



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 151 of 2010.
Reserved on 23.9.2016
Date of Decision: 28.10.2016.

Lakshmi Singh**Petitioner.**
Versus
State of H.P.**Respondent.**

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes

For the petitioner: Ms. Anu Tuli, Advocate.
For the respondent: Mr. Rupinder Singh Thakur, Additional Advocate General, with Mr. Rajat Chauhan, Law Officer.

Sandeep Sharma, J.

The present criminal revision petition filed under Section 397 read with Section 401 of the Cr.PC, is directed against the judgment dated 21.04.2010, passed by the learned Sessions Judge, Shimla, HP, in Criminal Appeal No. 13-S/10 of 2008, affirming the judgment of conviction and order dated 27.2.2008 and 3.3.2008 respectively, passed by the learned Judicial Magistrate 1st Class, Theog, District Shimla, HP, in Case No. 279-1 of 2006, whereby the accused-petitioner has been sentenced to undergo rigorous imprisonment for a period of two years for commission of offence punishable under **Section 452 IPC** and to pay fine of Rs. 2000/- and in case of default, to further undergo

Whether reporters of the Local papers are allowed to see the judgment? Yes.

simple imprisonment for three months. The petitioner-accused has been further sentenced to undergo rigorous imprisonment for six months for the commission of offence punishable under **Section 323** of IPC and for period of six months for the commission of offence punishable under **Section 506** of the Indian Penal Code.

2. Briefly stated facts as emerged from the record are that the complainant (Krishan Singh Hetta) telephonically informed the police of Police Station Theog that accused (Lakshmi Singh) gave beatings to his mother Smt. Savitri Devi, PW-2. On the aforesaid information PW-11, H.C. Vijay Kumar along with Constable Narinder Kumar PW-4 visited the spot. On reaching the spot, the complainant gave a written complaint, Ext.PW-1/A stating therein that on 2.7.2006, he was present in his house and was cooking vegetables in the kitchen. When at that time, his mother was removing the grass from the courtyard, accused carrying 'danda' came from the path leading to village Kanog just below his courtyard and started exchanging hot words with his mother. The complainant further stated that the accused asked about the whereabouts of the complainant and asked her to call her son (complainant) to come outside and proclaimed to kill him. The mother of the accused tried to pacify the accused and requested him to go back to his house but accused forcibly trespassed in the courtyard. He also picked up a stone in his hand from the path

and at that time, the complainant was seeing the accused from the window of the kitchen. The mother of the complainant tried to stop the accused, but the accused hit the stone on left leg of his mother, as a result of which, she came inside the kitchen. Thereafter, accused forcibly came inside the kitchen and ran towards the complainant in order to give him beatings. However, mother of the complainant came in between accused and the complainant. The accused firstly threatened that he would kill the mother of the complainant and gave blow of danda on the left side of the head of the mother of the complainant, as a result of which, blood started oozing out of her head. The accused fled away from the spot. On the basis of aforesaid complaint Ext.PW-1/A, police lodged FIR Ext.PW-6/A at police Station Theog. I.O. prepared the spot map Ext.PW-9/A and also took into possession danda, Ext.P-1, blood stained Jacket, Ext.P-2, vide seizure memo, Ext.PW-2/A in the presence of witnesses. Police also got the mother of the complainant medically examined. PW-3, Dr. Nalnish Sharma medically examined PW2, Savitri Devi and issued MLC Ext.PW-3/A. PW-3 also advised X-ray examination of her skull and X-ray Form is Ext.PW3/B. Police also recorded the statements of witnesses under Section 161 of the Cr.PC and after completion of investigation, presented the Challan before the competent court of law.

3. Learned Judicial Magistrate, 1st Class, Theog, District Shimla, after satisfying itself that prima facie case exists against the accused person put a notice of accusation, to which he pleaded not guilty and claimed trial. Learned trial Court on the basis of evidence adduced on record by the prosecution, found the accused guilty of having committed offences under Sections 452, 323 and 506 of the IPC and convicted and sentenced him as per description already given above.

4. The present petitioner-accused being aggrieved with the judgment of conviction passed by the learned trial Court, filed appeal under Section 374 (3)(a) of Cr.PC before the Court of learned Sessions Judge, Shimla, HP, who vide judgment dated 21.4.2010, dismissed the appeal. Hence, this criminal revision petition before this Court.

5. Ms. Anu Tuli, Advocate, representing the petitioner vehemently argued that the impugned judgments of conviction and sentence recorded by the Courts below are illegal, unjust and contrary to law and facts as applicable to the facts and as such, same deserve to be quashed and set-aside. Ms. Tuli, further contended that bare perusal of the judgment passed by the Courts below clearly suggests that learned courts below while convicting and sentencing the petitioner accused have not dealt with evidence led on record by the prosecution in its right perspective, rather judgments are based upon the conjectures and surmises and as such, same are liable to be

quashed and set-aside. Counsel representing the petitioner strenuously argued that there are material contradictions with regard to time of occurrence in the complaint admittedly made by the PW1 that the complainant while making written complaint to the police Ext.PW1/A disclosed 6:45 AM on 2.7.2006 being time of occurrence as has been recorded in FIR. Whereas, while deposing as PW1 before the learned trial Court, the complainant disclosed the time of occurrence as 10.45AM. Similarly, Ms. Tuli, also invited attention of this Court to the statement of PW2, who stated that time of occurrence, was 11 AM. Mr. Tuli further contended that PW9 Vijay Kumar HC in his cross examination admitted that as per the challan, the occurrence took place at 6:45AM. Ms. Tuli forcefully contended that since there were material contradictions qua the time of occurrence, courts below ought to have exercised great caution while relying upon the statements of the these PWs but both the courts below failed to take into consideration the material evidence of the case as a result of which great injustice has been caused to the petitioner. Further stated that Courts below failed to appreciate that there is delay of more than six hours in informing the matter to the police if the time of occurrence is taken to be 6:45. She further stated that accused has been falsely implicated by the police after due deliberations with the complainant who is admittedly an advocate. She also stated that there is ample

evidence on record to demonstrate that there was civil litigation between petitioner-accused and the complainant and as such, their version could not be relied upon solely while convicting/sentencing the petitioner, in the absence of some independent witnesses. She also stated that it has specifically come in the statement of I.O. i.e. PW-9 that there are number of houses in the vicinity but for the reasons best known to the prosecution, no independent witness from the vicinity was cited as PW to prove their case, which omission clearly indicates that story put forth on behalf of the prosecution was untrustworthy and could not be relied upon in the absence of independent witnesses. While concluding her arguments, Ms. Tuli forcefully contended that both the courts below heavily placed reliance upon the testimonies of PWs No. 1, 2 and 7, perusal of which suggests that they are full of material contradictions with regard to time and manner of occurrence and as such, both the courts below have fallen in grave error while recording the conviction of the accused that too on the basis of appreciation of aforesaid witnesses, who were admittedly interested witnesses? She further contended that since there was no independent witness who had seen the alleged incident of beating by the accused, courts below were expected to exercise due care and caution while dealing with the statements given by PWs 1, 2 and 7, who are closely related to each other. She stated that prosecution was not

able to connect present petitioner accused with the offence so alleged against him. Ms. Tuli, also invited attention of this Court to the statements of PW3 and PW4 who admittedly in their cross-examination stated that stone shown to them did not bear FIR number and did not contain any blood stains. She also stated that statement of Doctor PW3 itself suggests that injuries stated in the MLC could be caused by fall and as such, courts below had no occasion to record conviction of the petitioner -accused on the basis of medical evidence adduced on record by the prosecution. Lastly Ms. Tuli argued that bare perusal of the evidence on record as well as judgment passed by the courts below suggests that prosecution was not able to prove the case against the petitioner beyond reasonable doubt and petitioner ought to have been acquitted by the courts below especially in view of the material contradictions in the statements of PWs 1, 2 and 7. She also stated that if it is presumed that petitioner has been rightly held guilty of having committed offences, in that eventuality also, punishment awarded by the courts below is on higher side and excessive. She stated that as per medical evidence adduced on record PW2 only suffered simple injuries and by no stretch of imagination, accused could be awarded punishment.

6. It is also contended on behalf of the petitioner that both the Courts miserably failed to appreciate that present petitioner was

entitled to the benefit of Section-4 of the Probation of Offenders Act, 1958 since he was first offender and there was no case pending against him in any court of law. In the aforesaid background, Ms. Tuli, Advocate appearing for the petitioner prayed that this petition may be allowed and judgments passed by the Courts below be quashed and set-aside.

7. Per contra, Mr. Rajat Chauhan, Law Officer, representing the State supported the impugned judgment passed by the courts below. Mr. Chauhan vehemently argued that bare perusal of the impugned judgments suggests that same are based upon the correct appreciation of the evidence available on record and prosecution has been able to prove its case beyond reasonable doubt. He further contended that in the given facts and circumstances of the case, no interference, whatsoever, of this Court, is warranted, where it stands proved on record that accused gave beatings to the mother of the complainant. He also reminded this Court that this Court has very limited powers while exercising its revisionary powers under Section 397 of the Cr.PC to re-appreciate the evidence when it stands duly proved on record that the courts below have dealt with each and every aspect of the matter very meticulously. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in case

State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri (1999)2

Supreme Court Cases 452, wherein it has been held as under:-

"In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. 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 feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

8. I have heard learned counsel for the parties as well carefully gone through the record

9. True, it is that this Court has very limited powers under Section 397 Cr.PC while exercising its revisionary jurisdiction but in the instant case, where accused has been convicted and sentenced, it would be apt and in the interest of justice to critically examine the statements of the prosecution witnesses solely with a view to ascertain that the judgments passed by learned courts below are not perverse and same are based on correct appreciation of the evidence on record.

10. As far as scope of power of this Court while exercising revisionary jurisdiction under Section 397 is concerned, the Hon'ble Apex Court in **Krishnan and another Versus Krishnaveni and another, (1997) 4 Supreme Court Case 241**; has held that in case Court notices

that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order. The relevant para of the judgment is reproduced as under:-

8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order."

11. Perusal of the evidence led on record by the prosecution clearly indicates that on 2.7.2006, petitioner-accused gave Danda blow on the head of the mother of the complainant. Prosecution with a view to prove its case, beyond reasonable doubt, examined as many as nine witnesses. PW1 K.S. Hetta, stated before the learned trial Court that he is an advocate by profession and is resident of village Sariana. He further stated that on 2.7.2006 at about 10:45, he was cooking the vegetables in his kitchen and below his courtyard, there is a path leading from village Sariana to village Kanog. He further stated that

accused came there having stick in his hand and asked his mother that where is your son, who is an advocate? Call him out and I will kill him. His mother asked the accused to go to his home but accused trespassed into the courtyard of his kitchen. He picked up a stone and tried to come inside the kitchen but his mother obstructed the accused. When accused pelted a stone on Savitri Devi (mother of the complainant) on her left leg, she came inside the kitchen and accused also trespassed into the kitchen, then accused tried to give a blow on the person of the complainant, but his mother came between them to rescue the complainant. He further stated that accused said that he will first kill her, then he will kill her son and then gave stick blow on the head of his mother, then accused threw the stick in the kitchen and ran away from the spot, as a result of which, blood started oozing out from her head and her jacket smeared with blood. He stated that thereafter he telephonically informed the police and filed the complaint Ext.PW-1/A. He further stated that his mother handed over stick Ext.P1 and jacket Ext.P2 to the police, which were taken into possession vide Memo Mark-B. He also stated that his mother was medically examined. He also admitted before the Court that stick is the same with which the accused gave beating to the mother and she was wearing the same jacket. He in his cross examination admitted that incident occurred at about 10:15 AM and there are about 8 to 10 houses in the village

Sariana. He also admitted the suggestion put to him that there was litigation with the accused person, but he qualified that they are not inimical and there was an allegation against his brother to kill the nephew of the accused person. He also admitted that there is case pending in the Court of SDM, Theog against the accused. PW1 stated that he tried to inform the police at about 10:45 am, but telephone lines were busy, therefore, he could not inform police at 10:45 am. However, he specifically denied the suggestion put to him that he falsely instituted case against the accused person due to enmity. He also denied the suggestion that his mother was not given beatings by the accused. He also denied that the mother of the complainant sustained injuries by way of fall.

12. Similarly, PW2 Savitri Devi, while deposing before the Court below corroborated the version put forth on behalf of PW1, wherein she stated that on 2.7.2006, at about 10:45 am, she was picking up the grass in her courtyard. She also stated that accused (present in court) came in that path, holding a stick in his hand and threatened her to call her son out and he wanted to kill him. She tried to pacify the matter, but the accused picked up the stone and pelted the same on her knee. Thereafter, she went inside her kitchen, but accused followed her and trespassed in the kitchen. She further stated that when accused made an attempt to beat her son, she came in

between the accused and the complainant but accused stated that he will kill her prior to her son and then accused gave a blow of stick on her head., as a result of which, blood started oozing out and her jacket was smeared with blood. She further stated that the matter was informed to the police and police came on the spot. She handed over the stick and jacket to the police which were taken into possession vide memo Ext.PW-2/A. In her cross-examination she stated that stone was small and it was pelted at a distance of 4-5 feet. The stone was not taken into possession by the police. She stated that her son informed the police at about 11:45 am telephonically. She stated that she was beaten with stick from the close distance. She also admitted in her cross-examination that she is having litigation with the accused and there is no inimical relationship with the accused. Close scrutiny of aforesaid PWs, who were admittedly eye witnesses to the alleged incident suggests that on 2.7.2006, petitioner forcibly entered into the premises of the complainant and gave danda blow on the head of the PW2, as a result of which, she suffered injury on her head.

13. Careful perusal of entire version put forth on behalf of these PWs clearly suggests that they supported the version of each other and there are no contradictions, if any, with regard to time as alleged by the petitioner accused. Both the PWs specifically stated that on 2.7.2006, at about 10:45 am, present petitioner forcefully

entered the premises of the complainant. Both the PWs unequivocally stated that since at that relevant time, telephone line was busy police could only be informed at 11:45 AM. Though counsel representing the petitioner-accused by referring to the Ext.PW-1/A made an attempt to demonstrate that complainant had disclosed to the police that incident occurred at 6:45AM but interestingly, no suggestion worth the name was put to either of the aforesaid PWs by the defence that initially, they had reported to the police that incident occurred at 6:45 am, in the morning. Apart from above, there is no attempt on the part of the defence to confront aforesaid PWs with the timing got recorded by the complainant in written complaint Ext.PW-1/A, where he allegedly disclosed time at 6:45 am. Close scrutiny of cross examination conducted on these material prosecution witnesses nowhere suggests that defence was able to shatter their testimony, which otherwise appears to be trustworthy. Both the PWs have been very very candid specific and consistent while narrating the sequence of events allegedly occurred at the time of the incident. Since both the PWs categorically stated that incident occurred at 10:45 am and matter was reported to police at 11:45, this Court sees no force in the contention put forth on behalf of the counsel representing the petitioner that there were material contradictions qua the timing given by both the PWs, rather, this Court after perusing the entire

examination-in-chief as well as cross-examination conducted on these PWs, is compelled to conclude that the statements of both the PWs is confidence inspiring and they fully corroborate the version put forth by each other.

14. True, it is that both the PWs in their cross examination and examination-in-chief admitted that litigation is pending in the court of law inter-se parties but interestingly, nothing was placed on record by the petitioner-accused in support of aforesaid claim. Similarly, defence was not able to shatter testimonies of PWs, where they categorically stated that the petitioner accused forcefully trespassed into the premises of the complainant and gave beatings to PW2.

15. Apart from above, PW3, who medically examined PW2 and issued MLC Ext.PW-3/A stated that injuries stated in the MLC are simple in nature and duration is less than six hours. As per record, PW2 was examined by PW3 at 2:30 pm, meaning thereby, she was examined within six hours of alleged occurrence i.e. 10.45 am Since Dr. specifically stated that duration of injury is less than six hours and there is possibility that injury can be caused with the stick and by falling, both the courts below rightly came to conclusion that prosecution was able to prove on record by leading cogent and convincing evidence duly supported by medical evidence that Savitri Devi was given beatings by the present petitioner accused. Moreover, PW3 in cross-examination

admitted that it is possible that injury No.1 can be caused with the stick and injury No.2 can be caused by falling on the stone, which itself corroborates the version put forth on behalf of PW1 and 2 that petitioner accused gave danda blow on the head of the mother of the complainant.

16. PW7 Jeet Ram also stated that his house is on the back side of the house of PWs 1 and 2. He stated that on 2.7.2006 at about 10:45 am, he heard the noise of crying upon which he went on the lintel and witnessed that accused was asking PW2 about the whereabouts of the complainant, who is an advocate. He has stated that he came back and after some time when he again heard the noise of crying, he proceeded to the place of the occurrence, whereas accused went towards the 'ghasni'. He stated that PW2 was weeping in the kitchen and blood was oozing out of her head. Though, this witness was declared hostile but in his cross examination by learned prosecutor, he specifically admitted that when PW2 proceeded inside the kitchen, accused was holding the danda in his hand and upon the hearing cries of PW2, he again went inside the kitchen. He also admitted that it was disclosed by PW2 that the accused had given beatings with danda. He also stated that he had identified the Danda with which the injury was caused and same was taken into possession by the police. This witness was declared hostile but in his cross examination he

also corroborated the version put forth on behalf of PW1 and PW2 that when PW2 proceeded inside the kitchen, accused was holding danda in his hand and he further admitted that when he went inside the kitchen, it was disclosed by PW2 that accused had given her beating with the danda. He also stated that he had identified the danda with which the injury was caused by the accused upon the PW2 and same was taken into possession by the police. Though, it was urged on behalf of the petitioner that no reliance, if any, could be placed upon the version put forth on behalf of PW7 because admittedly incident had not occurred in his presence but close scrutiny of statement given by PW7 establishes the presence of the petitioner-accused in the kitchen of the complainant as well as mother of the complainant, to whom he gave danda blow. It also emerged from his statement that immediately after occurrence PW2 informed PW7 that injury has been caused on her head by the petitioner accused. PW7 categorically admitted in his cross examination that when PW2 entered inside the kitchen, accused carrying danda in his hand also entered into the kitchen. He also admitted that when he heard cries, he went in the kitchen and it was disclosed to him that accused had given beating with danda to her. Similarly, he also identified the danda, which was being carried by the accused in his hand. Hence, this Court sees no illegality and infirmity in the judgment passed by the courts below,

where they came to conclusion that PW7 also supported the case of the prosecution.

17. Similarly, this Court with a view to ascertain the genuineness and correctness of the argument having been made by the counsel appearing for the petitioner that in FIR, timing was got recorded as 6:45 am, perused FIR, perusal whereof clearly suggests that time of occurrence has been stated as 10:45 am, as have been stated by both the PWs (PW1 and PW2).

18. At the cost repetition, it may be pointed out that in cross examination both the PWs were not confronted by the defence with regard to the timing. Since no suggestion qua the timing of 6:45 was ever put to these PWs, both the courts below rightly relied upon the statements of PW1 and PW2, where they unequivocally stated that the time of occurrence was 10:45 am. Hence this Court has no hesitation to conclude that prosecution was able to prove beyond reasonable doubt that occurrence took place at about 10:45 am and there is no illegality and infirmity in the judgment passed by the courts below. Though, defence by putting suggestion in the cross-examination made an attempt to demonstrate that there is litigation pending in the courts between them and he was falsely implicated but interestingly, no evidence was led on record to suggest that the injury suffered by PW2 was not inflicted by him, whereas prosecution by way of leading

cogent and convincing evidence was able to prove on record that the petitioner-accused caused injury on the head of the PW2. PW3 in his cross-examination specifically stated that injury could be possible by stick and similarly, presence of accused on the spot, has not been disputed at all, rather same stands proved in view of the statement given by PW7. Hence, this Court has no reason to interfere with the well reasoned judgments passed by the courts below which otherwise appear to be based upon the correct appreciation of the evidence adduced on record by the prosecution.

19. Faced with this situation, counsel representing the petitioner prayed that if it is presumed that injury, which is admittedly simple in nature was caused by the petitioner-accused by inflicting danda on the head of PW2, punishment awarded by the court being excessive and on higher side needs to be modified. She further stated that the petitioner being first offender also deserves to be given benefit of Section-4 of the Probation of Offenders Act keeping in view his being first offender. Ms. Tuli, also stated that mitigating circumstance in this case is that approximately, more than ten years have passed after happening of that incident and eight years have been passed after passing of the judgment of conviction dated 27.2.2008. The accused petitioner has already suffered much agony during the pendency of the appeal in the court of learned Sessions Judge Shimla (H.P.), as well

as in High Court of Himachal Pradesh. In support of the aforesaid argument, learned counsel for the petitioner-accused also invited the attention of this Court to the judgment passed by this Hon'ble Court in **Yudhbir Singh versus State of Himachal Pradesh 1998(1)S.L.J. 58**, wherein it has been held as under:

"9. The only mitigating circumstance that appears to be there is that the time gap of about six years between the date of occurrence as well as the date of decision of this revision petitioner. During this entire period sword of present case looming over the head of the petitioner was always there. That being so, this court is of the view that instead of sending the petitioner to jail as ordered by the courts below, he is given the benefit of Section 4 of the Probation of Offenders Act. Accordingly, it is ordered that he shall furnish personal bond in the sum of Rs. 5,000/- to the satisfaction of the trial Court within a period of four weeks from today to keep peace and to be of good behavior for a period of one year from the date of execution of the bond before the court below as well as not to commit any such offence. In addition to being given benefit of Section 4 of the Probation of Offenders Act, petitioner is further directed to pay a sum of Rs. 3,000/- each to PWs Baldev Singh and Dilbagh Singh injured as compensation. Shri R.K. Gautam submitted that this amount of compensation be deposited with the trial Court on or before 31.8.1997, who will thereafter pay the same to said persons."

20. In this regard, reliance is also placed upon Hon'ble Apex Court judgment **Ramesh Kumar @ Babla versus State of Punjab 2016 AIR (SC) 2858**, wherein it has been held as under:

"7. Accordingly the appeal is allowed in part by converting appellant's conviction under Section 307 IPC to one under Section 324 IPC. On the question of sentence, it is pertinent to note that the occurrence took place in 1997. In his statement under Section 313 of the code of Criminal Procedure the appellant gave his age in 2002 as 36 years. He claimed that he and others went to the place of occurrence on getting information that his brother Sanjay Kumar was assaulted by Ramesh Kumar (Complainant). He brought his brother to Police Station and lodged a report. As noticed by trial court, parties are involved in civil as well as criminal litigation from before. High Court has noted that

appellant, as per custody certificate, is not involved in any other case. In such circumstances, it is not deemed necessary to send the appellant immediately to Jail custody after about 19 years of the occurrence when he appears to be 50 years of age and fully settled in life.

8. In view of aforesaid, in our view the ends of justice would be met by granting benefit of Probation of Offenders Act to the appellant. We order accordingly and direct that the appellant be released on executing appropriate bond before the trial court to appear and receive sentence of rigorous imprisonment for 1 (one) year when called upon to do so and in the meantime to keep the peace and be of good behaviour."

20. The reliance is also placed upon Hon'ble Apex Court judgment ***Hari Kishan and State of Haryana versus Sukhbir Singh 1988 AIR (SC) 2127***, wherein it has been held as under:

"8. The question next to be considered is whether the accused are entitled to the benefit of probation of good conduct? We gave our anxious consideration to the contentions urged by counsel. We are of opinion that the High Court has not committed any error in this regard also. Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders, on probation, the Court encourages their own sense of responsibility for their future and protect them from the stigma and possible contamination of prison. In this case, the High Court has observed that there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. These are not showing to be incorrect. We have already said that the accused had no intention to commit murder of any person. Therefore, the extension of benefit of the beneficial legislation applicable to the first offenders cannot be said to be inappropriate.

9. This takes us to, the third questions which we have formulated earlier in this judgments. The High Court has directed each of the respondents to pay Rs.2500/- as compensation to Joginder. The High Court has not referred to any provision of law in support of the order of compensation. But that can be traced to section 357 Criminal Procedure Code Section 357, leaving aside the unnecessary, provides:-

"357. Order to pay compensation:

(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is in the opinion of the Court, recoverable by such person in a civil Court;

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(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation. Such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its power of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this Section.

11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default."

21. In view of the aforesaid law as well as submissions having been made by Ms. Tuli, learned counsel appearing on behalf of the petitioner and after taking into consideration the facts and circumstances of the present case, I am of the considered opinion that the present petitioner-accused can be granted benefit of Section 4 of the Probation of Offenders Act, 1958 subject to payment of adequate compensation, which would be determined after the receipt of the report of Probation Officer.

22. Accordingly, Registry is directed to call for the report of the Probation Officer, Shimla, District Shimla, H.P. within six weeks. Registry to list this matter on **12th December, 2016.**

28th October, 2016

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**(Sandeep Sharma),
Judge.**

High Court of H.P.