

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 2025 of 2019

- State Of Chhattisgarh Through Police Station Borai, District Dhamtari, Chhattisgarh.

---- Applicant

Versus

1. Ramanuj Pandey S/o Late Shri Ramkrishna Pandey Aged About 27 Years
2. Sandeep Mishra S/o Shri Rahul Mishra Aged About 22 Years
3. Roshan Shukla S/o Shri Rahul Mishra Aged About 19 Years

All R/o Gram Sansaripur, Near Hulasi Kusiya Mandir, Thana Raniganj, District Pratapgarh, Uttar Pradesh.

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For Applicant                      :-        Shri Aditya Sharma, PL

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

Order On BoardByPrashant Kumar Mishra, J.09/09/2019

1. On due consideration delay of 51 days in filing the Cr.M.P. is condoned. Accordingly, I.A. No.01 of 2019, application for condonation of delay occurred in filing of the instant Cr.M.P. is

allowed.

2. The trial Court has acquitted the accused persons of the charges under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. The accused persons were traveling in a Maruti Suzuki esteem vehicle bearing Registration No. DL1CV/5794 when they were intercepted near forest barrier, Police Station- Borai, district Dhamtari. During search of the accused persons as well as vehicle, accused Ramanuj Pandey was found to possess 9.400 Kgs of Ganja whereas Sandeep Mishra and Roshan Shukla were found to possess 19 Kgs and 17 Kgs of Ganja respectively.
4. The trial Court has found that, although, the accused persons were traveling in one vehicle and the Ganja was kept in the *Dikki* yet notice under Section 50 was served on them jointly but the search was carried individually. The trial Court would also observe that when entire quantity was found inside the *Dikki* of the vehicle, what is the foundation for distributing the same amongst 3 accused persons for the purposes of affecting seizure.
5. In the matter of **State of Rajasthan V. Parmanand & Anr.** AIR 2014 SC 1384, the Supreme Court has observed that a joint communication of the right available under Section 50 (1) of the Act to the accused would frustrate the very purpose of

Section 50. Accused must be individually informed that under Section 50 (1), he has a right to be searched before the nearest Gazetted Officer or the nearest Magistrate. First of all, if the Ganja was recovered from the *Dikki*, there was no reason for the Investigating Officer to have searched the accused persons individually but once the I.O. proceeds to search them individually on suspicion that they might be carrying other illicit drugs, he has to serve the notice under Section 50 (1) individually. Once having proceeded under Section 50 (1), the prosecution cannot later on turn back to say that since nothing was found during personal search and the Ganja was recovered from the *Dikki*, compliance of Section 50 was not necessary.

6. The trial Court has rightly observed that there is no foundation in the prosecution case as to the reason for distributing the seized Ganja amongst 3 accused persons.
7. In our considered view, the judgment of the trial Court appears to be based on proper application of law and fact, therefore, no case for grant of leave to appeal is made out.
8. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

Sd/-  
**(Prashant Kumar Mishra)**  
Judge

Sd/-  
**(Gautam Chourdiya)**  
Judge