

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM No. 57 OF 2014

Jatindra Naik @ Jitendra Nath Naik* *Petitioner

Mr. Sameer Mishra, Advocate

-versus-

Kishori Naik and another* *Opp. Parties

Ms. Bharati Dash, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
12.04.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 29th March, 2014 passed in Criminal Misc. Case No.464/205 of 2013/2012, whereby learned Judge, Family Court, Baripada directed the Petitioner to pay a sum of Rs. 5,000/- per month to each of the Opposite Parties as maintenance from the date of filing of the application, i.e. from 10th July, 2012. A further direction was made to the Petitioner for payment of arrear maintenance in six equal installments.
3. Mr. Mishra, learned counsel for the Petitioner submits that the Opposite Party No.1 is not the legally married wife of the Petitioner. As such, the Opposite Party No.2 was not born out of their wedlock. The Petitioner has married to one Ranjubala Dash, daughter of Bharat @ Bata Krushna Dash of his village and is leading a happy married life. The Petitioner was an employee under the State Bank of India and has already retired from service. At the time of filing of the petition under Section 125 Cr.P.C., the Opposite Party No.2 was 28 years old. Learned Judge, Family

Court, Baripada while adjudicating the matter did not appreciate these material aspects in their proper perspective and awarded the maintenance. Hence, he prays for setting aside the impugned order and to remit the matter back to the learned Judge, Family Court, Baripada for fresh adjudication.

4. Ms. Dash, learned counsel for Opposite Parties refuting such submission contended that the subsequent events that occurred after disposal of the petition under Section 125 Cr.P.C. cannot be taken into consideration in this RPFAM. At the relevant time, the Petitioner was drawing monthly salary of Rs.43,183.32 paisa and his take home salary was Rs.28,586/- per month. The Opposite Party No.1 is the legally married wife of the Petitioner and Opposite Party No.2 was born out of their wedlock. In order to substantiate the same, the Opposite Parties have adduced ample documentary evidence in support of their case. The income of the Petitioner was also not disputed. Hence, learned Judge, Family Court, Baripada has committed no error in awarding the maintenance, as aforesaid.

5. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the impugned order, this Court is of the considered opinion that strict proof of marriage is not required in a proceeding under Section 125 Cr.P.C. If two persons are living as husband and wife under one roof, the same is sufficient to construe their status for consideration of the petition under Section 125 Cr.P.C. In the instance case, learned Judge, Family Court, Baripada has taken into consideration the oral as well as documentary evidence of the parties and came to a categorical finding that the Opposite Party No.1 being the wife of the Petitioner is entitled to get maintenance. It is also held that the

Opposite Party No.2 being the daughter born out of wedlock of Petitioner and Opposite Party No.1 is entitled to get maintenance. The quantum of maintenance does not also appear to be excessive taking into consideration the facts and circumstances prevailing then.

6. In view of the above, I am not inclined to interfere with the impugned order.

7. Accordingly, this RPFAM being devoid of any merit stands dismissed.

(K.R. Mohapatra)
Judge

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