

(1991) 07 OHC CK 0047
In the Orissa High Court
Case No : Criminal Revision No. 616 of 1987

Buti Domb and Another

APPELLANT

Vs

Suti Domb

RESPONDENT

Date of Decision : 10-07-1991

Acts Referred:

Probation of Offenders Act, 1958 — Section 3

Citation : (1991) 2 OLR 180

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : J. Adhikari, B. Pr. Patra and Meera Das, for the Appellant; None, for the Respondent

Judgement

A. Pasayat, J.—This revision is directed against the judgment of "learned Addl. Sessions judge, Koraput, jeypore confirming an order of conviction and sentence awarded by the learned Judicial Magistrate, First Class, Kotpad. teamed Magistrate found the petitioners guilty under Secs. 379/34 of the Indian Penal Code, 1860 (in short the "Code"), in default to undergo rigorous imprisonment for two months There was also a direction out of fine amount if realised, a sum of Rs. 100/- was to be paid to the complainant as compensation. Learned Addl. Sessions Judge on analysis of evidence held that bona fide claim over property in question was not established and therefore, offence u/s 379/34 of the Code was clearly made out. It was held by learned Migistrate that petitioners are not entitled to get the benefits of Probation of Offenders Act, 1958 (in short the "Probation Act"), The learned Addl Sessions Judge has not dealt with this aspect specifically, but has held that sentence was reasonable.

2. Though various points were urged by learned counsel for petitioners characterising conviction to be unreasonable and perverse, I do not find any scope for interference considering the fact that Courts below have made an elaborate analysis of evidence on record and have held that petitioners did not establish plea of bona fide claim of right. However, I find that petitioners are

illiterate persons belonging to an interior village of Koraput district. They have no previous conviction. Having regard to the circumstances of the case including nature of offence and character of the offender, I feel that instead of sentencing them to any punishment or releasing them on probation of good conduct u/s 4 of the Probation Act. it would be appropriate to release them after admonition, which I do by exercise of powers u/s 3 of Probation Act.

It was urged by the learned counsel for the State that High Court has no power to exercise jurisdiction u/s 3 of the Probation Act. The position has been settled beyond doubt by the apex Court in Ramji Missir and Another Vs. The State of Bihar, . High Court has power to release an accused u/s 3 of the Probation Act after due admonition.

Criminal Revision is disposed of accordingly.