

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1436 of 2019

- State of Chhattisgarh, through- Station House Officer, Police Station- Lakhanpur, District- Surguja (C.G.) ----- **Petitioner**

Versus

- Smt. Shobha Bai, D/o- Matthuram Teli, Aged about- 33 years, R/o- Village- Rasti, Police Station- Kinginkela, District- Sundergarh (Orrisa) ----- **Respondent**

For State/petitioner : Shri Raghvendra Verma, Govt. Advocate.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

18/11/2019

1. Heard on I.A. No. 01/2019, which is an application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, the same is allowed and delay of 179 days in filing the instant petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against the judgment dated 20th August, 2018 passed by Special Judge (N.D.P.S. Act) Ambikapur (C.G.) in Special Criminal (N.D.P.S.) Case No. 37/2013 wherein the said Court acquitted the respondent for charge under Section 20(B)(ii)(b) of the Narcotic Drugs and Psychotropic Substances (N.D.P.S.) Act, 1985 for having possession of contraband illegal Ganja to the tune of six kilogram on 9th September, 2013 at about 04:05 pm to village- Judwani Nawapara, Thana- Lakhanpur.

5. In the present case, independent witness has not supported the version of the prosecution. Case of the prosecution is based on statement of Bhavesh Kumar Gautam who is Police Sub-Inspector/Investigating Officer (PW-8). As per version of this witness, he seized contraband article from the possession of respondent and thereafter made two samples from the seized article of 25 grams each and same was deposited in Malkhana of Police Station- Lakhanpur.
6. Dilbodhan Singh (PW-7) who is Head Constable and In-charge at Police Station- Lakhanpur deposed that he has not made entry regarding sample from Investigating Officer. He has admitted that there is no entry in the Malkhana Register regarding sample of Ganja.
7. In the present case, when entry is not made in the Malkhana Register regarding sample, the trial Court recorded finding that sample which is sent for chemical examination cannot be treated as sample which is seized in the present case, therefore, test of Ganja by laboratory cannot be conclusively said to be regarding sample of present case and in the present case the view taken by the trial Court is one of the plausible view, therefore, it cannot be concluded that sample produced before the trial Court is report of sample seized in the present case.
8. Investigating Officer Bhavesh Kumar Gautam (PW-8) admitted (Para-18) that he has not sent information to immediate superior officer regarding seizure in the present case as per Section 57 of the Act, 1985 (Para-18). Looking to his evidence it was under

cloud that article was seized from the respondent. The trial Court after elaborately discussing the evidence recorded finding that the charge levelled against the respondent is not established.

9. After re-assessing the entire evidence, this Court has no reason to record contrary finding. It is not a case where respondent should be called for hearing again for full consideration of this petition.
10. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge