

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 324 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE P. M. RAVAL**

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Approved for Reporting	Yes	No

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MAHESHBHAI HIRALAL OZA

Versus

STATE OF GUJARAT

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Appearance:

MR KIRTIDEV R DAVE(3267) for the Applicant(s) No. 1

MR RAHUL K DAVE(3978) for the Applicant(s) No. 1

MS AMRITA AJMERA(5204) for the Applicant(s) No. 1

PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE P. M. RAVAL**Date : 03/12/2025****ORAL JUDGMENT**

1. The present Criminal Revision Application has been preferred against the judgment and order dated 15.07.2011 passed by the Additional Sessions Judge, Surendranagar in Criminal Appeal No. 22/2010, whereby, the Applicant – Org. accused was convicted for the offence under Section 323 and 504 of the Indian Penal Code and was ordered to sentence two months Simple Imprisonment under both the aforesaid sections and the said conviction was ordered to be run concurrently and

a fine of Rs. 2,000/- is imposed, however, the Applicant was acquitted for the charge under Section 506(2) of the IPC and punishment qua the said charge is quashed and set aside.

2. The facts of the prosecution in nutshell to the effect that :-

2.1 On 18/08/2003 at about 4 pm in the afternoon the present applicant had visited the residential premises of the complainant that is Paras Society, Near Old Junction Road, Surendranagar and thereby had used abusive language against the complainant and her daughter which is mother and sister of the present applicant and it is also alleged that he had given kick and fist blows and had asked them to vacate the premises and had also threatened them of dire consequences and therefore the aforesaid complaint was lodged with the concerned police station for offences punishable u/s. 323, 504 and 506 (2) of the Indian Penal Code against the present applicant. Thereafter, after framing the charges the case was considered by the Chief Judicial Magistrate, Surendranagar, whereby the Ld. Chief Judicial Magistrate after considering the record and evidence had convicted the present applicant u/s, 323, 504 and 506 (2) of the IPC, for which he was required to undergo six months rigorous imprisonment for charge u/s. 323, six months rigorous imprisonment for charge u/s. 504, and one year rigorous imprisonment for charge u/s. 506 (2) and a fine of Rs.3,000/- towards all the said charges vide its order dated 12/04/2010.

2.2 Being aggrieved and dissatisfied by the order passed by the learned Additional Sessions Judge, Surendranagar in Criminal Appeal No. 22/2010 dated 15.07.2011, the present applicant

prefers the captioned Appeal.

3. Ld. Advocate Mr. Kirtidev R. Dave at the outset, submits that even while the applicant was released on bail, a request to grant benefit of probation was sought for. Pursuant to which, vide order dated 12.11.2025, probation report was called for which has been received and placed on record.

4. On perusal of the probation report submitted by the Chief Officer, District Surendranagar, it transpires that except the present case, there are no past criminal antecedents of the present applicant, who served as an Armed police constable of the Gujarat Police and superannuated and on taking various statement of neighbours, no adverse remarks has been placed on record and that the Applicant is also sorry about the incident which had taken place way back in the year 2003, more particularly on 18.08.2003. It also transpires that the alleged incident took place with regard to the property dispute.

5. However, the Trial Court had convicted the present Applicant six months rigorous imprisonment for charge u/s. 323, six months rigorous imprisonment for charge u/s. 504, and one year rigorous imprisonment for charge u/s. 506 (2) and being aggrieved and dissatisfied with the aforesaid order of conviction, preferred the Appeal, whereby, the First Appellate Court had reduced the sentence for two months under Section 323 as well as 504 of the IPC and ordered to be run concurrently and acquitted the applicant for the charge under Section 506 (2) of the IPC. The First Appellate Court while confirming the conviction under Section 323 and 504 of the IPC noted that the

Court has reduced substantial sentence for two months only hence, the request for probation came to be rejected.

6. At this stage, it would be apt to consider the judgment in the case of *Chellammal and another Vs. State represented by the Inspector of Police reported in 2025 INSC 540*, wherein, it held as under:-

“ 26. On consideration of the precedents and based on a comparative study of Section 360, CR.P.C and Sub Section (1) of Section 4 of the Probation Act, what is revealed is that the latter is wider and expansive in its coverage than the former. Inter alia, while section 360 permits release of an offender, more twenty one years old, on probation when he is sentenced to imprisonment for less than seven years or fine, Section 4 of the Probation Act enables a Court to exercise its discretion in any case where the offender is found to have committed an offence such that he is punishable with any sentence other than death or life imprisonment. Additionally, the Non- obstante clause in sub section gives overriding effect to sub section (1) of Section 4 over any other law for the time being in force. Also, it is noteworthy that Section 361, CRPC itself, being a subsequent legislation, engrafts a provision that in any case where the Court could have dealt with an accused under the provisions of the probation act but has not done so, it shall record in its judgment the special reasons therefor.

27. What logically follows from a conjoint reading of sub section 1 of Section 4 of the probation act and Section 361, CRPC is that Section 360, CRPC were not applicable in a particular case. There is no reason why section 4 of the Probation Act would not be attracted.

28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the probation act, we hold that, unless applicability is excluded in a case where the circumstances stated in sub section (1) of Section 4 of the Probation Act are attracted. The Court has no discretion to omit from its consideration release of the offender on probation; On the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfillment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the Court in its discretion decides to extend the benefit of probation. It may upon considering the report of the probation officer imposed such conditions as deemed just and proper. However, if the answer be in the negative. It would only be just and proper for the Court to record the reasons therefore.”

7. More particularly, while rejecting the request of the First Appellate Court, the reasons recorded are that the sentence is substantially reduced, however as noted hereinabove, the applicant is not a hardcore criminal and in peculiar facts and circumstances of the case, the Court ought to have consider the request of granting probation.

8. In view of the aforesaid principle of law, the Court ought to have considered the request of the Org. Accused for granting of probation since, the dispute is purely in the nature of family dispute nor the present applicant is a hardcore criminal and also considering the fact that this is the only alleged offence against

the present applicant, under such circumstances, it would be in the interest of justice that the applicant came to be granted benefit of probation without taking any hyper technical approach.

9. The Applicant is therefore, granted the benefit under the Probation of Offenders Act, 1958 as provided under Section 4 of the Act. The Applicant is released on probation of good conduct instead of directing him to serve out the remaining period of imprisonment. Accordingly, the Appellant to enter bond with one surety of Rs. 15,000/- before the concerned Trial Court failing which the Court below shall issue nonbailable warrant of arrest against the Applicant-accused to serve the sentence imposed by the First Appellate Court. The Order of the substantive sentence imposed on applicant-accused shall remain under suspension till the period of bond i.e. for a period of six months and if there is any breach of condition of bond executed under Section 4 of the Probation of Offenders Act, the Trial Court shall have a liberty to issue non-bailable warrant against the Applicant accused for serving the sentence imposed against him. The Applicant is directed to keep peace and be of good behavior during this period of probation. With the aforesaid observation, the present Application stands allowed partly. R and P is ordered to be sent back forthwith.

(P. M. RAVAL, J)

MMP

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MAHENDRA MOHANBHAI PUROHIT(HCD0074), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 05/12/2025 11:15:08