

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 949 of 2013**

- State Of Chhattisgarh Through S.H.O P.S. Khairagarh, Distt. Rajnandgaon C.G.

---- Appellant

Versus

- Ravi Dubey S/o Late Narayan Dubey, Aged About 25 Years R/o Turkaripara, Khairagarh, Distt. Rajnandgaon C.G.

---- Respondent

For State/ Appellant : Shri Gagan Tiwari, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

10.02.2021

1. Heard on application for leave to appeal and also on I.A. No. 01/2013 i.e. application for condonation of delay in filing of acquittal appeal.
2. On due consideration and for the reasons stated I.A. No. 01/2013 is allowed and delay in filing the acquittal appeal is allowed.
3. The present leave to appeal has been filed against the acquittal order dated 21.01.2013, passed in Special Case No. 06/2010 by the Special Judge, NDPS Act, Rajnandgao, whereby the respondent has been acquitted under Section 20 (B) of the Narcotic Drugs & Psychotropic Substance Act, 1985.
4. Learned counsel for the appellant would submit that by order dated 21.01.2013 while acquitting the respondent the Court has failed to take into notice the fact that the seizure witnesses though has turned hostile but the I.O. has supported the case, therefore, on the statement of the I.O. the Court should have considered the same as the statement of the I.O. remains

unrebutted. He further submit that the delay which has been caused for 119 days was due to some administrative sanction which was obtained from the department for filing the appeal and therefore no deliberate delay has been caused, therefore the delay may be condoned and leave to appeal may be allowed.

5. Perused the judgment and the documents.
6. Furthermore, after considering reasons stated the delay is condoned.
7. Perusal of original records would show that as per the prosecution case on 20.09.2010 on a raid being conducted from the possession of the respondent 3.700 K.G. cannabis was seized and thereafter after FSL report was received and it was confirmed that it was cannabis, charge sheet was filed after compliance of Narcotic Drugs & Psychotropic Substance Act, 1985.
8. Perusal of the record of the Trial Court would show that one of the witness Salik Ram (PW-2) in whose presence cannabis was said to be weighted has not supported the case of the prosecution and turned hostile. Two seizure witness (PW-6) Mohammad Salim and Abdul Kadir (PW-7) have also not supported the case of the prosecution and in the seizure they have completely disowned the seizure. According to the statement of Gyanchand Bhosle (PW-4) who was *Malkhana Moharie* in the *Thana* Khairagarh has exhibited the *Malkhana* register. The copy of the *Malkhana* Register is marked as Ex. 12 would show that on 20.09.2010 from the respondent Ravi Dubey 3.700 K.G. cannabis was seized and deposited in the *Malkhana* and out of that 50 gms sample packets were also prepared which was kept in the *Malkhana* which was marked as Article A & B. The same register records that on 24.09.2010 the sample marked A was deposited by one Rajendra who is the constable and carried it to the FSL . Thereby, it shows that the sample of cannabis article A was taken out on 24.09.2010 according to the *Malkhana* register. The forwarding letter Ex. P13 is a memo signed by the SP of Police,

who signed it on 21.09.2010 which purports that a sealed plastic packet containing 50 gms of cannabis marked as Article A was sent for FSL. The carrier of such article Rajendra Mandawi PW-5 is a constable who carried the said sample has stated that on 21.09.2010 he received the sample to be deposited in the FSL and it was carried and was deposited vide Ex. -P14 which is receipt of FSL which is dated 22.09.2010 and contains endorsement that the sample marked as Article - A was received. Thereafter, in the cross examination of Rajendra Mandawi, he stated that he received the sealed packet from the *thana* and according to his statement on 21.09.2010 on the same day he deposited the same with the FSL. His statement is not corroborated by the receipt of the FSL which shows that the sample was deposited on 22.09.2010 the day after. Furthermore, according to the *Malkhana* Register Ex. P12 the sample was taken out from the *Malkhana* on 24.09.2010, therefore if the samples were taken out on 24.09.2010 what was the sample which was received by PW-5 on 21.09.2010 and was deposited on 22.09.2010 as per Ex. P14 with the FSL the ambiguity looms large which has cause a dent to the case of the prosecution. More so, the independent witnesses have not supported the case of the prosecution, therefore even if the statement of I.O. PW- 9 is considered the said lacuna from the receipt of the *Malkhana* and deposited the same with the FSL has not made it clear, for which the benefit of doubt which has been given by the Trial Court to the accused remains.

9. Taking into the facts in totality, I do not find any reason to re-appreciate the facts as no sufficient reason has been assigned. Accordingly, the application for leave to appeal filed under Section 378 (1) of CRPC is dismissed.

Sd/-
(Goutam Bhaduri)
Judge