

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 6 OF 2022

Pankajini Pradhan and another* *Petitioners

Mr. Trilochan Nanda, Advocate

-versus-

Bibhuti Bhusan Pradhan* *Opp. Parties

Mr. Nirakar Behera, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

Order No.

25.08.2022

4. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 12th November, 2021 (Annexure-1) passed by learned Judge, Family Court, Puri in CRP No.3 of 2019, whereby he directed the Opposite Party to pay maintenance @ Rs.10,000/- per month to the Petitioner No.1 from the date of application, i.e. from 3rd January, 2019.
3. Mr. Nanda, learned counsel for the Petitioners submits that the gross salary of the Opposite Party is Rs.50,000/- and his net salary is Rs.34,724/- as it reveals from the salary slip marked as Ext.1. Learned Judge, Family Court, Puri taking into consideration the net income of Opposite Party has awarded a meager amount of Rs.10,000/- per month as maintenance to the Petitioner No.1. Further, learned Family Court refused to grant any maintenance to the Petitioner No.2, who is an unmarried daughter born out of the wedlock of Petitioner No.1 and Opposite Party. The Petitioner No.2 being a unmarried daughter is entitled to maintenance under Section 125 Cr.P.C.. In that view of the matter, Mr. Nanda, learned counsel for the Petitioner prays for setting aside the impugned order under Annexure-1

and to remit the matter back to the learned Judge, Family Court, Puri for re-consideration with regard to quantum of maintenance and entitlement of Petitioner No.2 to receive maintenance.

4. Mr. Behera, learned counsel for the Opposite Party, on the other hand, submits that the major daughter is not entitled to maintenance in view of the provision under Section 125 (1) (c) Cr.P.C. The provision under Section 125 Cr.P.C. is only applicable to legitimate/illegitimate minor child. Hence, the Petitioner No.2 is not entitled to any maintenance. Since the net income of the Opposite Party is Rs.34,724/- per month, learned Judge, Family Court, Puri has committed no error in granting maintenance of Rs.10,000/- per month to the Petitioner No.1. He, therefore, prays for dismissal of the RPFAM.

5. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the record, it appears that the net income of Opposite Party after the statutory deduction is Rs.34,724/- per month. The Opposite Party has also his personal expenses. Taking into consideration the income of Opposite Party and requirement of the Petitioner No.1, learned Judge, Family Court, Puri has directed to pay maintenance of Rs.10,000/- per month. In the case of **Kalyan Dey Chowdhury –v- Rita Dey Chowdhury Nee Nandy**, reported in (2017) 14 SCC 200, the wife is entitled to 1/4th of the net salary of the husband towards her maintenance in a petition under Section 125 Cr.P.C. Thus, the maintenance amount directed to be paid to the Petitioner No.1 is just and reasonable.

6. In the case of **Abhilasha –v- Parkash and others**, reported in 2020 SCC Online SC 736, the Hon'ble Supreme Court has held as under:

“ 12. The Act, 1956 was enacted to amend and codify the law relating to adoptions and maintenance among Hindus. A bare perusal of Section 125(1) Crpc. as well as Section 20 of Act, 1956 indicates that whereas Section 125 Crpc. limits the claim of maintenance of a child until he or she attains majority. By virtue of Section 125(1) (c), an unmarried daughter even though she has attained majority is entitled for maintenance, where such unmarried daughter is by reason of any physical or mental abnormality or injury is unable to maintain itself. The Scheme under Section 125(1) Crpc. thus, contemplate that claim of maintenance by a daughter, who has attained majority is admissible only when by reason of any physical or mental abnormality or injury, she is unable to maintain herself.”

In view of the ratio decided in ***Abhilasha*** (supra), there remains no controversy that the daughter, who attained majority, is not entitled to any maintenance, if she is not mentally or physically incapacitated. In the instant case, there is no material on record to show that the Petitioner No.2 is not mentally or physically incapacitated. In that view of the matter, she is not entitled to any maintenance under Section 125 Cr.P.C. In the case of ***Abhilasha*** (supra), the Hon'ble Supreme Court discussing the provision of law has held that a major unmarried daughter, if falls within the category of persons mentioned in Clause (c) of Section 125(1) Cr.P.C., can only claim maintenance under the said provision.

7. In view of the above, I find no infirmity in the impugned order under Annexure-1.

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

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

(K.R. Mohapatra)
Judge