

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2640 of 2018**

- State Of Chhattisgarh Through Police Station Pamgarh, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Petitioner**Versus**

- Subasu Dinkar S/o Shri Sonau Dinkar Aged About 33 Years R/o Sirri , Police Station Pamgarh, District Janjgir- Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Respondent

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

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

01/02/2019

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, same is allowed and delay of 173 days in filing the petition is condoned.
3. Also heard on the application for grant of leave to appeal filed under Section 378 (3) Cr.P.C.
4. The instant Cr.M.P. has been filed seeking leave to appeal against the judgment dated 13th March, 2018, passed by the Special Judge under Narcotic Drugs and Psychotropic Substances Act, Janjgir Champa (CG) in NDPS case No.13/2017, wherein the said Court has acquitted the respondent of the charge under Section 20(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the NDPS Act).

5. The respondent has been charge sheeted on the basis of seizure of 4 plants of cannabis from the kitchen garden of his house. O.S. Kanwar (PW1) who is Patwari deposed before the trial Court that in record of rights, the respondent is co-owner of the said land along with co-sharer, Indal, Ramayan Bai, Heera Bai, Arjun and Dhanu.

6. For establishing charge under Section 20(a) of the NDPS Act for cultivation of any cannabis plant it has to be established that the respondent participated in growing the said plant. Case of the prosecution is not based regarding cultivation but it is based on seizure of 4 plants. There is no evidence on record that the respondent taken part in cultivation of cannabis plant right from the beginning. In absence of evidence of cultivation of the cannabis plants, charges are not established. Again, there are two possibilities in growing the cannabis plants. The first by cultivation and second by sprouting of its own. When seeds were thrown by anyone in the said field sprouting of its own is not cultivation as described under Section 20 (a) of the NDPS Act.

7. The trial Court has elaborately discussed the entire evidence and recorded finding of acquittal. After re-assessing the evidence this Court has no reason to record a contrary finding. It is not a case where the respondent should be called for full consideration of the petition. Accordingly, the prayer for leave to appeal is rejected.

8. Consequently, Cr.M.P. stands dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge