



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 24.09.2025

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CRL.A. 268/2020

STATE

.....Appellant

Through: Mr. Pradeep Gahalot, APP for State
with SI Arpit PS Daryaganj.

versus

SAKIR

.....Respondent

Through: Mr. Sarfaraz Ahmed, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present appeal filed under Section 377 (3) Cr.P.C., the State has assailed the order on sentence dated 06.12.2019 passed by learned District Judge (Commercial Court), Central District, Tis Hazari Courts, Delhi in SC No.42/2017 in case FIR No.267/2015 seeking enhancement of sentence awarded to the accused/respondent – *Sakir*.
2. The aforesaid order came to be passed in the context of a judgment dated 28.11.2019 whereby the respondent/accused was convicted for the offence punishable under Section 392/397/34 IPC and vide the impugned order on sentence dated 06.12.2019, the learned Trial Court considered the case of the convict for being released on probation.
3. Learned APP for the State submits that the challenge in the present appeal is limited to the aforesaid aspect. The Respondent was released on probation for two years. He further submits that the testimonies of the prosecution witnesses duly establish the identity and the role of the



respondent in the commission of the offence. It is submitted that the respondent was convicted for a heinous offence and hence benefit of probation ought not to have been granted to him.

4. Learned counsel appearing for the respondent submits that there is no infirmity in the impugned order on sentence which has allowed the respondent to be released on probation. It is contended that State's contention that benefit under the Probation of Offenders Act ought not to be granted to a person convicted under Section 397 IPC stands settled by the decision of the Supreme Court in Lakhvir Singh & Ors. v. State of Punjab reported as **(2021) 2 SCC 763**.

5. A perusal of the record indicates that the testimony of the complainant (PW-3) is consistent, cogent and inspires confidence. It stands duly corroborated by the testimony of the eye-witness. Both witnesses identified the respondent as the person who along with his associates in furtherance of their common intention robbed PW-3 of Rs.1,000/- and PW-5 of a mobile phone. Consequently, the Trial Court convicted the Respondent for the offence punishable under Sections 392/397/34 IPC.

It is further noted in the order of sentence that while considering the prayer to be released on probation, the learned Trial Court observed that the convict was 33 years old, illiterate and had wife and three daughters aged 17, 12 and 5 years, and two sons aged 11 and 4 years old respectively at the relevant time. The convict/respondent was earning his livelihood by selling fish and he was not a previous convict. The learned Trial Court further noted that the convict had shown remorse and repentance.

6. The purpose of releasing offenders on probation is to reintegrate them in society and make them self-reliant, which in turn would make aid in their



reformation. A testament to the importance of this provision is that the Supreme Court in Lakhvir Singh & Ors. v. State of Punjab & Anr.¹, has extended the benefits of the Probation of Offenders Act, 1958 even to convicts who had not completed the mandatory minimum sentence of seven years as prescribed in Section 397 IPC, since IPC was enacted before the Probation of Offenders Act came into being. The relevant extract is hereinbelow: -

“16. A more nuanced interpretation on this aspect was given in CCE v. Bahubali. 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 M.P. v. Vikram Das 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 IPC, the offence in the present case. In fact, the observation made in Joginder Singh v. State of Punjab are in the same context

18. We, thus, release the appellants on probation of good conduct under Section 4 of the said Act on their completion of half the sentence and on their entering into a bond with two sureties each to ensure that they maintain peace and good behaviour for the remaining part of their sentence, failing which they can be called upon to serve that part of the sentence...”

7. In the present case, the conviction is under Section 392/397/34 IPC. It is pertinent to note that Section 392 IPC does not prescribe any minimum sentence. Though Section 397 IPC prescribes a minimum sentence of seven

¹ (2021) 2 SCC 763



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years, the IPC, having been enacted prior to the coming into force of the Probation of Offenders Act, must be read harmoniously with the latter statute. The bar on the application of the Act arises only where a special statute enacted after 1958 prescribes a mandatory minimum sentence coupled with a non obstante clause. and hence, this Court retains discretion to extend the benefit of probation to the appellant, provided the circumstances justify such relief.

8. Considering the aforesaid facts and circumstances and the fact that the respondent has faced trial since 2015 and the impugned order same to be passed in the year 2019 and the fact that the respondent has not been involved in any other case, I find no merit in the instant appeal and the same is accordingly dismissed.

9. A copy of this order be communicated to the trial court.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 24, 2025/rd