial Court regarding Survey No. and area of the land in question in which contraband article was cultivated. No one examined before the trial Court to establish the exclusive possession of the land in question. Therefore, in absence of evidence, exclusive possession of the respondent in land in question is not established. The prosecution was under obligation to establish that the respondent cultivated the ganja/cannabis right from the beginning and that he sown seeds, provided fertilizers and irrigation for cultivating the tree. But no one examined before the trial Court to establish that anything related to cultivation is done by the respondent in the said land. Growing of the ganja tree is not one day job. In the present case investigating officer seized ganja tree on 11.1.2017 and on the basis of seizure charges for cultivation was roped against the respondent. When there is no evidence to show that the respondent was involved in any manner for cultivating the tree, mere seizure of the tree is not sufficient to establish that the respondent is responsible for cultivation of contraband article ganja. Sometime it happens that the tree of contraband article is grown on its own because of the sprouting of seeds which was thrown in the land in some previous time. Therefore, sprouting of tree of its own will not be equated with cultivation of the contraband article. The trial Court has also

marshalled other aspects of the mater and after evaluating the entire evidence recorded finding of acquittal. After reassessing the entire evidence, this Court has no reason to record a contrary finding. It is settled law that if two views are possible, the view in favour of the accused the view in favour of

the accused should be accepted, therefore, it is not a case where interference of this Court is required. This is also not the case where th

e respondent should be called for full consideration of the matter.

6. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**