IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF NOVEMBER, 2025

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BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL REVISION PETITION NO.146/2021

BETWEEN:

1. HAMEED,
S/O EDINAB,
AGED ABOUT 26 YEARS,
R/O VATHSARE VILLAGE AND POST,
CHIKMANGALURU-577133.

2. JAIBHEEMA,
S/O BASAPPA,
AGED ABOUT 29 YEARS,
R/O INDRA NAGAR, BIDADI,
RAMANAGARA DISTRICT
AND TALUK-562159.

3. MAHENDRA S.P.,
S/O LATE SUBAPPA,
AGED ABOUT 30 YEARS,
R/O NO.94 LTI, 9TH 'A' CROSS,
6TH MAIN ROAD, KENGERI,
BENGALURU-560060.

4. VIJAY S.,
S/O SRINIVAS,
AGED ABOUT 28 YEARS,
R/O NO.327, 3RD CROSS,
MUNESHWARA BLOCK,
BENGALURU-560026.

5. SANTHOSH KUMAR GOWDA,
S/O SADASHIV GOWDA,
AGED ABOUT 28 YEARS,
R/O NO.506, 8TH CROSS,
11TH MAIN, T. DASARAHALLI,
BENGALURU-560057.

6. GIRISH V.,
S/O VARADACHARI,
AGED ABOUT 29 YEARS,
R/O NO.490, 3RD CROSS,
ITI COLONY, K.R.PURAM,
BENGALURU-560016.

7. SANTHOSH KUMAR,
S/O SAIBANNA,
AGED ABOUT 30 YEARS,
R/O YOGESHWAR LAYOUT,
BIDADI, RAMANAGARA,
DISTRICT AND TALUK-562159.

8. VENKATESHAIAH,
S/O GOVINDAPPA,
AGED ABOUT 27 YEARS,
R/O 6TH MAIN ROAD,
KENGARI SATELLITE,
BENGALURU-560060.

9. MANJUNATH N.S.
S/O SHIVALINGAPPA,
AGED MAJOR,
R/O KAMALAMMA KEMPANNA,
COMPOUND, DODDABOMASANDRA,
BENGALURU-560097.

10. BHIMAPPAMURUGUTTI,
S/O MALAKAPPA,
AGED ABOUT 30 YEARS,

R/O K.F.G. THIMAIAH,
NAGADEVANAHALLI,
BENGALURU-560056.

11. VASANTH KUMAR K.G.,
S/O KRISHNEGOWDA,
AGED ABOUT 27 YEARS,
R/O PUTTENAHALLI,
APPALAKSHMI LAYOUT,
J.P. NAGAR, BENGALURU-560076.

12. CHANDRASHEKARAPPA,
S/O NAANJUNDAPPA,
AGED ABOUT 37 YEARS,
R/O SANJEEVAIAH BUILDING,
KATHANAHALLI ROAD, BIDADI,
RAMANAGARA DISTRICT AND
TALUK-562159.

13. SHIVAKUMAR M.K.,
S/O KARIBASAPPA,
AGED ABOUT 30 YEARS,
R/O NO.373, 2ND B MAIN ,
2ND CROSS, R.R. LAYOUT,
NAGADEVANAHALLI,
BENGALURU-560056.

14. BASAVARAJU SINDHAGI,
S/O DODDAPPA,
AGED ABOUT 30 YEARS,
R/O NO.13, 4TH CROSS, 7TH MAIN,
KENGARI SATELLITE TOWN,
BENGALURU-560060.

15. KUMARSWAMY,
S/O PUTTASWAMY GOWDA,
AGED ABOUT 33 YEARS,
R/O NO.1124, 6TH CROSS,

2ND MAIN ROAD, T. MARI SCHOOL,
T. DASARAHALLI,
BENGALURU-560057.

16. PRAKSH B.E.,
S/O EROLAHAIAH,
AGED ABOUT 26 YEARS,
R/O BELEKAMPENAHALLI,
BIDADI, RAMANAGARA,
DISTRICT AND TALUK-562159.

17. SESHADHAR B.E.,
S/O BASAVARAJAPPA,
AGED ABOUT 29 YEARS,
R/O NO.504, JBS QUATERS,
13TH CROSS, NEW TOWNSHIP,
HAL, MARATHAHALLI,
BENGALURU-560037.

18. AYYAPPA N.C.,
S/O CHANDRA N.C,
AGED ABOUT 27 YEARS,
R/O NO.1538, 13TH CROSS,
KALYAN NAGAR, T. DASARAHALLI,
BENGALURU-560057.

19. SRINIVASA B.C.,
SO LATE CHIKKAMUDDAIAH,
AGED ABOUT 24 YEARS,
R/O INDRA NAGAR, BIDADI,
RAMANAGARA DISTRICT AND TALUK-562159.

20. BHASKAR B.U.,
S/O UMAPATHI,
AGED ABOUT 27 YEARS,
R/O NO.9, 5TH CROSS,
4TH BLOCK, DODDABAMASANDRA,
BENGALURU-560097.

21. PRAKASH H.R.,
S/O RAJEGOWDA,
AGED ABOUT 30 YEARS,
R/O NO.130, 1ST MAIN ROAD,
6TH 'C' CROSS,
BAIRAVESHWARA LAYOUT,
NEAR MAHESHWARAMMA TEMPLE,
T. DASARAHALLI,
BENGALURU-560057.

22. SANTHOSH KATTAMANI,
S/O PANDARI KATTAMANI,
AGED ABOUT 27 YEARS,
R/O NO.1, 4TH CROSS,
GANAPATHI NAGAR,
RAJGOPAL NAGAR MAIN ROAD,
BENGALURU-560058.

23. THIMMARAJU,
S/O LATE NAGARAJU,
AGED ABOUT 26 YEARS,
R/O SHIVANNA BUILDING,
6TH A MAIN ROAD,
NEAR ROBIN THEATRE,
KENGARI SATELLITE TOWN,
BENGALURU-560060.

24. PRASHANTH S.M.,
S/O MANJUNATHAIAH,
AGED ABOUT 30 YEARS,
R/O NO.32, J.K. TAILOR BUILDING,
WATER TANK ROAD,
BENGALURU-560060.

25. PARASU RAM,
S/O ERANNA PATTIGAR,
AGED ABOUT 26 YEARS,
R/O NO.282, 5TH CROSS,

2ND MAIN, BHABALI NAGAR,
BENGALURU-560013.

26. ANIL KUMAR
AGED ABOUT 31 YEARS,
R/O NO.86, 14TH CROSS,
INDRA COLONY, RPC LAYOUT,
VIJAY NAGAR, BENGALURU-560040.

27. MAHADEV BHANDAR,
AGED ABOUT 32 YEARS,
R/O NO.26, 1ST MAIN,
NAGADEVANAHALLI,
BENGALURU-560056.

28. SANNA SWAMY K.C.,
AGED ABOUT 30 YEARS,
R/O SUBBAMMA GARDEN,
VIJAY NAGAR, BENGALURU-560040.

29. SATHYA NARAYANA H.,
AGED ABOUT 28 YEARS,
R/O MANJU NILAYA,
1ST CROSS, HUCHAPPA LAYOUT,
SVG NAGAR, MUDALAPALAYA,
BENGALURU-560072.

30. RAMESH K.,
AGED ABOUT 44 YEARS,
R/O NO.17, 2ND MAIN,
2ND CROSS, SHIVAJINAGAR,
RAJAJI NAGAR,
BENGALURU-560010.

… PETITIONERS

(BY SRI. SHANKARAPPA S., ADVOCATE)

AND:

STATE BY BIDADI POLICE,
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA
AT BENGALURU,
AMBEDKAR VEEDHI,
BENGALURU-560001.

… RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP AND
SRI. P. PRASANNA KUMAR, ADVOCATE [ASSITED THE STATE])

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 24.01.2019 IN C.C.NO.1005/2011 ON THE FILE OF HONBLE PRL. CIVIL JUDGE (JR.DN) AND J.M.F.C AT RAMANAGARA FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 147, 114, 324, 323, 504 R/W 149 OF IPC CONFIRMED IN CRL.A.NO.4/2019 ON THE FILE OF I ADDL.DISTRICT AND SESSIONS JUDGE, RAMANAGARA BY ORDER DATED 26.02.2020 AND PETITIONERS MAY BE ACQUITTED.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.11.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

1. This revision petition is filed praying this Court to set aside the judgment of conviction dated 24.01.2019 in C.C.No.1005/2011 on the file of the Principal Civil Judge (Jr.Dn) and JMFC at Ramanagara for the offences punishable under Sections 143, 147, 114, 324, 323, 504 read with Section 149 of IPC, which is confirmed in Criminal Appeal No.4/2019 dated 26.02.2020 on the file of the I Additional District and Sessions Judge, Ramanagara and prayed the Court to acquit the revision petitioners.

2. Heard the learned counsel Sri Shankarappa S appearing for the petitioners and the learned counsel Sri P.Prasanna Kumar who is permitted to assist the State vide order dated 24.03.2025.

3. The factual matrix of the case of the prosecution before the Trial Court is that the complainant was working as Junior Officer HR in M/s. Stanzen Toyotetsu India Pvt. Ltd., Toyota Techno Park, Bidadi and allegation is made in the

complaint that the accused persons with an intention to take away the life had caused bodily injuries to their Senior Management staff on 19.03.2011 at about 10.30 p.m. The members of the unlawful assembly started protest inside the Company and gathered near first aid room of the factory and when its General Manager C.W.2 came to enquire the same, accused Nos.6 and 13 assaulted him with first aid box and window frame over his head and caused him bleeding injuries and other accused assaulted C.W.3 to C.W.7 with their hands and legs causing them simple injuries and threatened C.W.3 to C.W.7 and abused in a filthy language and destroyed the furnitures and glasses and attempted to snatch gold chain from the neck of C.W.7. Based on the complaint Ex.P1, case was registered in Crime No.173/2011. The police investigated the matter and filed the charge-sheet for the offences punishable under Sections 143, 147, 114, 324, 323, 504, 506, 427, 356 read with Section 149 of IPC. The jurisdictional Magistrate having received the charge-sheet, in compliance with Section 207 of Cr.P.C., framed the charges for the above offences against the accused and the accused persons did not plead guilty

and claimed trial. Hence, the prosecution relied upon the evidence of P.W.1 to P.W.15 and Exs.P.1 to 11 along with M.Os.1 to 7. Exs.D.1 and 2 are marked for the defence, but the accused did not choose to lead any defence evidence.

4. The Trial Court having considered both oral and documentary evidence available on record and also the respective submissions, convicted the accused only for the offences punishable under Sections 143, 147, 114, 324, 323, 504 read with Section 149 of IPC and acquitted the accused persons for the offences punishable under Sections 427, 356 and 506 read with 149 of IPC and instead of sentencing them to the aforesaid offences, by exercising the power under Sections 3 and 4 of the Probation of Offenders Act, considered the case of the accused falling under the provisions and called for the report under the Act from the concerned authority by getting executed bond with surety from all the accused.

5. The accused being aggrieved by the said judgment of conviction passed by the Trial Court, preferred Crl.A.No.4/2019. The Appellate Court, having re-assessed both

oral and documentary evidence available on record, when there was a delay of 4 days, condoned the same. However, accepted the reasoning of the Trial Court in coming to the conclusion that the prosecution has established beyond all reasonable doubts that the accused persons by forming an unlawful assembly, joined their hands and used criminal force or violence in the assembly at the abetment of other accused and caused simple injury to P.W.2 to P.W.7 by using M.O.1-steel window frame and also accused persons have assaulted with hands and legs. The First Appellate Court also comes to the conclusion that the accused persons have not made out any case for interference with the judgment and order of conviction passed by the learned Trial Judge and dismissed the appeal.

6. Being aggrieved by the conviction and confirmation, the present revision petition is filed before this Court.

7. The main contention urged by the revision petitioners in this revision petition is that the First Appellate Court erroneously allowed the application filed by the prosecution under Section 391 of Cr.P.C. to examine P.W.15 and

lead additional evidence to produce the certified copy of the FIR registered in Crime No.174/2011 of Bidadi Police Station with the true copy of the complaint as the same were not produced before the Trial Court inspite of serious objection was filed by the petitioners. It is contented that trial was conducted for more than 7 years. The learned Sessions Judge committed an error in allowing such an application. It is contended that the Court below gravely erred in holding that Ex.P.1 is admissible under Section 2(d) read with Section 154 of Cr.P.C. In fact, according to the prosecution, date of offence is 19.03.2011 at about 10.30 p.m. After the said incident, P.W.15 Investigation Officer, clearly admits in the evidence that on 19.03.2011 at about 11.00 p.m. he received a telephone call from P.W.12 and after the receipt of said information, he arrived to the place of incident at about 11.15 p.m. to 11.20 p.m. and P.W.15 met P.W.12 Mayana Gowda in the place of incident and P.W.12 admits that he was the person who informed about the cognizable offence to P.W.15 through telephone. P.W.15 Investigating Officer was there in the spot from 11.20 p.m. upto 01.30 a.m. on 20.03.2011 and he also received the information from P.W.12 about cognizance of

the offence, but he did not record the statement of P.W.12 immediately.

8. It is also emerged during the course of evidence that at 01.30 a.m. on 20.03.2011, P.W.15 left to the police station and thereafter at about 02.00 a.m. on 20.03.2011 again came back to the place of incident within half an hour and remained there upto 06.00 a.m. He further admits that at 11.00 p.m. on 19.03.2011, P.W.12 and C.W.19 Uma Shankar, who is HR Manager of the said Company have been enquired in detail and after the receipt of the said information from P.W.12 and C.W.19, he did not record their statements. He further admits that on 19.03.2011 itself when P.W.15 came to the spot, P.W.15 thoroughly searched the spot and noticed M.O.1 to M.O.3 at the spot and the same has been shown by P.W.12 and he also further admits that there is no impediment for P.W.15 to seize M.O.1 to M.O.3 and this material important aspect has been clearly admitted by P.W.15 and further admitted that on 20.03.2011 at about 09.30 a.m. again P.W.15 came to the spot and he remained for 1½ hours at the spot and thereafter he

went to the police station. It is also contended that Ex.P.1, which is received by P.W.15 on 20.03.2011 at about 06.00 p.m. clearly goes to show that Ex.P.1 is hit by Section 162 of Cr.P.C. It is very clear that once the Investigating Officer goes to spot and verify the spot and knew that cognizable offence has taken place and he has received the information and the case is not registered, the same is hit by Section 162 of Cr.P.C. and the same is ignored by both the Courts.

9. It is also contended that both the Courts gravely erred in holding that P.W.1 categorically admitted that 19.03.2011 was Saturday and it was holiday as per Ex.D.1 and identification of the accused is very important because P.W.1 to P.W.10 and P.W.12 have clearly admitted that there are security officers working in the entrance near the gate and there are three shifts and in all three shifts employees are working and in all there are 1,500 employees working in the factory. There are seven units in the factory and if any employee who has to enter to respective units, they have to swipe the card and thereafter the respective section supervisor will take their attendance. In

the given case, neither the entrance entries and also presence of employees on 19.03.2011, who have allotted special duty records have not been produced in view of Ex.D.1, if any employee has deputed for overtime work, the list will be prepared a week prior, name of workers will be listed in view to this, so the identity of the petitioners at the scene of offence is very much important and list of the persons who were posted for duty on 19.03.2011 is not produced, mere identification in the Court randomly cannot be taken as admissible and this aspect is also ignored by both the Courts.

10. It is also the contention of the petitioners that both the Courts below erred that the statement of P.W.2 to P.W.6 was recorded on 25.03.2011 and this delay of recording has not been explained and there is tampering of dates of recording of witnesses as 25th instead of 28th and these injured witnesses are very much available in the said Company on 21.03.2011 itself and there is no explanation from the prosecution and the Trial Court ignored the material aspects, which has been admitted by witnesses and P.W.15, still the Court below accepted that there

is no delay of recording of statements of witnesses and the said finding is erroneous against the judgment of the Apex Court in a case of ***Ganesh Bhavan Patel V/s State of Maharashtra reported in AIR 1979 SC 135*** and also in a case of ***Harbeer Singh V/s Sheehpal reported in AIR 2016 SC 4958*** wherein the Apex Court held that recording of statements of witnesses are fatal to the case of prosecution and this aspect is completely ignored by the Trial Court as well as the First Appellate Court.

11. Both Courts below gravely held that Ex.P.2 - spot mahazar is proved and panch witness P.W.11 who is working as Manager in the said company has been examined as pancha and even prior to Ex.P.2, P.W.15 has visited to the spot on 19.03.2011 and continuously he was very much present. The witness P.W.15 admitted that he had seen MO-1 to MO-3 on 19.03.2011, but he did not seize the same. MO-1 is a steel window frame said to have been used to assault P.W.2, if this MO-1 has been removed from First Aid room, the place where it has been removed is not been mentioned in Ex.P.2 and MO-1 has a blunt sharp edge weapon which cannot be lifted by one

person and MO-2 cotton cloth and MO-3 First Aid box, if these M.O-3 was used to assault, it would cause the fracture. No witnesses have stated that MO-3 was used to assault. Further P.W.15 and other witnesses have admitted that in First Aid room, for 24 hours, Doctors would be present, if working is going on in a company. According to witnesses, a male nurse was present and also no such male nurse was cited nor examined and even prosecution further alleged that computer instruments were broken, but no such broken pieces have been seized nor the witness was at First Aid room. No such material have been seized in First Aid room that is stones were thrown inside First Aid room and that is the case of the prosecution and there is no existence of light at the scene of offence, so identifying the assailants of the injured is impossible and even if it is admitted that there are about 10 to 12 security people working in factory on shift basis, if any untoward incidents could have happened in the premises, it is their duty to inform jurisdictional police station and none of the security officers have been examined nor secured as panchas to Ex.P.2. Inspite of this

lacuna, the incident has been taken inside First Aid room is highly unsustainable in law.

12. Both the Courts below gravely erred in holding that, even though *prima facie* case of prosecution has not been established and even P.W.1 and other witnesses admitted that petitioners who served in a company for 10 to 15 years, they did not provide insurance, provisional fund and medical assistance and also did not increase their wages and also filed dispute before Labour Commissioner.

13. The Court below gravely erred in accepting the evidence of P.W.1 to P.W.6 as if it had been proved beyond reasonable doubt. In fact P.W.15 who recorded the statements of so called witnesses on 25.03.2011 and even then their evidence is completely improved version and omissions are proved through P.W.15. The P.W.1 and P.W.2 omission have been proved and the same has been extracted during the course of cross-examination. All the omissions which have been extracted from the evidence of witnesses was not discussed by both the Courts and particularly evidence of P.W.15 is very clear

that nothing is stated before him and elaborative omissions are extracted from his cross-examination. In a criminal case, omissions, commissions and contradictions are very important and the same was not taken note of either by Trial Court or First Appellate Court.

14. The Court below gravely erred in accepting the evidence of MO-6 coupled with MO-4 and MO-5 admitting MO-6 is a admissible evidence. In fact, though P.W.15 received and seized M.O.6 under Ex.P.3, he did not view the contents of MO-6 and even under Section 65(B) of Evidence Act, as if the primary evidence has not been viewed by P.W.15 and even MO-6 does not disclose nor clearly visible with regard to who are the persons in the MO-6 coupled with MO-4 and MO-5. Even P.W.15 who visited the scene of offence on 19.03.2011 at 11:15 p.m., and P.W.12 was also present and he has shown the CC T.V footage of company premises, but did not disclose in Ex.P.2 inspite of this lacuna, in a prosecution case, still the Trial Court below holds that admissibility of M.O-4 to M.O-6 is highly unsustainable in law. The counsel also during his argument,

apart from the grounds which have been urged in the revision, vehemently contend that even inspite of accused No.17, who filed the complaint, at the first instance itself registered the C.Misc and not taken any action and hence it clearly shows that I.O was acted upon in terms of the management.

15. The counsel also would vehemently contend that statements of P.W.1, P.W.3 and P.W.4 is very clear that it is nothing but a joint complaint and P.W.15 omissions elicited during the course of cross-examination have not been discussed and material omissions were not considered. The counsel also would vehemently contend that the case of the accused was registered after the registration of the case of the management and the same goes to the very root of the case of the prosecution. The counsel would vehemently contend that Ex.P.1 complaint was given after thought that is after 19 hours with details of badge number. The witnesses P.W.2 to P.W.6 are the injured witnesses and wound certificate clearly discloses that injuries are simple in nature. The wound certificate doesn't discloses the name of the assailants and particularly timings at

what time they went to the hospital and took the treatment and wound certificate Ex.P.5 is from Fortis Hospital. P.W.14 is examined and contents are spoken, but not treated the injured and so also P.W.6 at Ex.P.6 and wound certificate of P.W.3 at Ex.P.8 discloses that no external injury and so also wound certificate of P.W.4 at Ex.P.9 which discloses that no external injury and wound certificate of P.W.5 at Ex.P.10, but Doctor has not been examined and no external injuries. Ex.D.1 clearly discloses that it was Saturday an holiday. The MO-4 to MO-6 are CC T.V footage and no 65(B) certificate is produced to prove the CD which is second evidence.

16. The learned counsel also would vehemently contend that there was a delay in lodging the complaint and F.I.R was also registered belatedly and I.O is biased. The Ex.P.1 is signed by P.W.1, P.W.3 and P.W.4 and attendance certificates are not produced and security officials are not examined and even not cited as witnesses. During the evidence, there was an improvement. The Trial Court invoked the Probation of offenders Act. Both the Courts ignored the material evidence and even

though I.O was very much present immediately after the incident, not enquired anyone and recorded the statement.

17. Per contra, learned counsel appearing for the respondent-State would submits that delay in giving the complaint was due to obtaining permission from higher authority and the same will not be a fatal to the case of prosecution. The counsel would vehemently contend that CC T.V evidence to be taken note of and the same is also displayed in Court. The counsel would vehemently contend that though the Trial Court invoked the Probation of offenders Act, but there is no any order at all, only called for the report. But, the fact is that there is a conviction, but no sentence. When such being the case, appeal is not the remedy. The counsel would vehemently contend that no judgment before the Court in view of not passing any order invoking of Probation of offenders Act and with regard to the M.O-5 is concerned, no 65-B certificate is necessary, since original is produced. Once the original is produced, it does not require any 65-B certificate.

18. The learned counsel would vehemently contend that P.W.1 is examined who is the custodian of original CPU and the very CC T.V is produced. The counsel also brought to notice of this Court, the witnesses P.W.2 to P.W.7 are injured and Ex.P.4 to Ex.P.8 and Ex.P.10 are wound certificates. The witnesses P.W.13 and P.W.14 are Doctors who have been examined before the Court. The counsel would vehemently contend that the scope of Revision Petition is very limited. P.W.1 and P.W.8 to PW12 are the eye witnesses to the incident and no illegality is found in the order of the Trial Court as well as the First Appellate Court. The Court while exercising the revisional scope, very slow and delay in registering the case is not a significant. P.W.15 rushed to the spot and he was there at the spot immediately after the incident.

19. The learned counsel in support of his argument, he relied upon the judgment reported in ***(2018) 8 SCC 165*** in case ***of Kishan Rao V/s Shankaragouda*** and brought to notice of this Court paragraph No.12 while considering the scope of the revision jurisdiction by the High Court. Therefore, it would not be appropriate for the High Court to reappreciate the evidence and

come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. The Revisional Court is not meant to act as an appellate court.

20. The counsel also brought the notice of this Court an order passed in ***Crl.A.No.447-SB of 1984 in case of Rattan Singh V/s State of Haryana*** and brought to notice of this Court paragraph No.2 wherein an observation is also made that when the legislature in its wisdom has not permitted an appeal against the order of Court of sessions in which the sentence passed only was imprisoned for a term not exceeding 3 months or a fine not exceeding Rs.200/- or both such imprisonment and fine, it cannot be conceived that an appeal was permissible when no sentence at all had been passed.

21. The counsel also relied upon the judgment reported in ***(2019) 10 SCC 161 in case of State of M.P V/s Man Singh*** and brought to notice of this Court, paragraph Nos.8, 9

and 11 invoking of Probation of offenders Act. When the High Court was deciding the revision petition against the order of conviction, it could have, after calling for a report of the probation officer in terms of Section 4 of the Act, granted probation. Even in such a case, it had to give reasons why it disagreed with the Trial Court and the First Appellate Court on the issue of sentence. The Court must obtain a report from the probation officer and then order his release on his taking bonds with or without securities, to appear and receive sentence when called upon during such period, not exceeding three years or as the Court may direct and in the meantime to keep peace and good behaviour. The proviso of sub-section (1) of Section 4 clearly provides that Court cannot order release of such an offender unless it is satisfied that offender or his surety has a fixed place of abode a regular occupation in the place over which the Court can exercise jurisdiction. In paragraph No.11 also, an observation is made that we fail to understand under what authority the High Court could have passed such an order. Even in a case where the High Court grants benefit of probation to the accused, the Court has no jurisdiction to pass an order that the

employee be retained in service and held that grant of benefit of probation under the Act does not have bearing so far as the service of such employee is concerned.

22. The counsel also relied upon a judgment reported in ***(2014) 10 Supreme Court Cases 473*** in case of ***Anvar P.V V/s P.K.Basheer*** and others and brought to notice of this Court paragraph No.24 wherein the Apex Court discussed in detail the situation would have been different had the appellant produced primary evidence, by making available in evidence, the CDs used for announcement and songs. CDs were made therefrom which were produced in Court, without due certification. Those CDs cannot be admitted in Evidence since the mandatory requirement of Section 62 of the Evidence Act are not satisfied. It is clarified that not withstanding what we have stated here in the preceeding paragraphs and secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act, if an electronic record as such is used as primary evidence [under Section 62 of the Evidence Act], the same is

admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act.

23. The counsel also relied upon the judgment reported in ***(2020) 7 SCC 1*** in case of ***Arjun Pandit Rao Khotkar V/s Kailash Kushanrao Gorantyal*** and brought to notice of this Court relevant paragraph No.3 wherein discussion is made in the said judgment once again re-iterated that quite obviously, the requisite certificate in sub-section (4) is unnecessary, if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the computer as defined, happens to be a part of a computer system or computer network and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contacted in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The counsel referring these

statements would vehemently contend that when the original is produced before the Court, no need of production of the 65-B(4) certificate.

24. In reply to this argument, the counsel appearing for the revision petitioner would vehemently contend that the very arguments of the State cannot be accepted. The very hard disk is not produced and only CD is produced and MO-5 is only a storage device and the same is also not seized by drawing any mahazar and MO-4 is CPU and no mahazar was drawn with regard to the seizure of the same and the same is marked before the Court. When the original is not produced and CD is produced, it requires 65-B(4) certificate and the same is not produced and this material was not considered by the Trial Court as well as the Appellate Court.

25. In reply to this argument, learned counsel appearing for the respondent-State would submits that mahazar is not required and in the P.F, it is shown. The learned counsel also relied upon the judgment reported in ***(1973) 1 SCC 471*** in the case of ***R M MALKANI vs STATE OF MAHARASHTRA*** and

brought to notice of this Court paragraph No.24 wherein discussion was made that illegality was said to be a contravention of Section 25 of the Indian Telegraph Act. There is no violation of Section 25 of the Telegraph Act in the facts and circumstances of the present case. The tape recorded conversation was obtained by illegal means and even if the evidence is illegally obtained, it is admissible. The reason given was that if evidence was admissible, it matters not how it was obtained. There is of course always a word of caution.

26. In reply to this argument, the counsel for revision petitioner would submits that even P.F is also not produced before the Court and not marked for seizure of MO-4 CPU and only direction was given to the officials of the company to produce the CD and even CD is also not prepared in the presence of the I.O. The counsel also would vehemently contend that when the CD is produced before the Court, it requires a certificate that there was no any manipulation and no FSL report is produced that the same is genuine and the same is not manipulative. Hence, the counsel would vehemently contend

that both the Courts fail to take note of in the absence of certificate under Section 65-B(4), ought not to have relied upon M.O.6.

27. Having heard the revision petitioner's counsel and also learned counsel appearing for the respondent-State and also considering the principles laid down in the judgment referred supra, this Court has to re-consider the material within the scope and ambit of the revisional jurisdiction, the points that would arise for consideration of this Court are:

(1) Whether the Courts below have committed an error in convicting the accused persons for the offences invoked against them and whether this Court can exercise its revisional jurisdiction in coming to the conclusion that the reasoning of both Courts amounts to miscarriage of justice?

(2) Whether the Courts below have committed an error in not noticing the fact that FIR was hit by Section 162 of Cr.P.C?

(3) Whether the Courts below have committed an error in relying upon M.O.4 to M.O.6 for

convicting the accused persons and the said electronic evidence is not the legal evidence and inadmissible?

(4) Whether the revision is not maintainable as contended by the State in the absence of sentence or an order on Probation of Offenders Act?

(5) What order?

Point Nos.(1) to (4):

28. It is the case of the prosecution before the Trial Court that the accused persons have indulged in committing the offence of forming an unlawful assembly and in furtherance of common object, assaulted the victims and caused life threat and abused in filthy language. As a result, some of them have sustained injuries and they were assaulted with M.Os.1 and 3 and with their hands and legs and destroyed the furnitures and glasses and attempted to snatch gold chain from the neck of C.W.7. Hence, offences are invoked against them under Sections 143, 147, 114, 324, 323, 504, 506, 427, 356 read with Section 149 of IPC. The Police based on the complaint of P.W.1 and others have registered the case and investigated the matter and

filed the charge sheet. The accused persons did not plead guilty and claimed trial.

29. The prosecution mainly relies upon the evidence of P.W.1 to P.W.15 and Exs.P1 to P11 along with M.O.1 to M.O.7 and documents Exs.D1 and D2 were marked on behalf of the defence.

30. The Trial Court having assessed the oral and documentary evidence, convicted the accused for the offence under Sections 143, 147, 114, 324, 323 and 504 read with Section 149 of IPC and acquitted the accused for the offence under Section 427, 356 and 506 read with Section 149 of IPC. The Trial Court, instead of sentencing the accused persons for the offences for which they have been convicted, exercised the powers under Section 4 of Probation of Offenders Act in coming to the conclusion that Section 4 of the Probation of Offenders Act could be invoked and called for the report and did not pass any order fixing the date for further orders. The same is challenged before the Appellate Court and the Appellate Court confirmed the

same. Hence the present revision petition is filed before this Court.

31. This Court already in detail discussed the grounds which have been urged in the revision petition and so also the arguments addressed by learned counsel appearing for the revision petitioners as well as learned counsel for the respondent-State and also taken note of the principles laid down in the judgments which have been referred supra. Now, this Court has to re-analyze the material and the scope of revision is very limited and need not reassess the evidence available on record and only if there is any miscarriage of justice, then Court can look into the evidence available on record. Learned counsel appearing for the revision petitioners relied upon certain judgments and so also learned counsel appearing for the respondent-State which have been discussed above and this Court also would like to rely upon those judgments having considered the factual aspects of the case is concerned.

32. Now let this Court decide on the factual aspects of the case. It is the specific case of prosecution that incident has

taken place on 19.03.2011 and the timings of the incident is very significant that incident has taken place at 10.30 p.m. on 19.03.2011 within the jurisdiction of Bidadi Police Station and place of incident is industrial area of Bidadi i.e., M/s. Stanzen Toyotetsu India Private Limited. The incident is in connection with the demands of the labours and accused Nos.1 to 30 are also the employees of the said particular company. It is the case of the prosecution also that near the factory first-aid room, unlawful assembly was formed and when the C.W.2-General Manager came forward to enquire, he was assaulted with window frame by accused No.6 and accused No.13 assaulted with first-aid box and other accused persons assaulted C.Ws.3 to 7 and as a result, all of them have sustained simple injuries. Immediately, the Police Inspector rushed to the spot at around 11.20 p.m., who has been examined as P.W.15 before the Trial Court.

33. The main contention of revision petitioners before this Court is that a complaint was lodged by accused No.17, who went to the Police Station on the same day and filed a complaint

and the same was received by H.C. No.449-Chandrappa and it was registered as Crl.Misc.No.120/2011 and not registered as criminal case. The main contention of revision petitioners is that when the complaint was given, the same was registered as criminal miscellaneous at the first instance, inspite of cognizable offences are invoked against the management and its supporters and allegation under Section 3(10) of SC & ST (POA) Act was invoked. But, it is the main contention of learned counsel appearing for the revision petitioners that when the Inspector rushed to the spot, by that time P.W.1-Lokesh, Junior officer was very much present at the spot and he did not give any complaint and others were also very much present and the Police Officer, who came to the spot noticed that cognizable offence has taken place. But, he did not record the statement of either P.W.1 and also the persons, who were present at the spot. The records also reveal that the complaint was given by P.W.1, who was present at the spot on the previous date, but given complaint on the next day at 6:00 p.m. When the Police Officer came to the vicinity, he did not lodge the complaint till the next day at 18.00 hours on 20.03.2011 and complaint was marked as Ex.P1 which

is a joint complaint given by P.Ws.1, 3, 4 and C.W.16. The said complaint was registered as Crime No.173/2011 for the above offences and while lodging the complaint, afterthought, they included the Employees Badge Numbers of accused Nos.1 to 25 in the complaint Ex.P1 and also mentioned in Ex.P7-FIR. The names of P.Ws.1 to 4, P.W.7 and C.W.5 are mentioned in Ex.P1-complaint and in Ex.P7-FIR. It is also contented by learned counsel appearing for the revision petitioners that though according to the Police, complaint was given on 20.03.2011, FIR was registered and the same was sent to Court on the very same day on 20.03.2011 through P.C.No.959, but no time was mentioned. But, the records disclose that Ex.P7 was received by the Court on 21.03.2011 at 10.45 a.m. through P.C.No.959. But, the P.C., who took Ex.P7 was not examined before the Trial Court with regard to the delay and even if it is sent on the previous day, what made to present the same before the learned Magistrate on the next day at 10.45 a.m., no explanation and P.C.No.959 was also not examined to explain delay.

34. It is also the main contention of revision petitioners that Ex.P1-complaint and Ex.P7 are hit by Section 162 of Cr.P.C,

commencement and duration of investigation before lodging a complaint is found on record. That means, P.W.15-Vijaykumar visited the scene of offence on the very day of the incident i.e., at around 11:20 p.m. and he was very much present from 11:20 p.m. to 01.30 a.m. on 20.03.2011. He also inquired with P.W.1, P.W.12 and P.W.9 also narrated the entire incident to P.W.15. The P.W.15 also searched the entire premises at the scene of offence and noticed CCTV cameras at the security office and entrance gate. It has also emerged during the course of evidence, though he went at around 01.30 a.m. to Police Station and he came back to the spot at 02.00 a.m. and he was very much present upto 06.00 a.m. and he remained at the scene of offence and he even enquired with P.W.12-Mayannagowda and he had shown the entire spot. It has also emerged during the course of evidence that from 09.30 a.m. to 11.00 a.m. on 20.03.2011, P.W.15 has continued his enquiry in the scene of offence. Hence, it is very clear that P.W.15 commenced his investigation before lodging the complaint. It is important to note that the complaint was lodged on 20.03.2011 at 06.00 p.m. It is also important to note that according to P.W.15, mahazar

was drawn in the place of incident between 07.00 p.m. to 08.00 p.m. at first instance in terms of Ex.P2 and the place was shown by P.W.11 and mahazar was drawn in the presence of these witnesses and seized articles M.O.1-window frame, M.O.2-blood stained cotton piece and M.O.3-first-aid box, since the case of prosecution is also that assaulted the victim with window frame and first-aid box. The PF was also given to the Court on 21.03.2011.

35. Having taken note of these materials, learned counsel appearing for the revision petitioners relies upon the judgment in ***State of A.P. vs. Punati Ramulu and others*** reported in ***AIR 1993 SC 2644,*** wherein discussion was made with regard to Section 154, complaint about cognizable offence and also discussed with regard to Section 162, FIR or statement recorded during investigation-Investigation Officer deliberately not recording FIR after receipt of information of cognizable offence-registering the complaint as FIR after reaching the spot and after due deliberations, consultations and discussions, complaint could not be treated as FIR, it would be a statement

made during investigation and hit by Section 162. In the case on hand, it has to be noted that P.W.15 categorically admits and witnesses, who have been examined on behalf of the prosecution categorically depose that Police Officer-Vijaykumar rushed to the spot at 11.20 p.m. and he was very much present from 11.20 p.m. to 01.30 a.m. and again he went to the Police Station, but he did not register the case. Again, he came back to the incident spot and he was very much present in the vicinity from 02.00 a.m. to 06.00 a.m. and also on the next day from 09.00 a.m. to 11.30 a.m. and he met P.W.1 and others, but he did not choose to record their statement and also register the case and only after due deliberations, consultations and discussion, case was registered in terms of Ex.P1 and Ex.P7, since complaint was lodged at 06.00 p.m. on the next day, but it reached the Magistrate on the next date at 10.45 a.m on 22.03.2011. Hence, it is clear that Investigating Officer was having knowledge about cognizable offence has taken place, but he did not choose to record the statement of P.W.1 at the spot, though he was very much present and even did not record the statement of others, who were present there and did not enquire with other persons,

who have witnessed the incident and only registered the case of the management, even though the accused No.17 gave the complaint earlier on the very same day, immediately after the incident at the Police Station and the P.C., who received the complaint i.e., P.C.No.449-Chandrappa registered the same as criminal miscellaneous. It is also to be noted that having registered the case of management in Crime No.173/2011 and the complaint which was given earlier by accused No.17 was registered as Crime No.174/2011 for the offence punishable under Section 323 of IPC and Section 3(10) of SC & ST (POA) Act subsequently. The Court has to take note of the said fact into consideration and both the Courts have not taken note of the said fact into consideration. Hence, the judgment of the Apex Court referred supra i.e., ***State of A.P. vs. Punati Ramulu and others***, is very clear that the said complaint could not be treated as FIR, it would be a statement made during investigation and the same is hit by Section 162.

36. This Court also in the judgment in ***H.C. Karigowda @ Srinivasa and Others vs. State of Karnataka, by***

Holenarasipura Town Police reported in ***ILR 2013 KAR 992*** discussed in detail the scope of Sections 154 and 162, FIR or statement recorded during investigation-failure on the part of the Investigating Officer to record the FIR immediately on receipt of the information of cognizable offence-registering the complaint as FIR after reaching the spot and after due deliberations, consultations and discussion-legal sanctity of such a complaint which was treated as FIR, held that if the Investigating Officer deliberately does not record the FIR after receipt of information of cognizable offence, registering the complaint as FIR after reaching the spot and after due deliberations, consultations and discussions, such complaint cannot be treated as FIR, it would be only a statement made during investigation and hit by Section 162 of Cr.P.C. In the case on hand, it has to be noted that Investigating Officer had visited the spot immediately after having the knowledge of cognizable offence has taken place, but failed to record the statement and even he went to the Police Station at 01.30 a.m. and he was in the Police Station between 01.30 a.m. to 02.00 a.m. and again, he came back to spot at 02.00 a.m. and he was very much

present till 06.00 a.m. and thereafter also again he visited the factory premises at 09.00 a.m. on the next day and he was very much present till noon. But, complaint was registered on the next day evening at 06.00 p.m. and it clearly discloses that only after due deliberations, consultations and discussions, complaint was taken from P.W.1 and others and this fact is also not noticed by the Trial Court.

37. It is also important to note that the complainant P.W.1 categorically admits in the cross-examination that without looking the shift chart, he cannot tell in which shift he was working. He also categorically admits that on 19.03.2011, to show that he was on duty, he has not produced any document before the Investigating Officer and also he did not place any record before the Investigating Officer, who are all working at that time and when the Investigating Officer came to his office, he did not furnish any of the documents. It is also important to note that, he went to the office on the next day on 20.03.2011 and he was in the house in between 11.00 p.m. to 11.30 p.m. and when he went to the company, there was no need to go to

company on the next day. But he was called upon by P.W.12-Mayannagowda. It is also important to note that he categorically says that whole night, till he left the office, the Sub-Inspector was along with him and he was also having a mobile and there was no any difficulty to lodge the complaint with the Investigating Officer when Investigating Officer was along with him, but the only reason given by him is that he was having fear. But, when he came back to the office on the next day, he was not having any fear and also categorically admits that while coming and going, he has to go in front of the Police Station. Further, he categorically admits that complaint was prepared in the computer and admits that having discussed the same with P.W.12-Mayannagowda, he prepared the complaint. Hence, it is clear that, after due deliberations, consultations and discussions with P.W.12 and also with the Inspector, who was there along with him whole night complaint was given on the very next day belatedly at 6:00 p.m on 20.03.2011.

38. It is also important to note that P.W.15 also categorically admits that he had noticed all the M.O.1 to M.O.3

at the spot, when he had visited the scene of occurrence on the previous day itself. But, he conducted the mahazar on the next day in terms of Ex.P2 and seized M.O.1 to M.O.3. It is also important to note that through P.W.1, M.O.4 to M.O.6 are marked. M.O.6 is the C.D and there is no any Certificate under Section 65-B(4), which mandates that whenever secondary evidence is placed before the Court, it should contain a Certificate. No doubt, mahazar was made after seizure of M.O.6-C.D, the same was done in the Police Station, not in the factory premises. It is also important to note that when M.O.6 was marked through P.W.1, he categorically says that M.O.6-C.D. was prepared on the instructions of the Police and he also categorically says that Police have not noticed same and he got prepared the C.D. from the C.C. camera and the same was copied in a different place which was not mentioned in the complaint. But, he categorically says that they went to Police Station at around 04.00 p.m., but complaint was received at 06.00 p.m. and P.W.12-Mayannagowda was along with him from 02.00 p.m. to 04.00 p.m. and he gave the complaint and after typing the complaint, he examined the CCTV visuals and did not

disclose the same before the Police and Inspector came to Police Station at 05.00 p.m. and enquired him and Mayannagowda also in detail informed the same. But the fact is that Inspector was very much present on the previous day whole night in the factory premises and also in the early morning and throughout on the next date.

39. It is also important to note that when the mahazar was conducted, with regard to the seizure is concerned, signatures were not taken on the seized articles. But, he categorically says that at the time of conducting the mahazar, he had shown the CCTV camera to the Investing Officer and the presence of CCTV camera was not noted in the mahazar and nothing is mentioned in the mahazar also for having witnessed the CPU and visuals. The Police also did not collect the same, but only says that Inspector told him to give C.D. and about the said instruction also, nothing is mentioned in the mahazar. He also categorically admits that Police did not witness the CPU and even CPU was not sealed and Police were very much present and no instruction was given not to use the same. He also categorically

admits that in the presence of Police, he could have prepared the C.D. and there was no difficulty and the same is also admitted. But, the police only after leaving the scene of occurrence, he prepared the C.D. and Police have also not given any acknowledgement for having received the C.D. But, the Police have drawn the mahazar and taken his signature and he categorically admits that Police Inspector did not see the C.D. visuals in his presence and also he cannot remember whether the C.D. was sealed in a pack or not and whether his signatures are there. Police Inspector did not see the C.D. visuals in his presence and he also cannot remember whether C.D. was sealed in pack and his signatures are there. It is also his evidence that CPU recording will be there for 36 hours and thereafter, the same will be erased. He cannot tell on 19.03.2011, on what date storage was shifted to device and at what time, it was stopped and there was no difficulty to handover the CPU and storage device to produce the same before the Court as well as the Police and the Police also did not ask him to produce the CPU and storage device when the C.D. was handed over to the Police

and on what date the C.D. was handed over was also not mentioned.

40. This Court has to take note of the evidence of P.W.15, who is the Investigating Officer, coupled with the evidence of P.W.1, since prosecution mainly relies upon M.O.3 to M.O.6. P.W.15 - Police Sub-inspector, in his evidence speaks about registration of the case in Crime No.173/2011 on 20.03.2011, when the complaint was given by P.W.1 in writing and he identifies his signature in Ex.P1 and also issuance of FIR in terms of Ex.P7. Thereafter, on the same day, he had visited the spot and seized M.O.1 to M.O.3 and subjected the same to PF and took the signature of panch witness and drawn the mahazar in terms of Ex.P2 and he identifies his signature as Ex.P2(c), signature of panch witness as Ex.P2(b) and another witness as Ex.P2(d). On the same day, P.W.12-Mayannagowda handed over the C.D. to him and the same was subjected to P.F.No.113/2011 and produced the same before the Court and also drawn the mahazar in terms of Ex.P3 and identifies the signature as Ex.P3(c). At that time, P.W.12-Mayannagowda was

present and his signature is marked as Ex.P3(b) and so also the signature of Umashankar as Ex.P3(d). He identifies C.D. as M.O.6 and also produces the wound certificate and he completed the investigation and filed the charge sheet.

41. P.W.15 was subjected to cross-examination. In the cross-examination, he admits that on the date of the incident, he went to spot around 11.15 p.m. to 11.20 p.m. and he met Mayannagowda at the spot. At that time, there was not galatta and he was there for about 2½ hours and he inspected the spot thoroughly and though he admits that he noted in his notebook regarding the call received from Mayannagowda, he did not mention the same in the notebook. He also admits that while going to the spot, he has to mention the same in the Station House Diary, but he did not remember the same. He also admits that when he receives the information, he has to make an enquiry in detail and is having the power to issue FIR and there is no difficulty to record the statement of P.W.12-Mayannagowda and he came back to Police Station at around 01.30 a.m. and he was in the station for about half an hour and again, he went to

the incident spot at 02.00 a.m. and was there till 06.00 a.m. and again, he went to spot on the same day at 11.00 a.m. and found Mayannagowda, Umashankar and other persons and again, he enquired both Mayannagowda and Umashankar in detail. He has also noted down at the time of enquiry the details given by Mayannagowda and Umashankar, but he has not recorded their statement. He also says that spot was shown by Mayannagowda and also categorically admits that when he inspects the spot, he can seize the articles at the spot and he is having such powers and he had noticed the sign of incident at the spot and even noticed M.O.1 to M.O.3 at the spot and there was no any difficulty to seize M.O.1 to M.O.3 when he noticed the same. But, he says that case was not registered, hence, he did not seize the same and also says that he did not mention the same in the case register, mahazar or in the Station House Dairy, since he did not seize the same. He also admits that when he met and enquired Mayannagowda, he came to know about the cognizable offence and there was no any difficulty to register the case. But, witness volunteers that management people have told him that they are going to give complaint. Hence, he did not register the case. He

also categorically admits that they have not given any complaint till the next day evening 06.00 p.m. He admits that when he went to the incident spot, twice he had visited from previous day night 11.00 p.m. to early morning and the same is also part of the investigation. For having not registered the case also not mentioned in the Station House Dairy and also did not conduct any enquiry on 20.03.2011 from 11.00 a.m to 07.00 p.m. He also admits that accused No.17 gave the complaint on the previous day itself and the same was received by P.C.No.449-Chandrappa and criminal miscellaneous was registered. He also admits that Crime No.174/2011 was registered after the registration of case of the management for the offence punishable under Section 323 and Section 3(10) of SC & ST (POA) Act. He also admits that P.C.No.449-Chandrappa was there in the department on 19.03.2011 and management complaint was registered in Crime No.173/2011 and thereafter, the complaint of accused No.17 was registered subsequently.

42. Having considered all these admissions on the part of P.W.15, it is very clear that immediately when he came to

know about the incident and met P.W.12- Mayannagowda, P.W.1-Lokesh and Umashankar and thoroughly inspected the spot and noticed M.O.1 to M.O.3 and also found that it is a cognizable offence, he did not register the case and even after detailed enquiry was made, he did not choose to record the statement of these witnesses and waited till lodging of complaint by the management till next day evening. When such being the case, it is clear that he had discussed with the management and deliberately not registered the case, though it had come to his knowledge that it is a cognizable offence and waited till lodging of complaint by the management. Hence, the judgments which have been relied upon by learned counsel for the petitioners referred supra reported in ***AIR 1993 SC 2644*** and the judgment of the Division Bench of this Court in ***ILR 2013 KAR 992*** are aptly applicable to the case on hand and Sections 154 and 162 of Cr.P.C. are pressed into service in favour of the petitioner that FIR and statement was recorded only after lodging of complaint by the management and there was delay of 19 hours and also no explanation on the part of P.C., who took the FIR to Court on the next day and almost, it is more than 30

hours of delay in taking the FIR to the Court, though it was allegedly dispatched on the previous day evening and the same is not explained by the prosecution as to the delay. Hence, the same is hit by Section 162 of Cr.P.C. as held in the judgment of the Apex Court as well as the judgment of the Division Bench of this Court.

43. The another point for consideration by this Court is that whether both the Courts have committed an error in relying upon MO4 to MO6 for convicting the accused persons.

44. This Court already discussed with regard to MO6 is concerned and the same is a CD and there is no Certificate under Section 65B(4) of the Indian Evidence Act which mandates that whenever secondary evidence is placed before the Court, there must be a Certificate. No doubt, mahazar was made while seizing MO6-CD and the same was done in the Police Station, not in the factory premises. It is also emerged in the evidence of PW1 that he had prepared the same on the instructions of the police and the same was prepared based on the footage of CCTV camera and the same was copied in a different place and the

said fact was not mentioned in the complaint. Hence, it is clear that PW1 prepared the CD. PW1 evidence is very clear that he had shown the CCTV camera to the Investigating Officer. The presence of CCTV camera was not noted in the mahazar and nothing is mentioned in the mahazar for having witnessed the CPU and its visuals by the Inspector and the police have also did not collect the same. But, only says that Inspector told him to give CD and based on the said instruction, he prepared the CD. PW1 also categorically admits that police did not witness the CPU and even CPU was not sealed and police were very much present in the vicinity for two days and no instruction was given for not to use the same.

45. PW1 further admits that in the presence of police, he could have prepared the CD and there was no difficulty to do the same. He categorically says that after the police left the scene of occurrence, he prepared the CD and Police have also not given any acknowledgment for having received the CD. But mahazar only discloses seizure of the CD that too which was drawn in the police station. PW1 categorically admits that Inspector did not

see the CD visuals in his presence and also he cannot remember whether the CD was sealed in a pack or not and whether his signature was taken or not and police also did not see the CD visuals in his presence.

46. Having taken note of these admissions on the part of PW1, it is clear that he prepared the CD and handed over the same to the police and the same was not sealed by any cover. Apart from that whether CD was morphed or not or whether it is genuine or not, no evidence before the Court. It is also important to note that MO6 is not the primary evidence and the same is a secondary evidence since PW1 transmitted the visuals to the CD. The police did not even see the CD visuals in the presence of PW1 and even the same is not sent for FSL to obtain opinion that whether it is a genuine or not and also not taken any report from the concerned department to prove that whether the same is genuine or not. There is no any material before the Court to show that whether the CD was morphed or not and the same also not transmitted to the CD in the presence of the police. Nothing is mentioned in the mahazar except

drawing of mahazar at Ex.P3 in the police station. Hence, when the CD becomes as secondary evidence, it requires Certification under Section 65B(4) of the Indian Evidence Act.

47. The Court also ensure the admissibility of CCTV footage as evidence. To make CCTV footage admissible in the Court, it should (i) ensure the system was functioning properly during recording; (ii) maintain an unbroken chain of custody to avoid tampering; (iii) obtain certificate under Section 65 of the Indian Evidence Act from the operator or custodian of the CCTV system. The seizure of hard discs in India must be conducted with careful adherence to legal procedures to ensure the integrity of the evidence and protect the rights of the person. Key steps include creating mirror images, maintaining of chain of custody and involving forensic experts. Failure to follow these procedures can jeopardise the prosecution case and lead to acquittals based on insufficient evidence. It is advisable to consult with forensic experts and legal counsel throughout the process to ensure compliance with legal requirements. Always prepare a detailed seizure memo during the seizure of hard

discs. Engage forensic expert to create and verify mirror images of the hard disc and failure to follow proper procedure can lead the challenges regarding the admissibility of the evidence and nothing is done in this case.

48. The Court procedure also the sealed mirror images of the hard disc should be presented in Court for inspection by experts from both parties. If an infringement is found, the plaintiff must file an affidavit based on the findings as held in **MICROSOFT CORPORATION AND ANOTHER vs DHIREN GOPAL AND OTHERS** reported in **2010 (114) DRJ 248.** The Court may order the return of the hard disc or its copies to the accused under specific conditions to prevent misuse as held in **SCREEN CRAFT vs STATE OF KARNATAKA AND OTHERS** reported in **2008 SCC ONLINE KAR 849**.

49. A detailed record of the chain of custody must be maintained for all evidence, including hard discs. This includes documenting every transfer of the evidence to different authorities or experts as held in **VAIJINATH vs STATE OF MAHARASHTRA** reported in **2019 SCC ONLINE BOM 1357**.

50. The Court may order the return of the hard disc or its copies to the accused under specific conditions to prevent misuse and also during the seizure, a seizure memo should be prepared, documenting the details of the hard disc taken and the same ensure a clear record of what was seized and under what circumstances and the same was held in **RASHID vs STATE'**case delivered on **27.05.2016** in **Crl.A.No.1005/2014**. The hard disc should be sealed immediately after seizure to maintain the chain of custody and prevent tampering and same is held by the Delhi High Court in the case of **MANOJ vs STATE**.

51. In the case on hand, no such procedure is followed regarding seizure of MO4 and MO5 and no seizure at all and PW15-I.O. not spoken anything about MO4 and MO5. PW1 before the Court says that he is producing the same before the Court, that too on 17.12.2012 voluntarily and till then, where it was and what happened, nothing is stated by PW1.

52. It is crucial to involve forensic experts in the process to create a forensic duplicate copy of the hard disc. This includes generating hash values to verify that the data has not

been altered as held in **STATE OF KARNATAKA vs NASIR LIYAKATALI PATEL AND OTHERS** reported in **2017 SCC ONLINE KAR 4532.**

53. In the seizure process, key procedures to be followed during the seizure, a seizure memo should be prepared, documenting the details of the hard disc taken which ensures a clear record of what was seized and under preparation of mirror images. In case involving suspected use of pirated software or data, it is recommended to create a mirror image of the hard disc rather than seizing the physical device. This method preserves the data while allowing the original device to remain with the person, thus, preventing potential misuse or blackmail by the parties and the same is held in the case of **MICROSOFT CORPORATION** referred supra.

54. The procedure for seizing hard discs in the Indian judiciary system involves specific steps to ensure the integrity of the evidence and to prevent misuse. The following points summarise the key procedures based on the provided legal documents. The seized device or media must be sealed in a

tamper-proof evidence bag, clearly labeled and securely stored in the 'malkhana' (police evidence locker) and also obtained a certificate under Section 65B for authenticity from the systems custodian.

55. But in the case on hand, abruptly, PW1 produces the same before the Court and marked the same. For the footage to be accepted in Court, it must be accompanied by a certificate as per Section 65B of the Evidence Act. This certificate must be issued by the person in legitimate control of the Electronic Device and secure the original device or extract a forensic copy of the footage and take photographs or video of the seizure process and record the chain of custody with signatures of all parties present and every step of seizure and transfer must be meticulously documented in a panchanama in the presence of witnesses. seized, or a forensic copy of the footage can be extracted onto a reliable storage medium like a USB drive or external hard disc using write-blocking technology to protect the original data. The method of acquisition depends on the situation. The entire DVR/NVR unit may be seized or a forensic

copy of the footage can be extracted onto a reliable storage medium and also identify the location and ownership of the CCTV system and note the date, time and system details to prove the CCTV footage. An authenticity and the defense can challenge the footage if there is a possibility of manipulation. Generating and documenting cryptographic hash values of the footage is a standard forensic practice to ensure its integrity has not been compromised. Proper seizure of the footage should be acquired forensically, this often involves taking a mirror image of the original storage device rather than just a simple copy to preserve all and certification. If the footage is considered as secondary evidence (e.g., a copy of transferred to another drive), it may require an authentication certificate from the person in lawful control of CCTV system, as per relevant evidence under Section 65B of the Act. If the original hard disc containing the footage is seized as primary evidence, this certificate might not be required, but no such procedure is followed.

56. But in the case on hand, no material for having seized the original hard disc, no such above procedure was adopted. Except producing the same before the Court through PW1, there is no material for having original CPU which is marked as MO4 was seized but placed before the Court on 17.12.2012 abruptly more than a year and no material is placed how the same is produced before the Court and strict procedure must be followed and no such procedure is followed and where it was there till then. Identification of the location and ownership of the CCTV system and note the time, date and systems and ensure independent witnesses are present during the seizure and secure the footage to prevent it from being overwritten and acquisition and documentation must be made and all these steps and key procedures are not followed. The production of MO4 and MO5 made through PW1 abruptly after 1 year 2 months before the Court and no evidence to show that the above all procedures are followed.

57. Having perused P.F.No.112/2011, the same is in respect of only seizure of MO1 to MO3 while drawing the

mahazar in terms of Ex.P2 and other P.F. No.113/2011 is in respect of seizure of CD which is marked as MO6 but in respect of MO4 and MO5 are concerned, there is no seizure at all but abruptly at the time of recording the evidence of PW1, the same was produced and PW1 says that he is producing the same before the Court while giving the evidence almost after a year. Thus, no procedure as discussed above is followed and no seizure at all about MO4 and MO5. The Investigating Officer who has been examined as PW15 also not spoken anything about the same stating that the same has been seized or given to anybodies custody and also with regard to preservation. Hence, MO4 and MO5 are not the part of charge-sheet and charge-sheet documents reveals only P.F.Nos.112/2011 and 113/2011.

58. The Apex Court in the judgment reported in **AIR 2020 SC 1** in the case of **P GOPALKRISHNAN ALIAS DILEEP vs STATE OF KERALA AND ANOTHER** it is held with regard to the compliance of Section 207, proviso 1, Section 173(5) – right of accused to get copies of documents. The duty of the Magistrate under Section 207 does not empower Magistrate to

withhold any "document" submitted by Investigating Officer along with police report, unless it is voluminous. It is further held with regard to Section 3 and Section 65B of the Indian Evidence Act and even in respect of Information Technology Act, it is held that document whether it is under the Information Technology Act or any other document contents of memory-card/pen-drive would be a "matter" and memory-card itself would be a "substance". Hence, contents of memory-card would be a "document" and meaning of document also discussed in detail and also discussed with regard to the invoking of Article 21 of the Constitution of India wherein it is held that the right of the accused to get copies of documents and that must be furnished to accused in form of cloned copy of the same.

59. In the case on hand, first of all, MO4 and MO5 have not been seized and even not subjected in P.F. and abruptly placed before the Court without affording any opportunity. When such being the case, the Trial Court and the First Appellate Court ought not to have relied upon the said documents. I have already pointed out that even in respect of CD which is marked

as MO6 also, no certificate under Section 65B(4) of the Act. Hence, the Trial Court as well as the First Appellate Court erroneously relied upon MO4 to MO6.

60. Regarding revisional jurisdiction is concerned, this Court has to take note of the principles laid down in the judgment of the Apex Court reported in **(2012) 9 SCC 460** in the case of **AMIT KAPOOR vs RAMESH CHANDER AND ANOTHER** wherein categorically held that the revisional Court may interfere where the findings of the subordinate Courts are perverse, manifestly illegal or grossly unjust. Further, it is held that justice must not only be done but it must manifestly appear to be done or otherwise it will amounts the fundamental principle of constitution under fundamental right of the party would be defeated and both the Courts have to independently analyse the evidence by adopting the reasoning of the Trial Court almost verbatim, demonstrates, non-application of mind by the First Appellate Court which amounts to miscarriage of justice. The revisional jurisdiction of this Court exists precisely to correct such errors as observed in the said judgment.

61. This Court would like to rely upon the judgment of the Apex Court reported in **(2017) 3 SCC 198** in the case of **STATE OF RAJASTHAN vs FATEHKARAN MEHDU** wherein it is held that interference in revision is justified when the lower Courts have ignored the material evidence, applied wrong legal principles or rendered findings that shock the judicial conscience. The errors committed in the instant case are of precisely such a nature and the same can be corrected by exercising the jurisdiction under Section 397 of Cr.P.C. The jurisdiction of this Court under Sections 397 and 401 of Cr.P.C. is intened to ensure that findings of subordinate Courts are not vitiated by gross misrepresentation of evidence, error of law or miscarriage of justice. It is well settled law that while revisional power is not to be exercised as a second appeal, the revisional Court is duty bound to interfere where the findings under challenge are perverse, manifestly illegal or based on no evidence, when it leads to miscarriage of justice.

62. Having perused the material on record and in detail discussion, it is clear that both the Trial Court and the First

Appellate Court have disregarded the fundamental principle that concurrent findings cannot shield perverse reasoning. The mechanical repetition of the Trial Court's conclusions by the First Appellate Court, without independent appraisal of the evidence, constitutes non-exercise of appellate jurisdiction under Section 386 of Cr.P.C. The revisional jurisdiction of this Court therefore, stands squarely attracted. As held in the judgment of **SANWAT SINGH & OTHERS vs STATE OF RAJASTHAN** reported in **AIR 1961 SC 715** even concurrent findings of fact may be disturbed in revision when they are shown to be based on misreading of evidence or on disregard of vital material.

63. Having perused the material on record which have been discussed above also nothing but the First Appellate Court made an endorsement on the Trial Court reasoning which is nothing but a miscarriage of justice which is manifest on the face of record. The decision of the First Appellate Court is unsustainable not only because it is perverse in reasoning but also because it fails to conform to the minimum standards of judicial evaluation. It does not frame points for determination, it

does not analyse evidence witness-wise or exhibit-wise and it ignores binding precedent. Such an order cannot be permitted to stand as a judicial pronouncement.

64. The Apex Court in **CHANDRAPPA AND OTHERS vs STATE OF KARNATAKA** reported in **(2007) 4 SCC 415** held that an First Appellate Court is obliged to examine whether the view of the Trial Court is possible view. The view adopted here is not merely improbable but impossible in light of the record. The revisional power exists precisely to rectify such aberrations.

65. Having analysed and reevaluated the material on record it is clear that both the Courts have committed an error in not considering the legal evidence available on record. There is no legal evidence in respect of MO4 to MO6 and also even with regard to the overt act as deposed in the evidence but not before the Investigating Officer and Investigating Officer also categorically admitted during his cross-examination that none of the witnesses have spoken about overt act allegation against any of the accused persons and nothing was elicited from the mouth of PW15. But both the Courts comes to the conclusion that

accused have committed the offences but it amounts to a miscarriage of justice. If revisional Court fails to exercise the revisional power, it amounts to fundamental error in considering the material on record as committed by the Trial Court and the First Appellate Court. Hence, it is a fit case to exercise the revisional power.

66. No doubt, the counsel appearing for the petitioners relies upon the judgments of **ANVAR P V** and **ARJUN PANDIT RAO KHOTKAR** referred supra. In those two cases, it is specifically held that Certificate is mandatory. Even the counsel for the State also brought to notice of this Court paragraph 24 of the **ANVAR P V**'s case referred supra, wherein the Apex Court discussed in detail that the situation would have been different had the appellant produced primary evidence, by making available in evidence, the CDs used for announcement and songs. CDs were made therefrom which were produced in Court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirement of Section 65B(4) of the Evidence Act are not satisfied. Hence, it is clear that in the

absence of certification, the same cannot be relied upon. Even the Apex Court in the said judgment clarified that notwithstanding what we have stated herein in the preceding paragraphs and secondary evidence of electronic record with reference to Sections 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence, the same is admissible in evidence, without compliance with the conditions in Section 65B of the Evidence Act. Hence, it is clear that there is no any primary evidence and CD is a secondary evidence.

67. Even the counsel also relied upon the judgment of **ARJUN PANDIT RAO KHOTKAR'**s case referred supra wherein discussion was made that the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the computer as defined, happens to be a part of a computer system or computer network and it becomes

impossible to physically bring such network or system to the Court, then the only means of proving information collected in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). But in the case on hand, it is very clear that CD is prepared, but no certificate is produced before the Court. Thus, the same is not the primary evidence, and it is a secondary evidence. Hence, both the Courts ought not to have relied upon CD.

68. The other contention raised by the respondent/State is that MO4 and MO5 are also produced before the Court. MO4 is the CPU and MO5 is the device. It has to be noted that the evidence of PW1 is very clear that the IO did not see the CPU and also he did not see even the visuals of MO6 as well as MO4 and MO5. Even there was no any difficulty to seize the same by PW15 at the spot itself when spot inspection was conducted. The evidence of PW1 is very clear that he had shown the CCTV camera to the Investigating Officer and the presence of CCTV camera, but the same was not noted in the mahazar while drawing the spot mahazar as per Ex.P2 and nothing was

mentioned in the mahazar for having witnessed the CPU and its visuals by the Police Inspector. It is also admitted that police also did not collect the same and only instruction was given to give the CD. PW1 categorically admits that police did not witness the CPU and even CPU was not seized and sealed in a pack and police were very much present and no instruction was given. But surprisingly, the CPU and its device at MO4 and MO5 were not seized by the Inspector who had visited the spot and he did not notice the same. But during the course of evidence, the same was produced before the Court that too through PW1. The IO did not conduct any mahazar, seizure and there is no PF. But surprisingly, produced the same before the Court through PW1 after long time. Thus, the requisite of mahazar is not done. Whatever the material objects seized by the Investigating Officer, the same has to be seized by drawing a mahazar. In order to substantiate the same, there must be witnesses to the said seizure, but no such seizure and no such witnesses for the same. But the trial Court and the First Appellate Court relied upon MO4 and MO5 and the same are not the legal evidence before the Court since, in the absence of any mahazar and

seizure of MO4 and MO5 by the Investigating Officer in the presence of punch witnesses, MO4 and MO5 were produced. Thus, no procedure was followed and surprisingly, the same were produced before the Court through PW1 and PW15 – Investigating Officer did not speak anything about MO4 and MO5 and even no statements of any of the witnesses were recorded in this regard.

69. It is not the case of PW1 that he had produced MO4 and MO5 before the police and investigation conducted by the Investigating Officer also even did not disclose the same in the case diary or in any of the prosecution materials for having seized CPU and its device at MO4 and MO5. In the absence of legal evidence, the Court cannot look into the same. But both the Courts have relied upon the same against the accused which is not part of the investigation. Hence, the judgments relied upon by the learned counsel appearing for the respondent-State i.e., **ANVAR P V** and **ARJUN PANDIT RAO KHOTKAR's** case referred supra would comes to the aid of the State to consider MO4 and MO5. The very principle laid down in the judgments is

very clear that if primary evidence is produced, there cannot be any insistence of Certificate. But in the case on hand, MO4 and MO5 are not the part of the investigation and surprisingly through PW1, the same was produced before the Court without following the procedure by drawing the mahazar about the seizure and IO also did not seize the same. Hence, the very contention of the counsel for the State cannot be accepted.

70. However, the learned counsel appearing for the respondent-State brought to notice of this Court the judgment of the Apex Court reported in the case of **R M MALKANI** referred supra and brought to notice of this Court paragraph 24 wherein discussion was made that illegality was said to be a contravention of Section 25 of the Indian Telegraph Act. There is no violation and the same is with regard the tape recorded conversation which was obtained by illegal means and even if the evidence is illegally obtained and the same admissible. The said judgment also will not come to the aid of the State since MO5 and MO6 are not the part of investigation material. But surprisingly, placed before the Court through PW1 and PW15

never speaks anything about seizure of CPU and its device that is MO4 and MO5. Whatever the material collected by the Investigating Officer as contemplated in Cr.P.C, the same has to be provided to the accused to meet the case of the prosecution. But no such opportunity was given to the accused person to meet the case of the prosecution and surprisingly the same was marked through PW1 when the same was not part of the investigation and also not the material collected against the accused during the course of the investigation and Investigating Officer only has given instructions to PW1 to produce the CD. The same is also not prepared in the presence of the Investigating Officer. Hence, nothing discloses about the collecting of MO4 and MO5 during the course of investigation. Thus, the same cannot be relied upon as against the accused without supplying the same. Hence, both the Courts have failed to take note of the same and lost sight to consider the MO4 and MO5 as well as no certificate with regard to MO6. Hence, both the Courts have committed an error in relying upon MO4 to MO6.

71. The other contention was raised by the State is that the revision petition is not maintainable in the absence of any sentence or an order on Probation of Offenders Act. No doubt, on perusal of the operative portion of the order of the Trial Court, it discloses that there is no any sentence. But an observation is made that Probation of Offenders Act could be invoked in the case on hand. It is also noticed that an order was passed to secure the report of probation officers. But no date was fixed for consideration of the report of probation officers and nothing discloses that such report was obtained. But this Court having noticed the same, obtained the report and the same is the part of record of this Court and no such report against the petitioners' herein. At this juncture, this Court would like to extract Sections 3 and 4 of the Probation of Offenders Act, 1958 (for short 'the Act of 1958'), which read as follows:

> **3. Power of court to release certain offenders after admonition.**—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence

punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

4. Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at

once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such

supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

72. Having considered the proviso which have been referred above, it is very clear that the Court has power to release certain offenders after admonition when any person is found guilty of having committed an offence under Section 3 of

the said Act of 1958 instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 of the said Act of 1958. Section of 4 of the said Act of 1958 also very clear that the Court has power to release certain offenders on probation of good conduct. No doubt, the Trial Court also invoked the provisions of the Act of 1958 and called for the report. But based on the said report, not exercised the powers under Section 4 of the Act of 1958 except calling of the report no order was passed. Hence, the very contention of the counsel appearing for the State cannot be accepted since the very conviction itself is stigma on the revision petitioners and also the petitioners lost their job on account of this incident of conviction.

73. The counsel for the State in support of his arguments relied upon the judgment of **Rattan Singh** referred supra and brought to notice of this Court paragraph 2 wherein an observation is also made that when the legislature in its wisdom has not permitted an appeal against the order of the Court of sessions in which the sentence passed only was imprisoned for a

term not exceeding 3 months or a fine not exceeding Rs.200/- or both such imprisonment and fine, it cannot be conceived that an appeal was permissible when no sentence at all had been passed. No doubt, in the case on hand, no sentence was passed. But an observation is made that Probation of Offenders Act could be invoked and hence, this judgment also will not comes to the aid of the State and also called the report to invoke Section 4 of the Act.

74. The counsel also relied upon the judgment of **Man Singh**'s case referred supra and relies upon paragraphs 8, 9 and 11 wherein also discussion was made with regard to invoking of Section 482 of Cr.P.C. The Trial Court had given reasons for not giving benefit of probation. When the High Court was deciding the revision petition against the order of conviction, it could have, after calling for a report of the probation officer in terms of Section 4 of the Act, granted probation. But in the case on hand, it has been noted that the Trial Court has not invoked the Probation of Offenders Act. But High Court has invoked the said Act. But conviction was upheld.

75. But in fact reduced the sentence to the period already undergone meaning thereby that the conviction was upheld and sentence was imposed. In paragraph 9 discussed that another error is that the order quoted hereinabove has been passed in violation of the provisions of Section 4 of the Act which mandates that before releasing any offender on probation of good conduct, the Court must obtain a report from the probation officer and then order his release on his entering bonds with or without securities, to appear and receive sentence when called upon during such period, not exceeding three years or as the Court may direct, and in the meantime to keep peace and good behaviour. The proviso of sub-section (1) of Section 4 clearly provides that Court cannot order release of such an offender unless it is satisfied. But in the case on hand, it has to be noted that only a report is called for and also the Court is not satisfied that offender or his surety has a fixed place abode. But no such order was passed. Hence, the very contention of the learned counsel appearing for the respondent-State that revision is not maintainable cannot be accepted as there is no such order, invoking of Probation of Offenders Act, though an observation is

made that it could be invoked, but called the report and no order was passed but conviction order is in force.

76. Having considered the material with regard to the merits is concerned, this Court has to take note of the fact that whether the Court can exercise its revisional jurisdiction in coming to the conclusion that reasoning of both the Courts amounts to miscarriage of justice. This Court already in detail considered the evidence of P.W.1 wherein it clearly discloses that he was very much present at the time of the incident. But he did not lodge the complaint, till there was a discussion with P.W.12, Mayanna Gowda and both of them discussed and then lodged the complaint. This Court already pointed out that PW15-Investigating Officer was very much present immediately after the incident whole night and also in the next day morning till evening i.e., till the registration of the case. Thus, it is nothing but deliberately not recorded the statement of any of the witnesses when he was very much present and the offences which have been attributed are cognizable offences. PW15 also categorically admits that he did not register the case since the

management told him that they are going to lodge the complaint. Hence the evidence of PW1 and PW15 not inspires the confidence of the Court. However, the prosecution also relies upon the evidence of injured witnesses.

77. It is emerged during the course of evidence that they did not go to any of the hospitals which are very near to the vicinity of the incident place, but went to the hospitals which are far from the place of incident. The witnesses also categorically admitted that hospitals are nearby located from the incident place both private and government hospitals. Apart from that the wound certificates which have been produced through the doctor at Ex.P4 and P5, history is given as assault by mob and not mentioned the name of any of the accused persons. Hence, it is clear that this incident was a mob fury and also the victims were unable to point out the role of any of the particular accused persons at the time of giving history and the same is evident from Ex.P4. Ex.P5 is also very clear that the victim went to hospital on the next day not on the same day and only history of assault was given and no details of particular accused has

assaulted him. So also Ex.P6 is of the next day at 10.05 a.m., and the incident was on the previous day and immediately after the incident, the victim did not rush to the hospital. Thus, these documents clearly discloses that all of them went to the hospital on the very next day and there was a deliberation by the Management along with them and also not pointed out any assault by any of the particular accused.

78. Another wound certificate at Ex.P8 is from the K.R.Hospital with history of assault by the employees around 30 members but not mentioned the timings on what time, the patient went to hospital. In Ex.P9, except stating the history of incident on 19.03.2011 at 10.30 a.m., no timing is mentioned that at what time, the patient went to the hospital and on what date, he went to the hospital. So also in Ex.P10, the similar history is mentioned. Hence, all these documents clearly disclose that these certificates are obtained from the K.R. hospital wherein there is no history of involvement of any of the accused persons was given and date of visit made by the injured to hospital is also not mentioned. Hence, there is a force in the

contention of the counsel appearing for the revision petitioners that in the absence of any particular history of treatment that at what time, it was taken and what time he had been to the hospital, Ex.P8 to P10 cannot be relied upon. I have already pointed out that other wound certificates at Ex.P4 to Ex.P6 disclose that only an after thought, the injured persons went to the hospital and only given history of assault but not mentioned the name of any of the accused persons. Admittedly, it is a history of mob fury and 30 accused persons have been arrayed as accused and no single overt act allegations against any of those accused persons at the first instance but there was an improvement in the case of prosecution while giving complaint given even badge numbers of employees.

79. It is also emerged that the statement of these witnesses were recorded as per the Investigating Officer on 25.03.2011 i.e., after the sixth day of the incident. But, it is categorically admitted by the P.W.15 that date 28.03.2011 was corrected as 25.03.2011. Hence, it is clear that even according to the statement of witnesses that is particularly injured

witnesses were also tampered mentioning the date as 25.03.2011 instead of 28.03.2011. If, in one case, it is altered, the Court can accept the same, but in all the cases, the dates are tampered as 25.03.2011.

80. The witness P.W.2 in his evidence speaks about he also witnessed the incident and when they were assaulting, he also ran towards First Aid room and he was also assaulted by Thimmaraju on his nose, as a result blood came out and others were also assaulting others. He specifically says that Girish and Shivakumar came to the said spot and taking the steel window frame assaulted on his head by Girish and Shivakumar assaulted him with First Aid box. This witness was subjected to cross-examination and in the cross-examination, he categorically admits that while coming to Kirloskar, there is a Columbia Hospital and also there is a Nursing home at Kengeri and Government Hospital and to proceed infront of Rajarajeshwari Hospital. There are private and Government Hospital at Bidadi. Even he did not go to the Police Station and gave the statement and on the next day also he did not go to the company and even

not availed a leave and also admits that he was in need of taking immediate treatment, but admits that no Hospital in the campus, but having First Aid Centre. He categorically admits that he would have taken treatment either in the private Hospital or in the Government Hospital, but he did not make any such attempt and hence, this evidence is clear that he did not got to the Hospital, only on the advice of the Management, he went to Hospital and he did not visit any of the Hospital which were near the vicinity and the wound certificate also doesn't disclose the timings of treatment. He categorically admits that when the assault was made and he gave the statement, there was no any difficulty to mention the name of the persons who assaulted them. He categorically admits that he will not give any statement as against the management at any point of time and Police have also not seized any bloodstain cloth and also even not shown to them and even he did not see the same. Hence, this evidence also not supports the case of prosecution and does not inspire the confidence of the Court and he was very much present when the Police came to vicinity but not given complaint in writing immediately.

81. The other witness is P.W.3, who is also an injured. He speaks about the overt act. He admits that their family has to be run based on the salary given by the Management. He also admits that there are Hospitals near the vicinity of the place of incident and he did not go to any of the Hospital which are near to the place of incident and only went to Hospital on the next day after deliberation with the management.

82. The other witness P.W.4, who is also an injured witness. He says that accused persons assaulted with equipment and caused the damages of computers and nothing is seized. He gave the complaint along with P.W.1 and Deepak. He also admits that while seizing MO.1 to MO.3, himself, Mayanna, Umashankar, P.W.1 and Deepak were there and he went to K.R Hospital. He also admits that there are Hospitals in Bidadi and also there is a Rajarajeshwari Hospital on the way and also Government Hospital at Kengeri and other Hospitals are also there nearby the place of incident and suggestion was made that he has not taken any treatment at K.R Hospital and documents are created and the evidence of this witness also not inspires the

confidence of the Court having considered the admissions and only after thought went to K.R Hospital on the next day.

83. The P.W.5 also deposed that he was abused and assaulted. He also categorically admits that surrounding the place of incident, there are private and Government Hospitals, but he says that he went to the Sahana Hospital and he also did not take the treatment in the surrounding Hospital. But, he went to Fortis Hospital after 2 days and hence, it is clear that after deliberation went to the Hospital for creation of document.

84. The other witness is P.W.6 and he also says that he was abused in a filthy language and assaulted. In the cross-examination also he admits that he did not go to nearby any of the Hospital. He was not taken to any Hospital when the Police came to the spot and Police also did not see the injuries on his body and he did not show the injuries to the Police, but, he orally stated about the injuries sustained by him and hence, it is clear that document of wound certificate are created after deliberation.

85. The other witness is P.W.7 and he was also an injured. He says that when the Police came, he informed about the incident to the Police. He speaks about the incident was taken place in respect of wages is concerned, but he was not sent to Hospital by the Police immediately, but went to Hospital after thought.

86. Having considered the evidence of these injured witnesses and the same has to be considered coupled with the evidence of I.O who has been examined as P.W.15. Whether the evidence of these witnesses corroborates with each other. In the cross-examination of P.W.15-I.O, this Court already discussed with regard to that he rushed to the place of incident immediately, but not recorded the statement of any of the witnesses including the injured witnesses also at the spot and some of the witnesses also says that they did not bring it to the notice of injuries sustained by them to the I.O at the spot.

87. The P.W.15 categorically admits that immediately after filing of complaint, he has to record the statement of injured as well as eye witnesses. But, injured statements were

not recorded immediately. This Court already pointed out that injured statements are recorded according to prosecution on 25th, but dates are changed as 25th instead of 28th and there are manipulations in the said statement with regard to the date of recording of statement of witnesses only with an intention to put early date.

88. The P.W.15 also categorically admits that he did not go to any of the Hospital to record the statement of any of the injured witnesses, but P.W.15 says that he did not get time to go and record the statement of injured witnesses, but he got time to be there in the incident spot on that day and also on the next day till lodging compliant including deliberate with management. He also admits that immediately after the registration of the case, he came to know about the injured persons are in the hospital. He did not meet them and enquired them and also even did not see them. P.W.15 categorically admits that the statement of P.W.2, P.W.3, P.W.5 and P.W.6 are not in his hand writing. He categorically admits that dates are corrected in the statement of P.W.3 and P.W.5 as 25th instead of 28th and so also

the P.W.6. He also admits that he did not record the statement of injured witness Vikram on 25.03.2011. He also admits that for having collected the wound certificate, he has not put his counter signature. Suggestion was made that wound certificates are created for the purpose of the case and the same was denied and also Court has to take note of omissions on the part of P.W.15-I.O. In a criminal jurisprudence, omissions, commissions and contradictions are the prime material for consideration of the case.

89. This Court also would like to rely upon the judgment reported in ***AIR 1979 SC 135*** in case of ***Ganesh Bhavan Patel V/s State of Maharashtra*** wherein also while invoking Section 161, taken note of recording of statements delay and effect of duty of Investigator in paragraph Nos.15 and 29 that normally in a case where the commission of the crime is alleged to have been seen by witnesses who are easily available, a prudent investigator would give to the examination of such witnesses precedence over the evidence of other witnesses. But, in the case on hand, the same was not done and even he did not

record the statement of injured witnesses immediately and statement was though allegedly recorded on 25th, but actually it was on 28th since there was an admission that date 28th was corrected as 25th and the delay in recording the statements of the material witnesses caused a cloud of suspicion on the credibility of the very story of the prosecution.

90. The witness P.W.15 also says that he was not having a time to record the statement. But, Apex Court in the very same judgment while invoking Section 3 held that evidence regarding time of recording statement of witness merely because witness was labourer, it could not be said that he had no sense of time.

91. This Court also would like to rely upon the judgment reported in ***AIR 2016 SC 4958*** in case of ***Harbeer Singh V/s Sheehpal*** wherein discussed with regard to the jurisdiction of the Appellate Court and powers of Appellate Court categorically held that mere fact that another view could also have been taken on evidence on record is not a ground for reversing an order of acquittal, but view favorable to accused to be adopted

when two views are possible and also taken note of Section 161 recording of statement, delay and effect and the said delay ought to have been explained and it is not the case of P.W.15 that injured witnesses were not available. But, his evidence is that he was not having time to record the statement of injured witnesses.

92. The P.W.15 categorically admits that witnesses have not spoken about anything about the incident has taken place near the First Aid center and also witness did not inform before him that having taken note of the galata, none of the witnesses spoken that they followed and several omissions are elicited from the mouth of P.W.15 regarding overt act of each of the accused persons and categorically admits that not made any statement with regard to accused persons started assaulting and pushing them and witnesses also not made any statement that when the P.W.2 did not make any statement that accused Thimmaraju assaulted him on his nose, as a result blood was oozing from his mouth and also witness categorically says that injured also not made any statement that Deepak also started to

assault him and categorically admits that P.W.2 not stated anything about him that he was assaulted with steel frame by Girish on his head and also not stated that Shivakumar assaulted on his head with First Aid Box and also admits that witnesses have not stated anything about the incident was taken place near the First Aid room while giving their statement and for having caused the damages to the glasses and computers and not seized anything and C.W.2 also not stated that Thimmaraju assaulted him and also not spoken anything about Girish assaulted him and whatever the evidence spoken by the injured witnesses in the evidence was put to the I.O and the answers are elicited from the mouth of P.W.15 omissions with regard to each and every overt act spoken by the injured witnesses. These omissions were not considered by either the Trial Court or First Appellate Court and also categorically admits that P.W.8 while giving statement, not stated that he knows each and every accused persons and also he categorically admits that Ravikumar was stated that no one made statement that Ravikumar was taken to the Fortis Hospital while giving the statement. Further, admits that C.W.2 to C.W.7 injured persons have not stated

before him that in the said incident they have sustained injuries. When such answer is elicited from the mouth of P.W.15 with regard to the nature of injuries and treatment is concerned and overt act is concerned, there are clear omissions on the part of the evidence of P.W.15. But, the Trial Court accepted the evidence of injured witnesses as well as the P.W.15 and material contradictions and omissions were not taken note of by both the Courts. Hence, it is a clear case of miscarriage of justice in considering the material on record.

93. No doubt, the learned counsel appearing for the respondent-State brought to notice of this Court unless the miscarriage of justice, question of interference in the Revision Petition doesn't arise. No doubt that is also a settled law. Even the judgment relied upon by the learned counsel appearing for the respondent-State in case of ***Kishan Rao V/s Shankara Gowda***, the Apex Court while considering the case ***(1999) 2 SCC 452,*** the principles was taken note of in paragraph No.12 and extracted paragraph No.5 wherein with regard to the exercising of revisional jurisdiction held that ordinarily,

therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring features is brought out to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. Even the Apex Court in paragraph No.13 discussed the judgment reported in ***(2015) 3 SCC 123*** in a case of ***Sanjay Sin Ramrao V/s Dattatreya Gulab Palke*** and exacted paragraph No.14 wherein also an observation is made that unless the order passed by the Magistrate is perverse or the view taken by the Court is wholly unreasonable or there is non consideration of any relevant material or there is palpable misreading of records, the revisional Court is not justified in setting aside the order merely because another view is possible. Revisional Court is not meant to act as an Appellate Court.

94. Having considered the principles laid down in the judgment referred by the learned counsel appearing for the respondent-State and the said judgment will not comes to the

aid of State having taken note of the materials which have been discussed above in detail that omissions of P.W.15 is very clear that none of the injured witnesses have spoken about the overt act what has been deposed before the Court while recording his statement. Hence, it is clear that the same is nothing but an improvement at the time of leading an evidence by the prosecution with regard to overt act and also the wound certificate which have been produced not have discloses on what date and time treatment was taken and even there is no any overt act allegation against any of the petitioners, even by the injured witnesses while giving history in the Hospital. All these glaring material and error on the part of the Trial Court and Appellate Court is very clear that both the Courts carried away by considering the evidence of prosecution witnesses, but not looked into in a proper perspective. When such being the case, it is a clear case of miscarriage of justice and also the Court has to take note of conduct of the Investigating Officer who conducted the investigation with bias in favour of the management.

95. The Apex Court also in the judgment reported in ***(2009) 10 SCC 206*** in case of ***Aarulelu*** with regard to perverse finding is concerned, in detail discussed that the finding which is not only against the weight of evidence, but is altogether against the evidence itself is nothing but a perverse finding and the same has been discussed in detail in paragraph Nos.24 to 30. Further observed in paragraph No.16 that the contents of FIR should atleast mention the broad story of the prosecution and not mentioning of material and vital facts though may not affect the credibility of the FIR. This Court also in detail discussed under what circumstances FIR came into existence since I.O was very much present in the place of incident for about two days and discussed with the management witnesses who have lodged the complaint with the I.O and there was a prior deliberation and discussion before registering the case, the same is also admitted by the prosecution witnesses as well as the I.O who has been examined before the Court as P.W.15 and FIR registered after almost two days.

96. Having perused the material available on record, though incident was taken place in the previous night at 10:30 p.m., and P.W.15 rushed to the spot within a span of 45 minutes that he was there in the place of incident at 11:15 p.m., and he was there till 1:30 a.m., and only he left for half an hour in between 1:30 a.m., to 2:00 a.m., and he came back there to the place of incident again at 2.00 a.m., he was very much present from 2:00 a.m., to 6:00 a.m., and again he came back in the early morning at 9:30 a.m., till 11:00 a.m., and till receipt of the complaint at Ex.P.1 on the next day evening at 6:00 p.m., and he had met the complainant P.W.1 and P.W.12-Manager and discussed everything as well as even inspected the spot of incident and noticed MO.1 to MO.3 which were lying at the spot and throughout for about 19 hours he was very much present in the place of incident and FIR reached Court after two days of incident and no explanation. Hence, this Court also found that the proceedings initiated by the I.O., is hit by Section 162 and having knowledge about everything that a cognizable offence was taken place even he did not choose to record the statement of any of the witnesses either the injured witnesses or persons

who have witnessed the incident, but only acted upon after the deliberation and pre consultation that too complaint is received at the instance of the Management as admitted and then registered the case. The complaint was given by accused No.17 in the previous day itself and only the same is registered as C.Misc and after the registration of case of the Management in Cr.No.173/2011 and subsequently, Cr.No.174/2011 was given to the complaint of accused. Though he was very much present and observed the CC T.V and did not seize the MO.4 and MO.5 and also no material that MO.4 and MO.5 are produced by any of the management witnesses and surprisingly the same was marked through the P.W.1 before the Court and there is no any seizure of MO.4 and MO.5 and only seizure of MO.6-C.D that too in the Police Station by drawing Mahazar at Ex.P.3. When the P.W.1 transmit the same to the C.D and produces the same before the police and the said seizure of Ex.P.3 is in the Police Station and even he did not see the visuals of the said CC T.V and whether it is tampered or morphed and also not taken any opinion from the expert whether the same is genuine or not and even there is no any certificate under Section 65-B(4) when the secondary

evidence is placed and seized. But, all these materials were not taken note of by the Trial Court as well as the First Appellate Court and when there is no any legal evidence before the Court while convicting the accused Nos.1 to 30, even witnesses have not been spoken at the first instance by any of the injured persons that the particular accused persons have assaulted them, but only there was an improvement in the evidence. The P.W.15-I.O categorically deposed before the Court that with regard to the overt act is concerned, there is a omissions of each and every one witnesses have not spoken anything about the overt act. Under the circumstances, it is nothing but a miscarriage of justice. Hence, it is a fit case to exercise the revisional jurisdiction to acquit the accused persons by exercising the revisional jurisdiction since there is a clear miscarriage of justice. Hence, I answered all the points accordingly as there is a clear miscarriage of justice and also even the FIR was hit by Section 162 of Cr.PC and MO.4 to MO.6 ought not to have relied upon by the Courts below and Courts have committed an error in relying upon the same and apart from that the very contention of the counsel appearing on behalf

of State that revision is not maintainable since there is no any sentence cannot be accepted. But, the fact is that all of them have been convicted for the offences is not in dispute. The fact that Probation of Offenders Act was invoked, but the probation officer's report though it was called, but not secured and passed any order and not passing of an order on P.O Act cannot curtail the rights of the petitioners when they have been convicted for the offences and it was a mistake on the part of the Court getting the report and passing an order on the same. Hence, the contention that revision petition is not maintainable cannot be accepted. All the points which have been arises for the considerations are answered accordingly that conviction amounts to miscarriage of justice in the absence of any legal evidence and all procedures which have been made are illegal and hit by Section 162 and also no legal evidence before the Court with regard to MO.4 to MO.6. Hence, the petitioners are entitled for acquittal and answered accordingly.

97. Having considered the material on record, it discloses that this Court also taken note of lapses on the part of

the Investigating Officer who had visited the spot within 45 minutes of the incident and through out, he was very much present in the vicinity i.e., whole night as well as on the next day almost a day but he acts upon only based on the complaint of the management in terms of Ex.P1 inspite of complaint was given by accused No.17 and about the cognizable offence only, the criminal miscellaneous was registered. But only after registering the case by the management, Crime No.174/2011 was given. Hence, it is clear that the Investigating Officer has investigated the matter with bias and not acted upon without any bias and even failed to take the cognizance when cognizable offence was came to his knowledge on the previous night itself and met the complainant-PW1 at the spot and he did not choose to record the statement of PW1 at the spot or even recorded the statement till filing of the complaint by the management and waited for management complaint as admitted. After due deliberation and negotiation when throughout he was having the knowledge about the cognizable offence was taken place in the incident, fails to act upon and also he categorically admits that he did not register the case since management was intend to file

a complaint. This Court already comes to the conclusion that the very initiation of criminal prosecution is with due deliberation after having discussing the same with PW1, PW12 and with the management. Hence, it is a fit case to direct the Director General of Police and IG to initiate action against the Investigating Officer who has been examined as PW15 in accordance with law delegating the powers to the concerned disciplinary authority where at present he is working and submit the progress report regarding taking up of action against him.

98. In view of the discussions made above, I pass the following:

ORDER

i) The Revision Petition is ***allowed***.

ii) The impugned judgment of conviction dated 24.01.2019 passed in C.C.No.1005/2011 against the petitioners are hereby set aside and also the affirmation made in Criminal Appeal No.4/2019 dated 26.02.2020 by the Appellate Court is also set-aside. Consequently, the bail bonds executed by the

petitioners are cancelled. The Petitioners are acquitted for the offences invoked against them.

iii) The Director General of Police and IG is directed to initiate action against the Investigating Officer who has been examined as PW15 in accordance with law delegating the powers to the concerned disciplinary authority where at present he is working and submit the progress report regarding taking up of action against him within Four months.

iv) The Registry is directed to communicate this judgment to DG and IG to initiate action and report as directed.

Sd/-
(H.P. SANDESH)
JUDGE

MD/RHS/ST/SN