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

**BEFORE
HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL**

ON THE 20th OF MARCH, 2023

CRIMINAL REVISION No. 498 of 2023

BETWEEN:-

**JITENDRA S/O SHRI RAMDAS, AGED ABOUT 25 YEARS,
OCCUPATION- LABOUR, R/O DARSHAN COLONY,
DABRA, GWALIOR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI GAURAV MISHRA- ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION DABRA, GWALIOR (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI C.P.SINGH- PANEL LAWYER FOR THE STATE)

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*This revision coming on for hearing this day, the court passed the
following:*

ORDER

This revision has been filed by the petitioners against the judgment dated 25.1.2023 passed by the 1st Additional Sessions Judge, Dabra, Distt. Gwalior, in Criminal Appeal No.30/2022 affirming the judgment dated 4.4.2022 passed by the JMFC, Dabra, in Criminal Case No.1375/2015 convicting petitioner under Sections 354 and 323 (on five counts) of IPC and sentencing him to suffer 1 year RI with fine of Rs.500/- and TRC with fine of Rs.1,000/- on each count respectively.

Brief facts necessary for disposal of this revision are that on 4.10.2015 complainant had gone to bring milk, his mother and sister had gone to take

water and his wife was alone in the house. Suddenly on hearing cry of his wife, his mother and sister rushed to the house, then his wife told them that petitioner Jitendra was molesting her, at that juncture, petitioner Jitendra carrying Danda, his father iron rod, mother Mamta Danda and his sister Jyoti armed with Baka like object came there and assaulted the complainant, his father, mother and brother Dharmendra, Petitioner Jitendra was harassing her wife for long time. FIR was lodged. Matter was investigated. Petitioner and co-accused were arrested. After investigation, charge-sheet has been filed. Trial was conducted. After trial, petitioner has been convicted as aforesaid. Being aggrieved by the aforesaid, petitioner preferred appeal which was dismissed.

Learned counsel for the petitioner submits that petitioner has been falsely implicated in the case. On the same day one NCR has been filed against the complainant party. It is further submitted that there are material contradictions and omissions in the statements of prosecution witnesses. Complainant Sonu in para 3 of his cross-examination has admitted that before the incident petitioner Jitendra eloped with his wife. Thereafter he has stated that by persuading he took away her. It has been further stated by this witness that his wife was recovered after two days and he does not know how long their love affair is going on, whereas Victim (PW-2) in cross-examination para 5 has stated that on the date of incident she has seen petitioner Jitendra for the first time and she does not know him beforehand.

Learned counsel for the petitioner further submits that in view of such facts, since the petitioner has no criminal past, benefit of the Probation of Offenders Act, 1958 be extended to him. In this regard, learned counsel for the petitioner placed reliance on para 13 of the decision of the Apex Court in the case of **Lakhvir Singh and others Vs. The State of Punjab and others**

decided on 19.1.2021 in Criminal Appeal Nos.47-48 of 2021 which reads as under :

" 13. Even though, Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the PC Act') prescribes a minimum sentence of imprisonment for not less than 1 year, an exception was carved out keeping in mind the application of the Act. In *Ishar Das (supra)*, this Court noted that if the object of the legislature was that the Act does not apply to all cases where a minimum sentence of imprisonment is prescribed, there was no reason to specifically provide an exception for Section 5(2) of the PC Act. The fact that Section 18 of the Act does not include any other such offences where a mandatory minimum sentence has been prescribed suggests that the Act may be invoked in such other offences. A more nuanced interpretation on this aspect was given in *CCE vs. Bahubali, (1979) 2 SCC 279*. It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non-obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act. It is in this context, it was observed in *State of Madhya Pradesh vs. Vikram Das (Supra)* that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. We are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 of IPC, the offence in the present case. In fact, the observation made in *Joginder Singh vs. State of Punjab, 1980 ILR (1981)* are in the same context. "

It is further submitted by learned counsel for the petitioner that Section 354 of IPC though amended after 1958 and prescribes a minimum sentence of 1 year, but it does not contain a *non-obstante* clause, and therefore, in view of aforesaid decision of the Apex Court, benefit of Probation of Offenders Act may be given to the petitioner.

Learned counsel for the State opposed the said prayer.

Heard learned counsel for the parties and perused the record.

Section 354 of IPC reads as under :

" 354. Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine. "

On perusal of Section 354 of IPC, it is clear that it does not contain any *non-obstante* clause.

Looking to the facts & circumstances of the case and the aforesaid decision of the Apex Court in the case of **Lakhvir Singh (supra)**, in the considered opinion of this Court, petitioner is entitled for benefit of Probation of Offenders Act. In view of the provisions of the Probation of Offenders Act, 1958, it is directed that on furnishing a bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousand Only) of good conduct for a period of two years to the

satisfaction of concerned Magistrate, petitioner be released on Probation and his further sentence be treated as undergone.

With the aforesaid, this revision stands **disposed of**.

(DEEPAK KUMAR AGARWAL)
JUDGE

ms/-

