

NAFRHIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 1483 of 2019

- State of Chhattisgarh, through- Police Chowki, Khudiya, Police Station- Lormi, District- Mungeli (C.G.) ---- **Petitioner**

Versus

- Roop Singh Baiga, S/o- Kanwal Singh Baiga, Aged about- 50 years, R/o- Sarasdol, Chowk - Khudiya, P.S.- Lormi, District- Mungeli (C.G.) ---- **Respondent**

For State/Petitioner : Shri Dinesh R.K. Tiwari, Dy. G.A.

Hon'ble Shri Justice Ram Prasanna SharmaOrder on Board26/02/2020

1. Heard on I.A. No. 01/2019, which is an application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, delay of 145 days in filing the instant 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 the judgment dated 1st October, 2018 passed by Special Judge (Narcotic Drugs and Psychotropic Substances Act), Mungeli (C.G.) in Special Criminal Case No. 23/2016 wherein the said Court acquitted the respondent for charge under Section 20(a)(i) of the Narcotic Drugs and Psychotropic Substances Act (for short, the "N.D.P.S.

Act"), 1985 for having illegal possession of 40 plants of contraband article ganja.

5. In the present case, the plant in question was seized from a kitchen garden, but from the evidence of prosecution, it is not established that the said garden was in exclusive possession of the respondent.
6. Again, there is no evidence that the respondent sown seeds and did any act in furtherance of any cultivation. In absence of evidence of possession and in absence of evidence of cultivation, it is not established that plant was grown out of cultivation by the respondent. Some seeds if thrown in any land is sprouted of its own and same cannot be termed as cultivation, therefore, sprout of its own will not amount to cultivation.
7. In the present case, the trial Court recorded finding that the property which is seized is not proved to be kept in safe custody and sample of the same article was sent to laboratory, therefore, any report of laboratory is not connecting piece of evidence for ascertaining whether the seized article is contraband article or not.
8. The trial Court after evaluating the entire evidence recorded finding of acquittal. After going through the record, this Court is of the opinion that it is not a case where interference of this Court is required in the judgment of the trial Court. It is also not a case where the respondent/accused should be called for full consideration of this petition.

9. Accordingly, application for grant of leave to appeal is rejected.

Consequently, the petition stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge

Vasant