

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.2021 of 2019

State Of Chhattisgarh Through Akhilesh Kumar Shrivastava, the
then Food Inspector, Food & Drug Administration, District Raipur
Chhattisgarh.

---- Petitioner

Versus

Kapil Kumar Sadani, S/o. Nanakram, aged about 25 years,
R/o. Proprietor of Lakkhu Kirana Store, Gokul Nagar,
Sadadi Darbar, Boriya Kala, Raipur, District Raipur,
Chhattisgarh

---- Respondent

For the petitioner/State : Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna SharmaOrder on Board26.02.2020

1. Heard on IA No.01/2019 for condonation of delay in filing the petition.
2. On due consideration of the reasons mentioned in the application, the same is allowed and the delay of 51 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This petition has been preferred against judgment of acquittal dated 02.02.2019 passed by Judicial Magistrate First

Class, Raipur (CG) in the Criminal Complaint Case No.453/2011, wherein the said Court acquitted the respondent for charges under Section 7/16 of the Prevention of Food Adulteration Act, 1954.

5. In the present case, procedure was adopted on trial of warrant cases instituted otherwise than on police report. Evidence of Dinesh Nirmalkar (PW-1) was recorded on 09.8.2018, evidence of Sanjay Kumar Nand (PW-2) was recorded on 05.10.2018 and evidence of Food Inspector Akhilesh Kumar Shrivastava (PW-3) was recorded on 05.10.2018 and 30.10.2018. This evidence was recorded before framing of the charge. Charge was framed on 19.12.2018. As per the provisions of Section 246 of the CrPC, after framing of the charge, the respondent wish to be tried and cross-examined the said witness, but no one was examined after framing of the charge.

6. The trial Court opined that opportunity of cross-examination after framing of the charge is not available to the respondent, therefore, evidence adduced by the prosecution side cannot be used to record finding of conviction against the present respondent. The view taken by 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 accused/respondent should be

accepted. In view of the above, it is not a case where interference of this Court is required with the judgment of the trial Court. It is also not a case where the respondent should be called for full consideration of the case.

7. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE