

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 2 OF 2020

Sk. Yakub

.... ***Petitioner***

Mr. Rabindra Kumar Prusty,
Advocate

-versus-

Imrana Begum and another

.... ***Opp. Parties***

Mr. Ramesh Sethy, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
07.04.2022

- 7.
1. This matter is taken up through hybrid mode.
 2. This RPFAM has been filed assailing the order dated 10th December, 2019 (Annexure-1) passed by learned Judge, Family Court, Cuttack in Criminal Proceeding No. 764 of 2009, whereby he directed the Petitioner to pay a sum of Rs.2,500/- per month to the Opposite Party No.1-Wife and Rs.2,500/- per month to the Opposite Party No.2-Daughter towards their maintenance from the date of application, i.e. from 11th November, 2009. A further direction was made for payment of arrear maintenance in ten monthly equal installments.
 3. Mr. Prusty, learned counsel for the Petitioner submits that the Petitioner filed a petition under Section 281 of Mahomedan Law for restitution of conjugal rights in C.P. No. 931 of 2011, which was allowed. But, the Opposite Party No.1-Wife refused to join the Petitioner. As such, she is not entitled to receive any amount towards maintenance. He further submits that although learned Judge, Family Court, Cuttack held that the Petitioner is regularly paying Rs.1,500/- per month towards interim maintenance to the Opposite parties but

failed to give a direction for its adjustment while determining the arrear maintenance. Documents and orders passed by the competent court of law filed and exhibited during adjudication of the proceeding were not taken into consideration by learned Judge, Family Court, Cuttack while adjudicating the matter. Hence, the impugned order is liable to be set aside and the matter may be remitted back to the learned Judge, Family Court, Cuttack for fresh consideration in accordance with law.

4. Mr. Sethy, learned counsel for the Opposite Parties submits that the Petitioner was regularly paying the interim maintenance during pendency of the criminal proceeding. Adjustment of the amount already paid will arise while determining the arrear amount. He further submits that award of maintenance of Rs.2,500/- per month to each of the Opposite Parties is not in excessive. The Petitioner also does not dispute the relationship between the parties. Hence, award of maintenance of Rs.2,500/- to each of the Opposite Parties is not unreasonable and should not be interfered with.

5. Taking into consideration the submissions of learned counsel for the parties, this Court is of the considered opinion that learned Judge, Family Court, Cuttack should have taken into consideration the order passed in Criminal Proceeding No. 931 of 2011 (Ext.E) and the conduct of the Opposite Party No.1 in not joining the company of the Petitioner after the order allowing restitution of conjugal rights was passed by a competent Court. Section 125 (4) Cr.P.C. clearly envisages the grounds on which a Woman (wife) shall not be entitled to receive maintenance or the interim maintenance and expenses of proceeding from her husband, viz., if she is living in adultery or if without any sufficient reason she refuses to live with her husband, or if the parties are living separately by mutual consent. That being the statutory provision should have been taken into consideration by learned Judge,

Family Court, Cuttack while awarding maintenance in favour of Opposite Party No.1.

6. On perusal of the impugned order, it appears that learned Judge, Family Court, Cuttack did not at all consider this material aspect while passing the impugned order.

7. Accordingly, the impugned order under Annexure-1 is set aside and the matter is remitted back to the learned Judge, Family Court, Cuttack for fresh adjudication giving opportunity of hearing to the parties concerned keeping in mind the observations made above. In order to protect the interest of Opposite Parties, this Court directs that the Petitioner shall go on paying a sum of Rs.2,500/- per month to each of the Opposite Parties during pendency of the Criminal Proceeding No. 764 of 2009. However, recovery of arrear maintenance shall not be insisted upon during pendency of the said criminal proceeding.

8. With the aforesaid observation and direction, the RPFAM is disposed of.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks