

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 123 of 2019**

State of Chhattisgarh, Through: The Station House Officer,
Out Post Khandsara, Police Station Bemetara, District
Bemetara (C.G.)

---- **Petitioner**

Versus

1. Maishak Ganda, S/o - Chomru Ganda, Aged about - 28 years, R/o - Boargaon, Police Station Kosagunda, District Nawrangpur Orissa.
2. Mohan Chandro, S/o - Murli Chandro Ganda, Aged about - 29 years, R/o - Boargaon, Police Station Kosagunda, District Nawrangpur Orissa.

---- **Respondents**

For State/ petitioner : Mr. A. N. Bhakta, Dy A.G.

For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board**

12/03/2019

1. Heard on I.A No.1/2018, application for condonation of delay in filing instant petition.
2. On due consideration, the application is allowed and the delay of 33 days in filing the petition is hereby 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 10th August, 2018 passed by the Special Judge (N.D.P.S. Act) Bemetara (C.G.) in Special Case No. 03/2017 wherein, the said Court acquitted all the respondents for commission of offence

under Sections 20 (b) (ii) (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 for having possession of illegal contraband Ganja measuring 10 kg and 320 gms.

5. In the present case Police inspector Paras Patel (PW-10) has conducted a proceeding of seizure while Parasram Sahu (PW-4) Ganeshu Dohre (PW-5) and Rameshwar Sahu (PW-2), the independent witnesses were present during the process of seizure. All the independent witnesses have deposed before the trial court that no sample was separated from the seized article in their presence while the investigating officer deposed that samples have been taken in their presence. From the evidence of independent witnesses it is not established that sample were taken from seized article and sealed in their presence.
6. Looking to the evidence the trial court opined that it is not proved that samples which were sent for chemical examination were separated from seized article from the respondents. Therefore, it would not be safe to record a finding that the respondents were in possession of contraband article Ganja. The finding of the trial Court is based on relevant material and not based on irrelevant or extraneous material. The view taken by the trial court is one of the plausible view. It is settled law that if two view are possible, the view which is favourable to the accused/respondent should be accepted. Therefore, it is not a case of reversal of acquittal.

7. The trial court has elaborately discussed the entire evidence and came to conclusion that the charge leveled against the respondent is not established. After reassessing the entire evidence, 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.
8. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge