

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2155 of 2018**

State of Chhattisgarh, Through- Police Station- Dongargaon, District-
Rajnandgaon (C.G.)

---- **Petitioner**

Versus

Abdul Rasid, S/o Abdul Gani, Aged About 36 Years, R/o Station
Para, Rajnandgaon, Police Station- Dongargaon, District-
Rajnandgaon (C.G.)

---- **Respondent**

For State/ Petitioner : Mr. Raghvendra Verma, GA.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

15/01/2019

1. Heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
2. This petition is preferred against judgment dated 23.06.2018 passed by Special Judge (NDPS Act), Rajnandgaon (C.G.) in Special Case No. 03/2016, wherein the said court acquitted the respondent for commission of offence under Section 20(b)(ii)(B) of Narcotic Drugs & Psychotropic Substances Act, 1985 for having illegal possession of contraband article ganja measuring 3 Kg. on 25.05.2016.
3. In the present case, B.P. Tiwari, Sub-Inspector (PW-12) is investigating officer. As per version of this witness, after seizure of the contraband article, he separated two samples of 50-50 grams each and sealed the same in presence of witnesses. He again deposed that one specification seal was

also prepared and seized article was handed over to in-charge of malkhana- Deepak Singh (PW-8). Deepak Singh (PW-8) contradicted version of B.P. Tiwari, Sub-Inspector (PW-12). As per version of this witness, packets which were handed over to him, were neither sealed nor signed by any of the witnesses or investigating officer or the respondent.

4. Again, from version of Deepak Singh (PW-8), it is established that in one sample number of crime is mentioned, but the fact remains that the sealed property should be handed over in safe custody till it is sent to Forensic Science Laboratory, but in the present case, looking to the statement of in-charge malkhana- Deepak Singh (PW-8), it is not established that the property was kept in safe custody in same condition.
5. When packets were not having signature of investigating officer or panch witnesses or the respondent, the trial court opined that it is doubtful whether the article which is seized in the present case, is sent for examination. When seized article is not sent for examination, the report which is produced before the trial court cannot be used against the respondent which is showing test of ganja positive.
6. The finding recorded by the trial court is one of the plausible view and it is settled law that if two views are possible, the view which is favourable to the accused/respondent, should be accepted. The trial court has elaborately discussed the entire evidence and recorded finding of acquittal and 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. Accordingly, application for grant of leave to appeal is rejected.

7. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun