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## **Mahender Vs The State of Haryana**

### **Criminal Appeal No. 2187-SB of 2008**

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**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Dec. 5, 2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 428#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 15

**Citation:** (2009) 4 RCR(Criminal) 442

**Hon'ble Judges:** Sham Sunder, J

**Bench:** Single Bench

**Advocate:** Manoj Kaushik, for the Appellant; Vikas Chaudhary, AAG, Haryana, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Sham Sunder, J.

This appeal is directed against the judgment of conviction, and the order of sentence dated 6.11.2008, rendered by the

Special Judge, Rewari, vide which he convicted the accused/appellant, for the offence, punishable u/s 15 of the Narcotic Drugs & Psychotropic

Substances Act, 1985 (hereinafter called as "the Act" only) and sentenced him, to undergo rigorous imprisonment for a period of three years, and

to pay a fine of Rs. 5000/-, and in default of payment of the same, to undergo rigorous imprisonment for another period of three months, for having

been found in possession of 14 kgs. poppy-husk, (which falls within the ambit of non- commercial quantity), without any permit or licence.

2. The facts, in brief, are that on 1.11.2006, Jaipal Singh, ASI, Incharge of CIA, GRP, Rewari, alongwith other police officials, was present at

platform No. 7 of Railway Station, Rewari, in connection with train checking. In the meanwhile, on seeing the police party, the accused, who was

carrying a plastic bag, on his right shoulder, tried to go towards platform No. 8, but was apprehended, on suspicion. He kept the plastic bag, on

the ground. On search of the bag, in accordance with the provisions of law, it was found containing 7 packets. In each packet, there was 2 Kgs.

poppy-husk. Two samples of 100 grams each, from each of the packets, were taken out, and the remaining poppy-husk, was kept in the same

packets. The samples, and the packets, containing the remaining poppy-husk, were converted into parcels, duly sealed, and taken into possession,

vide a separate recovery memo. Ruqa was sent to the Police Station, on the basis whereof, formal FIR was registered. Rough site plan of the

place of recovery, was prepared. The accused was arrested. After the completion of investigation, the accused was challaned.

3. On appearance, in the Court, the copies of documents, relied upon by the prosecution, were supplied to the accused. Charge u/s 15 of the Act,

was framed against him, to which he pleaded not guilty, and claimed judicial trial.

4. The prosecution, in support of its case, examined Vikram Singh, ASI (PW-1), Abhay Singh, MHC (PW-2), Dharampal, EHC (PW-3), Ram

Niwas (PW-4), Krishan Kumar, SI (PW-5), and Jaipal Singh, ASI (PW-6). Thereafter, the Public Prosecutor for the State, closed the

prosecution evidence.

5. The statement of the accused, u/s 313 Cr.P.C., was recorded, and he was put all the incriminating circumstances, appearing against him, in the

prosecution evidence. He pleaded false implication. He, however, did not lead any evidence, in his defence.

6. After hearing the Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court,

convicted and sentenced the accused/appellant, as stated hereinbefore.

7. Feeling aggrieved, against the judgment of conviction, and the order of sentence, rendered by the trial Court, the instant appeal, was filed by the

appellant.

8. I have heard the learned Counsel for the parties, and have gone through the evidence and record, of the case, carefully.

9. The Counsel for the appellant, did not challenge the conviction, recorded by the trial Court. Even otherwise, he could not successfully challenge

the same, for the reasons, that the trial Court, after carefully going through the evidence of the aforesaid witnesses, found the same to be cogent,

convincing, reliable, and trustworthy. The trial Court also rightly came to the conclusion, on the basis of the evidence of the formal witnesses, that

the link evidence was complete. The trial Court was, thus, right in coming to the conclusion, on the basis of the reliable evidence of the aforesaid

witnesses, that the accused committed the offence, punishable u/s 15 of the Act. This Court, on thorough scrutiny of the evidence of the

prosecution witnesses, also comes to the conclusion, that the same is reliable. The trial Court, thus, rightly convicted the accused. There is no

reason, to interfere with the findings of the trial Court, in this regard.

10. The Counsel for the appellant, however, submitted that the recovery effected from the appellant, was minor, and the sentence awarded to him,

by the trial Court, is harsh. He further submitted that the sentence awarded to the accused be reduced, as he has been facing the criminal

proceedings, since 1.11.2006, the date when he was apprehended, in this case. The submission of the Counsel for the appellant, in this regard,

appears to be correct. Since, the appellant has been facing the criminal proceedings, since 1.11.2006, it is a fit case, warranting the reduction of

sentence. The submission of the Counsel for the appellant, in this regard, is accepted.

11. In view of the above discussion, the judgment of conviction, being based on the correct appreciation of evidence, and law on the point,

deserves to be upheld. The order awarding the substantive sentence, deserves to be modified suitably, by reducing the substantive sentence.

12. For the reasons recorded above, the appeal is partly accepted. The judgment of conviction is maintained. The order of substantive sentence is

modified, in the manner, that the appellant shall undergo R.I. for 8 months, instead of R.I. for 3 years, awarded to him, by the trial Court, whereas,

the order of imposition of sentence of fine, and the sentence imposed in default of payment of fine, shall remain intact. The Chief Judicial

Magistrate, Rewari, shall comply with the judgment forthwith, in accordance with the provisions of law, keeping in view the applicability of the

provisions of Section 428 Cr.P.C., and submit the compliance report, within a period of one month, from the date of receipt of the certified copy

of the same.