

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO. 23 OF 2013

Minati Patajoshi

.....

Petitioner

Mr. Pravat Kumar Mohanty, Advocate

-versus-

Bauribandhu Patajoshi

....

Opp. Party

Mr. Lalit Kumar Moharana, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

19.07.2022

Order No.

11. 1. This matter is taken up through hybrid mode.
2. Order dated 5th May, 2012 passed by learned Judge, Family Court, Puri in C.R.P. No. 128 of 2011 is under challenge in this RPFAM, whereby he entertaining an application under Section 127 Cr.P.C. enhanced the monthly maintenance to be paid by the Opposite Party to the Petitioner to Rs.1500/-.
3. Mr. Mohanty, learned counsel for the Petitioner submits that at the time of consideration of the petition under Section 127 Cr.P.C., the gross salary of Opposite Party was Rs.20,776/-. Thus, the Petitioner is entitled to get 1/5th of his salary as monthly maintenance. Earlier, the Petitioner was getting Rs.200/- per month towards maintenance, which was subsequently enhanced to Rs.400/- per month and lastly the same was enhanced to Rs.1500/- on an application filed by the present Petitioner. Learned Judge, Family Court, Puri while considering the matter did not, at all, take into consideration the law prevailing in the field. Hence, the maintenance awarded by learned Judge, Family Court, Puri requires reconsideration.
4. Mr. Moharana, learned counsel for the Opposite Party submits that although take home salary of Opposite Party at the

relevant time was about Rs.20,000/- per month, but he had dependants, like his children, who were prosecuting their studies in the college. The Opposite Party had also a dependant brother. The marriage between the parties has already been dissolved and the Opposite Party has remarried. While disposing of the petition for divorce, learned trial Court has given liberty to the Petitioner to pray for permanent alimony and maintenance. Accordingly, the Petitioner filed a petition under Section 125 Cr.P.C. It is his submission that taking into consideration the salary of Opposite Party vis-à-vis his obligation and requirement of the Petitioner, an amount of Rs.1500/- per month has been directed to be paid by the Opposite Party to the Petitioner towards maintenance. The impugned order has been passed taking into consideration the facts and circumstances of the case prevailing then. Hence, the amount so enhanced towards maintenance is justified and needs no interference.

6. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the case record, this Court finds that although the salary of Opposite Party at the relevant time was about Rs.20,000/- per month, but he had dependants, like college going children and one brother. Thus, considering the materials on record, the impugned order has been passed. In the meantime, more than nine years have elapsed. Hence, either of the parties is at liberty to file an application under Section 127 Cr.P.C. for variation of the order of maintenance.

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

(K.R. Mohapatra)
Judge

bks