

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 2146 of 2018

- State of Chhattisgarh, through- Police Station- Shivrinarayan, District- Janjgir -Champa (C.G.) ----- **Petitioner**

Versus

- Devnarayan Soni, S/o Ayodhya Prasad Soni, Aged about- 40 years, R/o Village- Rahod, Police Station- Shivrinarayan, District- Janjgir-Champa (C.G.) ----- **Respondent**

For State/Petitioner : Smt. Shubha Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board02/03/2020

1. Heard on I.A. No. 01/2018, which is an application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, the application is allowed and the delay of 111 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 7th March, 2018 passed by Special Judge (Narcotic Drugs and Psychotropic Substances), Janjgir -Champa (C.G.) in N.D.P.S. Case No. 01/2016 wherein the said Court acquitted the respondent for charge under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances (N.D.P.S.) Act, 1985 (for short "the Act, 1985")
5. The respondent was charge-sheeted for having illegal possession of contraband article Ganja to the tune of 1.250 kg on 30th January, 2016 at about 18:55 O'clock at village- Rahod in his beetle-shop.

6. In the present case, the Investigating Officer is Sub-Inspector Arjunlal Patel (PW-9). Though, this witness has deposed before the trial Court that after seizure of contraband article, he handed-over the same to In-charge of Malkhana of Police Station-Shivrinarayan, but said In-charge of Malkhana is not adduced evidence by the prosecution. There is nothing on record to say that the seized article and samples were kept in safe custody of Malkhana and the sample was withdrawn from the said Malkhana and deposited in Forensic Science Laboratory. In absence of entries in Malkhana Register, the trial Court opined that, it is not proved that seized article was kept in safe custody which is mandatory required as per Section 55 of the Act, 1985. In absence of Malkhana Register, the link is missing that the same sample was kept in Malkhana and was sent for examination. The trial Court after evaluating the entire evidence recorded finding that other provisions of the Act, 1985 is also flouted with looking to the evidence on record.
7. 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.
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**