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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR***

CRIMINAL REVISION APPLICATION NO.57 OF 2012

1. Vijay s/o. Ramsh Gabone,
Age 31 years,
2. Amrut s/o. Sewakram Shrawankar ..Applicants.

V/s.

State of Maharashtra ..Respondent.

Mr.Rajnish Vyas for the applicant.

Mr.Mirza, APP for the respondent-State.

CORAM: NITIN W.SAMBRE, J.

DATE : AUGUST 9, 2018

PC.:-

By consent of the parties, taken up for final hearing.

2. Heard Mr.Rajnish Vyas, the learned counsel for the applicants-accused, who are convicted in the Regular Criminal Case No.423/2008 by the Court of the learned Judicial Magistrate First Class, Mouda for an offence punishable under section 323 of the Indian Penal Code. However, they are acquitted of offence

punishable under section 324 read with 34 of the Indian Penal Code.

3. After arguing the matter on merits, the learned counsel for the applicants would urge that the provisions of the Probation of Offenders Act, 1958 ('the 1958 Act' for short) particularly section 4 need to be extended to the applicants / accused for the reason that they are convicted for an offence punishable under section 323 of the Indian Penal Code. The learned counsel for the applicants would urge that facts and the circumstances of the present case, the nature of offence, will demonstrate that the offence is neither serious nor there was any determined pre-intention to commit offence against the society. According to him, there are no criminal antecedents whatsoever. The applicants can be put to such reasonable conditions as may be necessary in the circumstances, for ordering their release on probation.

4. So as to substantiate his contention, the learned counsel for the applicants would rely on the law laid down by the Apex Court in the matter of *Mohd. Hashim v/s. Satate of UP & Ors.*¹

¹ 2017 (2) SC 198

so as to claim that the sentence awarded pursuant to conviction is covered within the requirement of section 4 of the Probation of Offenders Act. He also relied on the judgments in the matters of *Dhurukuumar s/o. Radhakisha Pitti & Anr. V/s. The State of Maharashtra*² and *Prem Chand V/s. The State of Himachal Pradesh*³.

5. On merits, the learned APP opposed the claim. However, when it came to the issue of extending the provisions of Probation of Offenders Act, particularly section 4, the learned APP graciously submits that the Court may pass an appropriate order in the matter.

6. The fact remains that the prosecution was unable to prove the case against the applicants-accused for an offence punishable under section 324 of the Indian Penal Code. The applicants were convicted for an offence punishable under section 323 of the Indian Penal Code. In the present matter, if the role attributed to the applicants is appreciated and the circumstances that the present proceedings are being faced by the applicants-accused for more than last ten years, the punishment awarded for offence punishable under section 323 and the award of fine of

² 2017 All MR (Cri) 4884 (SC)

³ 2017 All MR (Cri) 5358 (S.C.)

Rs.1,000/- i/d. to suffer rigorous imprisonment for 15 days, in my opinion, warrants extending the benefit under section 4 of the Act of 1958.

7. The applicants are ordered to be released on probation. It is ordered that the present applicants shall execute bonds of good behaviour with the Tahasildar / Probation Officer, Mouda, Nagpur within a period of three weeks from today with one surety. The Probation Officer shall observe the behaviour of the applicants for a period of six months. Any default or criminal act on the part of the applicants if noticed by the Probation Officer, he shall immediately inform this Court.

8. The applicants / accused are put to notice that in case if a default report is received against them, the Court will be constrained to convict them to imprisonment forthwith.

9. The Revision as such, stands disposed of in above terms.

(NITIN W.SAMBRE, J.)