

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4742 of 2011

Lalatendu Mishra *Petitioner*
versus-
Smt. Jayanti Panigrahi *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

ORDER
20.06.2022

Order
No.

12. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner-husband with a prayer to quash the proceeding in M.C. No.135 of 2011 pending on the file of the learned S.D.J.M., Phulbani and direct the Opposite Party-wife to restrain from filing Execution Case or cases pursuant to the judgment in M.C. No.87 of 2006 vide Annexure-7.
3. Heard the learned counsel for the parties.
4. The grievance of the Petitioner-husband in this case is that no doubt there was saddled with liability in M.C. No.87 of 2006 filed under Section 125 of Cr.P.C. by the Opposite Party-wife to pay maintenance of Rs.1,000/- per month and for non-payment of the same, the Opposite Party-wife had preferred Criminal Misc. Case No.54 of 2008 before the court of S.D.J.M., Phulbani for realization of the arrear maintenance. But, in the said case, the learned S.D.J.M. having held that

arrear maintenance due till then had already been paid, closed the proceeding. Thereafter, the Opposite Party-wife preferred revision before the court of Sessions Judge, Phulbani against the same, which has been confirmed.

5. However, it would be apposite to mention here that in a civil suit under the Hindu Marriage Act, i.e., C.S. No.13 of 2007, which is pending between the parties, an interim maintenance was allowed @ Rs.1,000/- by the Civil Judge (Senior Division), Phulbani. The wife challenging the inadequacy of the amount, preferred F.A.O. No.1 of 2011/F.A.O. No.01 of 2009 before the Adhoc Additional District Judge, Fast Track Court No.II, Phulbani, which was disposed of enhancing the quantum of maintenance to Rs.3,000/-.

6. Since an interim maintenance has already been awarded and the Petitioner-husband stated to be regularly paying the same in the civil proceeding, therefore, the subsequent filing of the execution case under Section 128 of Cr.P.C. vide M.C. No.135 of 2011 before the S.D.J.M., Phulbani is untenable. Hence, the Petitioner has prayed to quash the said proceeding and restrain the Opposite Party-wife not to file such execution cases.

7. In this case undisputedly in the order under Section 125 of Cr.P.C. passed in M.C. No.87 of 2006 has remained undemolished. In such premises, notwithstanding an order of

interim maintenance in a petition under Section 24 of the Hindu Marriage Act in a civil suit pending vide C.S. No.13 of 2007, the liability of the Petitioner-husband continuous pursuant to the order under Section 125 of Cr.P.C. to pay the maintenance. Since in earlier occasion, the maintenance due pursuant to such order was already paid, the same does not preclude the Opposite Party-wife to seek realization of the maintenance amount due thereafter by filing a fresh execution cases.

8. In view of the aforesaid position of law, the prayer made by the Petitioner in this case seeking the aforesaid relief is devoid of merit.

9. Accordingly, the CRLMC stands dismissed.

10. If no amount is due, but still any Misc. Case is filed under Section 128 or 125(3) of Cr.P.C. challenging realization of the same to levy the maintenance ordered, the Petitioner-husband may bring the same to the notice of the executing court and in that event, the executing court shall do the needful.

(S. Pujahari)
Judge

DA