

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL

ON THE 2nd OF JANUARY, 2023

CRIMINAL REVISION NO. 86 OF 2007

BETWEEN:-

**MAHESH S/O SHRI SHIVCHARAN MEENA,
AGED 27 YEARS, R/O GRAM
RATAUDHANA, POLICE STATION-
KUMBHRAJ, DISTRICT- GUNA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI S.S. RAJPUT- ADVOCATE)

AND

**STATE OF MADHYA PRADESH THROUGH
POLICE STATION- KUMBHRAJ,
DISTRICT- GUNA (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI NIRMAL SHARMA – PUBLIC PROSECUTOR)

*This petition coming on for orders this day, the Court passed the
following:*

ORDER

This revision under Section 397/401 of the Code of Criminal Procedure has been filed by the petitioner against the judgment dated

16/01/2007 passed by Additional Sessions Judge, Chachauda, District-Guna (M.P.) in Criminal Appeal No.235/2006, affirming the order dated 03/05/2006 passed in Criminal Case No.732/2003 by JMFC, Chachauda, District- Guna (M.P.), whereby the petitioner has been convicted and sentenced as under:-

Section	Sentence	Fine (Rs.)	Default Stipulation
498-A of IPC	1 Year RI	500/-	3 Months RI

Aggrieved of the said judgment, this revision has been filed by the petitioner before this Court on the ground that the Courts below relied upon inconsistent and contradictory evidence and convicted him. There are lots of contradictions and omissions in the evidence of witnesses. The petitioner is aged about 23 years and no antecedents has been put forth by the prosecution, therefore, the Courts below should have given the benefit of Probation of Offenders Act and Section 360 of Cr.P.C. to him and further not recorded any reasons as specified in Section 361 of Cr.P.C. In support of his submission, learned counsel for the petitioner placed reliance on a decision of the Apex Court in the case of **Lakhanlal @ Lakhan Singh vs. State of M.P.** decided on 04/04/2019 in Criminal Appeal No.1306/2013.

Heard learned counsel for the parties and perused the material

available on record.

Section 360(1) of Cr.P.C. reads as follows:-

“360. Order to release on probation of good conduct or after admonition.-

(1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised,

he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2).

As per the aforesaid provision, said Section contemplates as to which offender is entitled to the benefit of probation and on what conditions. It contemplates that firstly, if any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less; and secondly, when any person under twenty- one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, is entitled to the benefit of probation. Both categories of offenders have to further satisfy that he is not a previous convict; satisfaction of the Court having regard to the age, character or antecedents of the offender and to the circumstances in which the offence was committed. The court being satisfied can order, instead of sentencing him at once to any punishment, that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) and in the meantime to keep the peace and be of good behaviour.

Provisions of Section 361 of Cr.P.C. is mandatory and if trial Court is of the opinion that order to release on probation is not advisable, he has to assign reasons for non-giving the benefit. Beside this, as per Section 360(4) of Cr.P.C., this benefit can be awarded by the appellate Court or by the High Court while exercising its powers of revision.

In case in hand, offence pertains to domestic dispute wherein petitioner is alleged to have harassed his wife due to non-satisfaction of demand of dowry. This petition is pending since 2007 and petitioner was 23 years of age at the time of offence. Along with charge-sheet, prosecution has not filed any antecedents of the petitioner that he is having criminal record or he is of bad character. There is no evidence that petitioner was involved in any offence during this period.

In view of the aforesaid, in the opinion of this Court, benefit of probation ought to have been extended to the petitioner which trial Court as well as appellate Court have not extended. Therefore, this revision is disposed of in terms of Section 360 of Cr.P.C. and it is ordered that petitioner be released on probation of good character for a period of one year on furnishing personal bond before the trial Court within a period of one month from the date of receipt of a copy of the

orders on the conditions that he will maintain peace in the area and will not commit any offence during this period. Probation Officer is also directed to submit quarterly report of the petitioner before the concerning trial Court about his activities.

Accordingly, this Criminal Revision stands **disposed of**.

Certified copy/e-copy as per rules/directions.

(DEEPAK KUMAR AGARWAL)
JUDGE

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