

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. Revision No. 102 of 2012 Reserved on : October 18 , 2019 Date of Decision : October 23 , 2019. Court on its own motion ...Petitioner. Versus Raghbir Singh & another ...Respondents. Coram: The Hon'ble Mr. Justice Anoop Chitkara, Judge. Whether approved for reporting? 1 Yes. For the petitioner : Court on its own motion. For the respondent : Mr. Sunil Mohan Goel, Advocate, for respondent No. 1. M/s Ashwani K. Sharma & Mr. Nand Lal Thakur, Additional Advocates General and Mr. Narinder Thakur, Dy.A.G. for respondent No.2/State. Anoop Chitkara, Judge. Complaining the release of Raghbir Singh, son of Sh. G.S. Bali, under Section 4 of the Probation of Offenders Act, 1958, after his conviction under Section 332 IPC, a complaint was sent by the President, Bhartiya Janta Party Yuva Morcha & Jan Chetna Kangra 1 Whether reporters of Local Papers may be allowed to see the judgment? :: Downloaded on - 21/12/2019 22:18:19 ::HCHP High Court of H.P. & Dharamshala, to various authorities including the Hon'ble Chief Justice of the High Court of Himachal Pradesh. 2. Vide order dated 22.5.2012, this Court took cognizance of the said complaint and registered the same on the file of the High Court of Himachal Pradesh as Criminal Revision No. 102 of 2012, titled as Court on its own motion vs. Raghbir Singh & another. 3. I have heard Sh. Sunil Mohan Goel, learned counsel for the convict Raghbir Singh and Sh. Nand Lal Thakur, learned Additional Advocate General for the State of Himachal Pradesh and have also gone through the record. 4. The present case traces its origin to FIR No. 412 of 2001, dated 16.11.2001 registered in the file of Police Station Kangra under Sections 332, 353 and 506 IPC, on the complaint of Constable Sanjeev Kumar. 5. The police challan revealed that the complainant Constable Sanjeev Kumar (PW-3) on 16.11.2001 was on traffic duty at Tehsil Chowk Kangra. At about 11.00 a.m. the convict Raghbir Singh arrived at that place in a black Esteem car with a red beacon on its top and parked his car on the wrong side of the road near the iron chain which was meant for controlling the vehicles from entering the bazaar, starting from Tehsil Chowk. The complainant further stated that convict Raghbir Singh wanted to take his vehicle 2 :: Downloaded on - 21/12/2019 22:18:19 ::HCHP High Court of H.P. in the bazaar whereas the complainant did not permit him to do so because it would cause traffic jam. On this the convict got annoyed and caught the complainant from his sweater and manhandled him and also hurled filthy abuses at him. 6. On this the complainant went to the police station to inform about this incident and at that time convict Raghbir Singh alongwith Sh. S.D. Sharma and Sh. Sanjay Kaistha, Advocates, followed him. The complainant further stated that Sh. S.D. Sharma, Advocate asked the complainant to compromise the matter by saying that the convict has committed a mistake. 7. The further case of the complainant is that when they reached in the room of the SHO and told all the facts to the SHO then convict Raghbir Singh got infuriated and gave three – four blows to him. On these allegations FIR, as aforesaid, was registered. 8. The learned Judicial Magistrate in Criminal Case No. 87-II/2002 vide judgment dated 2.6.2009 convicted accused Raghbir Singh for the commission of offence under Section 332 IPC and sentenced him to undergo simple imprisonment for one month and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo simple imprisonment for 15 days. At the time of hearing of the sentence the learned trial Court did not subscribe 3 :: Downloaded on - 21/12/2019 22:18:19 ::HCHP High Court of H.P. to the contention of the defence counsel to consider releasing the convict under Section 4 of the Probation of Offenders Act. 9. The convict challenged the above mentioned judgment of conviction by filing an appeal in the Sessions Court Dharamshala and vide judgment dated 22.10.2011 passed by the learned Addl. Sessions Judge, Fast Track Court, Kangra at Dharamshala in RBT Cr. Appeal No. 41-K/X/11/2009 the first Appellate Court upheld conviction but

remanded the matter back to the Trial Court by holding that it was incumbent upon the Trial Court to consider the release of the convict under the Probation of Offenders Act and at least a report should have been called. The learned Appellate Court further directed the Trial Court to call for the report of the Probation Officer and to consider the plea of the convict for the benefit of Section 4 of the Probation of the Offenders Act. 10. The Trial Court vide order dated 11.11.2011 called for the report of the Probation Officer and vide order dated 29.12.2011, after perusing the report of the Probation Officer, released the convict under Section 4 of the Probation of Offenders Act. The learned Judicial Magistrate, 1st Class (II), Kangra (Trial Court) by considering the report of the Probation Officer took notice of the fact of the age of the convict and also that he was running an NGO in the name of Nagrota Welfare Society and also mentioned that father of the convict Sh. G. S. Bali was a politician and a social worker. 11. Challenging the order of grant of probation to the convict the above mentioned complaint was sent to various Constitutional Functionaries including the Hon'ble Chief Justice of this High Court. 12. This complaint, which is unsigned, alleges that the convict was son of Sh. G.S. Bali, who was an MLA and a very influential politician. It was further alleged that the grant of probation is under his influence. 13. Vide order dated 29.12.2011 the learned Trial Court had granted the benefit of Probation of Offenders Act to the convict by specifically mentioning that at the time of such grant of probation there was no case pending against the convict. It was further mentioned that there was previously one case under Sections 452 and 323 read with Section 34 IPC, but the prosecution in such case stood withdrawn under Section 321 CrPC long ago. The perusal of the order does not reveal that the learned Trial Court or the learned first Appellate Court were under any kind of influence or that they had passed the said order on the considerations other than judicial. 14. It is pertinent to mention here that the Probation of Offenders Act, 1958, applies to the State of Himachal Pradesh. 5 :::: Downloaded on - 21/12/2019 22:18:19 ::::HCHP High Court of H.P. Resultantly, Section 360 CrPC would not apply, however, the conditions mentioned in Section 361 CrPC mandates the Trial Court to record reasons in case the Trial Court did not apply the provisions of the Probation of Offenders Act to the convict. 15. The initial order of conviction reveals that despite the contention of the learned counsel for the convict to grant the benefit under Section 4 of the Probation of Offenders Act, the learned Trial Court had not extended the same by observing as under: "... The convict in the present case has been convicted under Section 332 IPC and allegation against him that he has beaten a police official, firstly at open place and thereafter gave beatings to him in the premises of Thana while persons accompanied him were requesting the complainant to effect compromise with the convict. I am of the view if such a person goes scot free that will have shocking effect on the entire society and wave of insecurity will travel in the society. I seriously believe that subsequent act of the convict in same transaction completely wipes out the possibility of application of section 4 of Probation of Offenders Act."... 16. This is not the spirit of the Probation of Offenders Act. The learned Trial Court should have arrived at such conclusion only after calling for the report of the Probation Officer. 6 :::: Downloaded on - 21/12/2019 22:18:19 ::::HCHP High Court of H.P. 17. Full Bench of High Court of H.P., in State of Himachal Pradesh v. Lal Singh, 1990 CriLJ 723, holds, "9. The reason why the Legislature has allowed two different sets of law to remain on the Statute Book is not far to seek. The provisions of the Probation of Offenders Act, 1958 are more beneficial and result-oriented and wider in scope and applicability for "the reformation and rehabilitation of the offender as a useful and selfreliant member of society without subjecting him to the deleterious effects of jail life" than the provisions of Section

360. Therefore, an option has been given to the State Governments to apply or not to apply the provisions of the Act to the areas falling within their territory, presumably keeping in view their respective law and order situation. No such option has been given as regards Section 360 which has been made applicable, broadly speaking, to the whole of India except the State of Jammu and Kashmir. Consequently, Section 360 would be applicable to a State or an area within a State to which the provisions of Probation of Offender Act have not been brought into force by way of a notification as postulated in Section 1(3) of the Act. ... .. 15. Next, we may deal with the effect of Section 361 of the 1973 Code vis-a-vis the provisions of the Act. Section 361 reads as follows : "361. Special reasons to be recorded in certain cases. - Where in any case the Court would have dealt with. - (a) an accused person under Section 360 or under the Probation of Offenders Act, 1958 (20 of 1958), or (b) a youthful offender under the Children Act 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders. 7 ::: Downloaded on - 21/12/2019 22:18:19 :::HCHP High Court of H.P. but has not done so, it shall record in its judgement the special reasons for not having done so." The above Section contains a mandate to the Court to record in the judgements special reasons for not dealing with the accused person under Section 360 or under the Provisions of the Act where this could have been done. This provision plainly supplements provisions of the Act and there is no conflict between the two. 16. In view of the above discussion, our answer to the reference made by the Division Bench is that Section 360 of the Code of Criminal Procedure, 1973 is inapplicable to the State of Himachal Pradesh as the Probation of Offenders Act has been brought into force. Section 361, however, applies with full force requiring Courts to record special reasons for not applying the provisions of the Probation of Offenders Act to a case where the Court could have dealt with the accused under the said provisions." 18. The anonymous complaint on which the proceedings of Court on its own motion were initiated, also questioned the power of the Sessions Judge to remand the case for considering the provisions of the Probation of Offenders Act and was put under scanner. Answer to this lies in the bare perusal of Section 386(b)(iii) CrPC which defines the powers of the Appellate Court and states that in an appeal from conviction the Appellate Court may, with or without altering the findings, alter the nature or extent of sentence, but not so as to enhance the same. Thus the learned Sessions Judge acted under this mandate and it was well within his 8 ::: Downloaded on - 21/12/2019 22:18:19 :::HCHP High Court of H.P. legal domain to remand the matter for calling the report of the Probation Officer for considering the benefit of the Probation of Offenders Act while upholding the conviction part. Thus what the Appellate Court had done was that it upheld the conviction but expressed disagreement on sentencing on the ground for non consideration of Section 361 CrPC. No fault can be found in such an approach. 19. The facts of the case point out that de-jure power of his father had gone to the head of the convict. He was showing off the authority of his father as well as the respect earned by his family and his father, to make his way, by-passing the law and order being enforced by the complainant. No doubt, this kind of behaviour is deplorable but still the Probation of Offenders Act does not bar the grant of probation to spoilt brats. With the passage of time, the convict must have acquired maturity and would have understood the power of law. Thomas Fuller rightly said "Be you ever so high, the law is above you". 20. In view of the facts of the case and the law discussed above, I am of the considered opinion that the judgment of the learned First Appellate court, which remanded the matter to the Trial Court for considering the application of Section 4 of the Probation of Offenders Act as well as the order of the Trial Court granting benefit 9 ::: Downloaded on - 21/12/2019 22:18:19 :::HCHP High Court of H