

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 1754 of 2019

- State of Chhattisgarh Through Police Station Gurur, District Balod Chhattisgarh.

---- Applicant

Versus

- Bhushan Bithhal Rao Deotare S/o Bithhal Rao Deotare Aged About 24 Years R/o Santoshi Mata Mandir Marg, Sant Dayaneshwar Ward, Hinganghat Wardha, Maharashtra.

---- Respondent

For Applicant-State :- Shri Santosh Bharat, PL

Hon'ble Shri Prashant Kumar Mishra
Hon'ble Shri Gautam Chourdiya, JJ.

Order on BoardByPrashant Kumar Mishra, J26/07/2019

1. Heard on I.A. No.1, application for condonation of delay in filing the application seeking leave to appeal.
2. On due consideration, application is allowed and delay of 12 days in filing the application, seeking leave to appeal, is condoned. Accordingly, I.A. No.1 stands allowed.
3. The Trial Court has acquitted the accused of the charges

under Sections 8/20(ख)(II)(ग) of the NDPS Act, 1985.

4. The accused was allegedly found to possess and transport illicit *Ganja* weighing around 87.49 kg. While acquitting the accused the Trial Court has found that signature of the accused was not obtained in the Talashi Panchnama, Exhibit P-7, Police-Party Talashi Panchnama, Exhibit P-8, Goods Talashi Panchnama, Exhibit P-9, Baramadgi Panchnama, Exhibit P-10, Identification Panchnama, Exhibit P-12, Panchnama of Weighing Machine, Exhibit P-13, Weighing Panchnama, Exhibit P-14 and Seizure Memo Exhibit P-15. Seized article was also not produced in the Court and moreover, the samples of 50-50 grams sent to Raipur, Forensic Science Laboratory (in short "FSL"), for examination, was not proved to be packed and sealed in front of witnesses. The label carrying signature of witnesses is available but there is no mention that packets were sealed. Similarly it is not mentioned in Exhibit P-29, that the samples were received by the FSL in sealed condition.
5. According to the prosecution, the subject vehicle No. MH 27 AC 404 met with an accident and turned turtle and was lying down in such condition near village Chitaud, National Highway No.30. The driver was crying with pain and all the glasses of the vehicle were broken. In view of condition of the vehicle, it has been found that the prosecution has not

been able to prove constructive possession of illicit *Ganja* by the accused.

6. Considering the evidence adduced by the prosecution, we are not inclined to grant leave to appeal. Accordingly, the Cr.M.P. is dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Ankit