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

\+ CRL.A. 520/2018

AVINASH KAHSYAP .....Appellant

Through: Mr.Banamali Shukla, Mr.S.C. Mishra, Advocates with appellant in person

versus

THE STATE (GOVT. OF NCT OF DELHI) .....Respondent

Through: Ms.Shubhi Gupta, APP for State with SI Monu Kumari

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

<u>O R D E R</u>

% **17.12.2025**

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 10.04.2018 and the order on sentence dated 13.04.2018, passed by the learned Additional Sessions Judge (South-West)-02, Dwarka Courts, Delhi, in Sessions Case arising out of FIR No. 325/2008, registered at Police Station Dabri under Section 489-C IPC. By the impugned judgment, the appellant *Avinash Kashyap* was held guilty for the offence punishable under Section 489-C IPC.

2. Vide the order on sentence dated 13.04.2018, the appellant was sentenced to undergo two years' Simple Imprisonment and to pay a fine of Rs. 5,000/-, and in default thereof, to further undergo one month's Simple Imprisonment, for the offence under Section 489-C IPC. The learned Trial Court directed that the appellant be granted the benefit of Section 428

Cr.P.C.

3. During the pendency of the present appeal, the sentence imposed upon the appellant was suspended by this Court vide order dated 04.05.2018.

4. The prosecution case, briefly stated, is that on 05.06.2008, at about 6:45 PM, at DDA Market, Nasirpur, Delhi, the appellant was allegedly found in possession of 50 counterfeit currency notes of the denomination of Rs. 100/- each, purportedly knowing or having reason to believe the same to be forged or counterfeit and intending to use them as genuine. It is the case of the prosecution that on the basis of a secret information, the appellant was apprehended by the police officials and the said currency notes were recovered from his possession.

5. In support of its case, the prosecution examined eight witnesses, including the police officials associated with the apprehension, seizure and investigation of the case. PW-1 Constable *Ashok Kumar* and PW-4 Constable *Sanjay Kumar* deposed regarding the alleged recovery of counterfeit currency notes from the appellant. PW-6, an official from the Currency Note Press, Nasik, proved the expert report opining that the recovered currency notes were counterfeit. The remaining witnesses were formal and police witnesses who supported the prosecution version.

6. In his statement under Section 313 Cr.P.C., the appellant denied all incriminating circumstances and claimed false implication, asserting that he had been picked up from the market following a dispute and that the alleged recovery was planted upon him. The appellant examined one defence witness, namely DW-1 *Naveen Kumar*.

7. The Trial Court, upon appreciation of the evidence on record, held that the prosecution had succeeded in establishing that the appellant was in possession of counterfeit currency notes and that the ingredients of Section 489-C IPC stood proved beyond reasonable doubt. Consequently, the appellant was convicted for the said offence.

8. Upon re-appraisal of the record, this Court finds no ground to interfere with the findings of the learned Trial Court insofar as the conviction of the appellant under Section 489-C IPC is concerned.

9. Learned counsel for the appellant, on instructions, submits that the appellant does not wish to press the appeal on merits and confines his prayer to seeking release on probation**.** It is submitted that the appellant is not involved in any other criminal case, has clean antecedents, and has already undergone the ordeal of criminal proceedings since the year 2008. It is further submitted that the fine amount stands deposited and a receipt thereof is on record.

10. Learned APP for the State, on instructions, confirms that no other criminal involvement of the appellant has been found as per the available record.

11. Pursuant to this Court's directions, the Social Investigation Report (SIR) submitted in respect of the appellant *Avinash Kashyap* records that he is a 39-year-old married man, presently residing with his wife and three minor children at a rented one-room flat bearing No. 599, Room No. 20, Second Floor, Megha Apartment, Pradhan Apartment, AF Rajokari, South-West Delhi. The SIR notes that the appellant migrated from Munger, Bihar to Delhi in the year 2008 in search of employment and is presently working as a call operator in a private firm at Gurugram, Haryana, earning

approximately Rs. 18,000/- per month. He is the sole earning member of the family and pays a monthly rent of Rs. 8,000/-, and the family sustains itself on modest means as he is the sole earning member. The report records that the appellant has studied up to Class XII. The SIR observes that during interaction, the appellant expressed regret over the prolonged litigation arising out of the present case, which has remained pending since 2008. While the appellant stated that the prolonged pendency of the case has caused emotional stress and financial hardship, he was otherwise found to be physically fit. The SIR further records that the appellant has no prior or subsequent criminal antecedents, a fact also confirmed by the report of the SHO, P.S. Dabri. Neighbors have stated that while they were unaware of his past, the appellant has conducted himself as a law-abiding citizen during his residence in the locality. The Probation Officer concludes that the appellant has maintained peace in society for over 17 years since the incident, has strong family support, demonstrates genuine prospects of reformation and rehabilitation, and is therefore found suitable for release on probation under supervision.

12. The underlying object of releasing offenders on probation is to facilitate their reintegration into society as law-abiding citizens, fostering self-reliance and aiding in their reformation. A testament to the importance of this provision is that the Supreme Court in *Lakhvir Singh & Ors. Vs. State of Punjab & Anr.*[1], has extended the benefits of the Probation Act 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

[1] (2021) 2 SCC 763

Probation Act came into being. The relevant extract is reproduced hereunder: -

> *"16. ... A more nuanced interpretation on this aspect was given in CCE v. Bahubali[15]. 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.[16] It is in this context, it was observed in State of M.P. v. Vikram Das[6] 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[17] are in the same context.*
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> *...*
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> *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."*

13. Pertinently, in the present case, Section 489-C IPC, under which the appellant stands convicted, does not prescribe any mandatory minimum sentence. The provision confers discretion upon the Court to award imprisonment, fine, or both. It is well settled that the provisions of the Probation of Offenders Act, 1958 operate in harmony with the penal statute, and that the benefit of probation may be extended in cases where the statute does not expressly prohibit its application or mandate a compulsory minimum sentence of imprisonment. In the absence of any statutory bar under Section 489-C IPC, this Court retains full discretion to consider the grant of probation, subject to the facts and circumstances of the case.

14. Having regard to the appellant's clean antecedents, the favourable observations recorded in the Social Investigation Report, the absence of any criminal involvement either prior or subsequent to the present case, the supportive statements of neighbors, his family responsibilities as the sole earning member, and the fact that the appellant has maintained peace and lawful conduct for over seventeen years since the incident, his Court is persuaded that the ends of justice would be served by adopting a reformative approach.

15. Accordingly, while upholding the judgment of conviction dated 10.04.2018 and the order on sentence dated 13.04.2018, the substantive sentence of imprisonment imposed upon the appellant is modified to the extent that the appellant shall be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, upon furnishing a probation bond in the sum of Rs. 10,000/- with one surety of the like amount, to the satisfaction of the Trial Court, within six weeks from today. The appellant shall maintain peace and good behavior for a period of one year and shall not commit any offence.

16. It is made clear that in the event of any breach of the conditions of probation, or involvement in any other offence during the probationary period, the benefit granted under this order shall stand automatically revoked, and the appellant shall be liable to undergo the substantive sentence as originally awarded by the Trial Court.

17. The appeal is partly allowed and stands disposed of in the above terms.

18. The bail bonds furnished by the appellant stand cancelled and the sureties shall stand discharged.

19. A copy of this judgment be communicated to the Trial Court and the Jail Superintendent, for information and compliance.

MANOJ KUMAR OHRI, J

DECEMBER 17, 2025/*na*