

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 72 of 2019**

State of Chhattisgarh, Through: Police Station- Champa, District-
Janjgir-Champa (C.G.)

---- **Petitioner**

Versus

Rampyare Gabel, S/o Shri Awadhram Gabel, Aged About 35 Years,
R/o Kumharikhurd, P.S.- Baradwar, District- Janjgir- Champa (C.G.)

---- **Respondent**

For State/ Petitioner : Mrs. Shubha Shrivastava, P.L.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

14/02/2019

1. Heard on I.A. No. 01/2019, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 199 days in filing the 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 judgment dated 20.02.2018 passed by Special Judge (NDPS), Janjgir-Champa (C.G.) in NDPS Case No. 21/2015, wherein the said court acquitted the respondent for commission of offence under Section 20(b)(i)(ii)

(B) of Narcotic Drugs & Psychotropic Substances Act, 1985 for possessing contraband article ganja to the tune of 1kg. on 04.08.2015 at about 4:30 p.m. at village- Kusmunda Road, Sivani.

5. In the present case, the seized article was kept in Malkhana as per evidence of the prosecution witnesses. As per Rojnamcha Sanha (Ex.P/35), sample was withdrawn from Malkhana on 6th August, 2015 for sending it to Forensic Science Laboratory, but the same was not deposited in the Laboratory and it was returned back to the said police station of Champa. This fact is not mentioned in the Malkhana register whether the property was again deposited in Malkhana after returning the same on 8th August, 2015, therefore, the trial court opined that it is not proved whether the sample seized in the present case is really sent for examination to Forensic Science Laboratory, therefore, report of the Forensic Science Laboratory cannot be used against the present respondent.
6. The prosecution is under obligation to keep the seized article in safe custody and send the same to Forensic Science Laboratory for examination, but when the property was not deposited in Forensic Science Laboratory and it was returned back, the entry ought to have been made in Malkhana register that the property has been returned. When returning of the property is not mentioned in Malkhana register, the trial court was not in position to say that again the same property was withdrawn from Malkhana and sent to Forensic Science Laboratory because resending of the property is not mentioned in Malkhana register.

7. The view taken by the trial court is one of the plausible view and this Court has no reason to substitute 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.
8. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge