

Pratap Singh

..Appellant(s)

vs.

State of Himachal Pradesh

..Respondent(s)

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In the instant case, the appellant was tried for an offence under Section 307 IPC and under Section 25/44/59 of the Indian Arms Act. After trial, the appellant was convicted for the offence under Section 324 IPC after being acquitted of the offence under Section 307 IPC and Section 25 of the Indian Arms Act. After convicting the appellant, the trial court granted him the benefit under Section 4 of the Probation of Offenders Act and ordered that he be released on probation for a period of one year. He was directed to maintain peace and good behaviour during the said period of one year.

The appellant filed an appeal against his conviction under Section 324 IPC which was withdrawn. On 25th July, 1993, an application was filed on behalf of the prosecution under Section 9 of the Probation of Offenders Act alleging that the appellant had been involved in an offence under Section 307 IPC and under the Indian Arms Act and the benefit granted to him under Section 4 of the Probation of Offenders Act should be withdrawn. After giving the appellant an

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opportunity, by order dated 21st January, 1999 the trial court withdrew the benefit given to the appellant under the Probation of Offenders Act and sentenced him to rigorous imprisonment for three years and also required him to pay a fine of Rs.3,000/- and in default thereof to undergo rigorous imprisonment for a further period of one year.

The order passed under Section 9 of the Probation of Offenders Act was sought to be challenged by the appellant by filing a Criminal Appeal No. 297/99 before the Himachal Pradesh High Court. A preliminary objection was raised to the effect that no appeal was maintainable against the order passed under Section 9 of the Probation of Offenders Act. The High Court accepted this contention and dismissed the appeal on the ground that it was not maintainable against an order passed under Section 9 of the Probation of Offenders Act.

In our opinion, an accused against whom an order under Section 9 of the Probation of Offenders Act had been passed cannot be left without a judicial remedy. Assuming for the sake of argument that an appeal was not maintainable, the High Court ought and could have regarded the appeal which was filed as being a petition under Section 482 Cr.P.C. and should have decided the case on merits. The said provision is meant for situations like the present one. In the alternative, a petition under Article 227 of the Constitution of India would always be filed and entertained. As long as a remedy is available to the accused, it matters little as to the

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nomenclature attached to it. The High Court in the present case should have regarded the appeal which was filed against

the order under Section 9 of the Probation of Offenders Act as a petition under Section 482 Cr.P.C. and decided it according to law. As this has not been done, we set aside the impugned order of the High Court and direct the High Court to hear the case afresh by treating the appeal filed by the appellant as a petition under Section 482 Cr.P.C.

This appeal is disposed of in the aforesaid terms.

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.....CJ.

.....J.
(K.G. BALAKRISHNAN)

.....J.
(ARIJIT PASAYAT)

New Delhi;
August 6, 2002.