
(1990) 07 OHC CK 0055
In the Orissa High Court
Case No : Criminal Revision No. 304 of 1986

Dusasan Mallick

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 05-07-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 34, 341
Probation of Offenders Act, 1958 — Section 11, 11(2), 3, 4

Citation : (1990) 70 CLT 633

Hon'ble Judges : V. Gopalaswamy, J

Bench : Single Bench

Advocate : S.D. Das, K.N. Sinha and D.P. Panda, for the Appellant; H.K. Jena, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopalaswamy, J.—This revision is preferred against the judgment of the Judicial Magistrate, First Class, Jajpur, in G.R. Case No. 735 of 1976 convicting the present Petitioner Dusasan and two Other co-accused person, under Sections 323 and 341/34, I.P.C. and directing their release u/s 3 of the Probation of Offenders Act (hereinafter referred to as "the Act") after due admonition.

2. Sub-section (2) of Section 11 of the Act provides:

(2) Notwithstanding anything contained in the Code, where an order u/s 3 or Section 4 is made by any Court trying the offender (other than a High Court), an appeal shall lie to the Court to which appeals ordinarily lie from the sentences of the former Court.

An order u/s 3 or Section 4 of the Act is not a sentence. But then, it is clear that Section 11(2) provides for an appeal from an order passed under Sections 3 and 4, notwithstanding anything contained in the Code of Criminal Procedure. The right to prefer such an appeal is conferred both upon the prosecution as well as

upon the accused. Section 11(2) states that where an order u/s 3 or Section 4 is made by any Court trying the offender, an appeal shall lie to the Court to which appeals ordinarily lie from the sentences of the former Court. But presently the Petitioner has preferred a revision against the order directing his release u/s 3 of the Act. But in view of the clear provision for appeal u/s 11 of the Act, the present revision petition is misconceived and not maintainable in law. (See Aravinda Mohan Sinha Vs. Prohlad Chandra Samanta,).

3. The trial Court, on a consideration of the evidence placed on record, found that the prosecution could successfully prove its case that on 18-9-1976 at about 9-30 A.M. as the informant was going to his field, the present accused-Petitioner along with two other co-accused persons had surrounded him and assaulted him. On a perusal of the judgment of the trial Court, I find that the trial Court was justified in holding the three accused persons, including the present Petitioner, guilty of the offences under Sections" 323 and 341/34, I.P.C. So even if an appeal were to be preferred before an appropriate Court, the same would have been dismissed.

4. In any view of the matter, the revision petition is liable to be dismissed and the same is accordingly dismissed.

Petition dismissed.