HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Revision Petition No. 103/2026

Sumitra D/o Rooplal, Aged About 24 Years, Resident Of Murla, Police Station Akola, Presently Residing In Front Of The Police Station, Rps Colony, Rawatbhata, District Chittorgarh.

----Petitioner

Versus

1. Ashish S/o Shrikrishnahari Sharma, Resident Of Gurjar Basti, Pratapnagar, Police Station Rawatbhata, District Chittorgarh
2. State Of Rajasthan, Through Pp

----Respondents

For Petitioner(s) : Mr Kunwar Parikshit Raj Deora
Mr. Prithvi Singh Balot

For Respondent(s) : Mr. Surendra Bishnoi, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

04/02/2026

1. The instant criminal revision petition under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 397 Cr.P.C.) has been filed by the accused Sumitra D/o Roopal Jat calling in question the judgment dated 19.12.2025 passed in Criminal Appeal (CIS) No.13/2024 by the Additional Sessions Court, Begu, District Chittorgarh. By the said judgment, the appeal preferred by the complainant was allowed, the conviction and sentence dated 21.03.2024 recorded by the learned ACJM, Rawatbhata in Criminal Case No.328/2021 were set aside, and the matter was remanded for fresh trial with a direction to record prosecution evidence.

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2. The background facts, necessary for adjudication of the revision are that the respondent No.1 lodged FIR No.17/2021 on 17.01.2021 alleging offences under Sections 341, 323, 504 and 452 of the Indian Penal Code arising out of a local altercation. Upon completion of investigation, a charge-sheet was submitted and the case came to be registered as Criminal Case No.328/2021 before the Court of the learned ACJM, Rawatbhata. The matter was thereafter fixed for prosecution evidence. The record shows that on several dates, including 11.09.2023, 09.10.2023, 11.12.2023, 19.01.2024 and 29.02.2024, the prosecution failed to examine even a single witness despite opportunities having been granted. Ultimately, on 21.03.2024, the accused submitted a voluntary statement admitting guilt. The learned trial court, after satisfying itself regarding the voluntariness of the plea and taking into consideration the attendant circumstances, namely the nature of allegations, absence of criminal antecedents, delay occasioned due to prosecution default and the possibility of reformation, recorded conviction and extended the benefit of Sections 4 and 12 of the Probation of Offenders Act. A nominal amount of Rs.400/- towards prosecution expenses was imposed under Section 5 of the said Act.

3. Being dissatisfied with the sentence alone, the complainant preferred an appeal under the proviso to Section 372 Cr.P.C., which came to be registered as Criminal Appeal (CIS) No.13/2024. By the impugned judgment dated 19.12.2025, the learned appellate court allowed the appeal, set aside the conviction and sentence dated 21.03.2024 and remanded the matter to the trial

court for fresh trial with a direction to record prosecution evidence.

4. The challenge raised before this Court is founded on the grounds that the appeal entertained by the Sessions Court was not maintainable in law; that the appellate court exceeded its jurisdiction in interfering with a lawful conviction and a discretionary order of probation; that the order of remand amounts to an unjustified reopening of a concluded trial, causing prejudice to the accused; and that such interference was undertaken without recording any finding of perversity, illegality or non-application of mind.

5. In the backdrop of the above facts, the issues that arise for consideration are whether the complainant could have validly invoked the proviso to Section 372 Cr.P.C. in the present case, and whether the appellate court was justified in withdrawing the benefit of probation and directing a fresh trial.

6. At the threshold, the question of maintainability deserves consideration. The right of appeal in criminal matters is entirely statutory and must be traced to the provisions of the Cr.P.C. The proviso to Section 372 Cr.P.C. confers a limited right upon a victim to prefer an appeal only against an order of acquittal, conviction for a lesser offence, or imposition of inadequate compensation. A case where the accused stands convicted and is granted the benefit of probation does not fall within the ambit of any of these categories. An order granting probation is a part of the sentencing process following conviction and cannot be equated with an

acquittal or a conviction for a lesser offence. The proviso does not confer upon a private complainant a general right to seek enhancement of sentence. Such power vests exclusively in the State under Section 377 Cr.P.C.

7. Examined in this light, the appeal preferred by the complainant was clearly beyond the scope of the proviso to Section 372 Cr.P.C. The foundation of the appeal lay only in dissatisfaction with the sentence imposed by the trial court. Entertaining such an appeal had the effect of permitting a private complainant to seek enhancement of sentence, a course not sanctioned by the statutory scheme. The impugned appellate judgment, therefore, suffers from a fundamental jurisdictional error.

8. The manner in which the learned appellate court entertained an appeal that was plainly not maintainable in law and proceeded to set aside a lawful conviction and a reasoned sentencing order reflects a serious misappreciation of the statutory limits of appellate jurisdiction. Without recording any finding of perversity, illegality or procedural infirmity in the order of the trial court, the learned Sessions Judge directed a de novo trial, thereby unsettling a concluded adjudication. Such an exercise amounts to an unwarranted assumption of jurisdiction not conferred by statute and has resulted in manifest prejudice to the accused. The approach adopted in the impugned judgment cannot be countenanced.

9. Even otherwise, interference with a sentencing discretion exercised by the trial court is circumscribed by well-settled principles. Grant of probation is not a matter of indulgence, but a conscious sentencing alternative recognised by statute. Interference by a superior court is warranted only where the exercise of such discretion is shown to be illegal, perverse or vitiated by non-application of mind, or where it results in miscarriage of justice. In the present case, the order of the trial court reflects consideration of all relevant factors, including the nature of the allegations, absence of antecedents, prolonged pendency due to prosecution default, voluntariness of the plea and the prospects of reform. There is nothing on record to indicate that the trial court acted arbitrarily or without application of mind. The appellate court, while setting aside the conviction and directing retrial, has not recorded any finding demonstrating perversity or illegality in the sentencing discretion exercised by the trial court. On the contrary, the record suggests that the plea of guilt was accepted only after repeated opportunities to the prosecution had proved futile, and that the grant of probation was intended to prevent further prejudice to the accused in a stale prosecution. The direction for a fresh trial, thus, appears to have the effect of granting the prosecution a second opportunity rather than correcting any legal infirmity, which is impermissible.

10. Further, the remand order, in the facts of the present case, causes serious prejudice to the accused and runs contrary to the principles of speedy justice and finality. The accused had voluntarily admitted guilt, stood convicted and had been extended

the benefit of probation by a reasoned order. Requiring the accused to face a second trial solely because the complainant was dissatisfied with the sentence, particularly when the prosecution had earlier failed to lead evidence despite repeated opportunities, cannot be justified. Appellate intervention must be corrective in nature and not punitive so as to undermine substantive fairness.

11. In view of the foregoing discussion, this Court is of the considered opinion that the appeal entertained by the Sessions Court at the instance of the complainant was not maintainable in law; that the learned appellate court exceeded its jurisdiction in setting aside a lawful conviction and a reasoned order of probation without recording any finding of perversity or illegality; and that the order of remand has resulted in manifest prejudice to the accused.

12. Consequently, the instant criminal revision petition is allowed. The impugned judgment dated 19.12.2025 is quashed and set aside. The judgment and order dated 21.03.2024 passed by the learned ACJM, Rawatbhata in Criminal Case No.328/2021 is restored. If, pursuant to the impugned appellate order dated 19.12.2025, the petitioner is in custody solely on that account, she shall be released forthwith, unless required in any other case. The trial court shall proceed in accordance with law and give effect to its order dated 21.03.2024 along with all statutory consequences flowing therefrom.

13. All pending applications, if any, stand disposed of.

14. Before parting, it may be reiterated that appellate interference in matters of sentence must be exercised with circumspection and for legally sustainable reasons alone. The statutory framework governing appeals and probation is intended to balance justice with finality, and that balance has to be maintained.

(FARJAND ALI),J

7-Pramod/-