JAWALA RAM AND ANR. A

v.

STATE OF H.P.

AUGUST 28, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.] B

Probation of Offenders Act, 1958 : Section 4.

Probation—Benefit of—Failure to file undertaking for—Dismissal of appeal—Filing of explanation and undertaking before Supreme Court—Acceptance and Directions. C

The appellants were held entitled to benefit of Section 4 of the Probation of Offenders Act, 1958 by the High Court but their appeal was dismissed for not filing the undertaking of good conduct. They filed their explanation as well as the undertaking before this Court. D

Accepting the same, this Court

HELD : The appellant shall remain on probation for a period of one year from the date of this order. If they keep good conduct and behaviour during this period, they shall be deemed to have served the sentence. In case they do not, the authorities would be free to take them into custody to serve the sentence imposed on them. [116-D] E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1000-1001 of 1995. F

From the Judgment and Order dated 21.4.95 of the Himachal Pradesh High Court in Crl. A. No. 329 of 1989.

Krishan Mahajan, R.N. Karanjawala and Mrs. Manik Karanjawala, for the Appellants. G

The following Order of the Court was delivered :

As directed by the Court, the Registry issued notice to the standing counsel for the state of Himachal Pradesh, but no appearance has been entered so far. Nobody has appeared also. H

A Leave Granted.

The appellants have been convicted under ss.451, 426 read with s.34 of the Indian Penal Code and sentenced to undergo two months imprisonment. The High Court postponed the sentence under s.4 of Probation of Offender's Act subject to filing an undertaking of good conduct. Since the
B appellants had not executed the under taking, the High Court dismissed the appeal. Thus, this appeal by special leave.

In view of the finding of the High Court that the appellants are entitled to Probation of Offender's Act and were directed to execute a bond, and in view of the explanation given by the appellants in the form of
C an affidavit filed in this Court, we accept the explanation of non-receipt of the advocate's letter. They have also filed an affidavit in this Court giving an undertaking that they would keep good conduct for a period of one year. We accept the undertaking and state that they shall remain on probation for a period of one year from today. If they keep good conduct
D and behaviour during this period, they shall be deemed to have served the sentence. In case they do not, the authorities would be free to take them into custody to serve the sentence imposed by the trial court and affirmed by the High Court.

The appeal is accordingly allowed.

T.N.A. Appeal allowed.