

NAFRHIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 1853 of 2019

- State of Chhattisgarh, through- Police Station- Lundra, District- Surguja (C.G.) ----- **Petitioner**

Versus

- Mohan Gupta, S/o- Ramkishun Sao, Aged about 35 years, R/o Village- Batwahi, Police Station- Lundra, District- Surguja (C.G.) ----- **Respondent**

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

Hon'ble Shri Justice Ram Prasanna Sharma

Order 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 66 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 13th February, 2019 passed by Special Judge (Narcotic Drugs and Psychotropic Substances Act), Ambikapur (C.G.) in Special Criminal (N.D.P.S.) Case No. 08/2015 wherein the said Court acquitted the respondent for charge under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act (for short, the "N.D.P.S. Act"), 1985.

5. In the present case, the Investigating Officer is Inspector S.L. Nagendra (PW-7). As per version of this witness, one di-acetylmorphine article was seized from possession of the respondent. He deposed that after seizure seal of Police Station- Lundra was affixed in the seized article, but as per report of Forensic Science Laboratory, the specimen seal was not found of Police Station- Lundra. The trial Court after evaluating the entire evidence recorded finding that the article which was seized and the article which was examined may be different, therefore, report of Forensic Science Laboratory cannot be used against the respondent. In absence of Forensic Science Laboratory report, there is nothing to incriminate the respondent with crime in question. The trial Court evaluating the other aspects of the matter found that the version of the Investigating Officer is not supported by other witnesses who are witnesses of seizure. After assessing the entire evidence the trial Court recorded finding of acquittal. Taking into consideration the report of Forensic Science Laboratory and other evidence, there may be two views.
6. Finding of the trial Court is one of the plausible view. It is settled law that if two views are possible, the view which is favourable to the respondent/accused should be accepted, therefore, this Court has no reason to record contrary finding regarding commission of offence. It is not a case where respondent should be called for hearing again of this petition.

7. 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