

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**RPFAM No.17 OF 2019**

***Anilla Kumar Singh***

.....

***Petitioner***

Mr. Pratap Chandra Misra, Advocate

*-versus-*

***Baijayanti Rani Singh and others***

....

***Opp. Parties***

Mr. K.C. Rajaguru Mohapatra, Advocate

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**27.07.2022**

**Order No.**

- 4.
1. This matter is taken up through Hybrid mode.
  2. Petitioner in this RPFAM seeks to assail the order dated 8<sup>th</sup> January, 2019 (Annexure-6) passed by learned Judge, Family Court, Khordha in Cr.P No.250 of 2017, whereby the application under Section 127 Cr.P.C. was allowed directing the Petitioner to pay a sum of Rs.8,000/- per month to the Opposite Parties at the enhanced rate.
  3. Learned counsel for the Petitioner submits that Opposite Party No.1 is the legally married wife of the Petitioner. The Petitioner is an ex-army personnel and was drawing pension of Rs.13,790/- per month at the relevant time. Since the Opposite Party No.1 did not join the matrimonial life the Petitioner had filed a petition under Section 13 of the Hindu Marriage Act, 1955 and a decree of divorce was passed. Assailing the same, the Opposite Party-wife preferred appeal before this Court. During pendency of the said appeal, the matter was referred for mediation, but the Opposite Party-wife blatantly refused to join the matrimonial life. It is his submission that directing to pay a sum of Rs.8,000/- per month from a meager pension of

Rs.13,790/- is very difficult on the part of the Petitioner to meet with. Hence, this RPFAM has been filed assailing the said order.

4. Mr. Rajguru Mohapatra, learned counsel for the Opposite Parties submits that the Petitioner was drawing pension of Rs.20,150/- at the relevant time. After deductions, his net pension was Rs.18,024/- per month. The Petitioner has never disclosed his net pension at the time of adjudication of the petition under Section 127 Cr.P.C. before the learned Judge, Family Court, Khordha. Petitioner by obtaining financial assistance has purchased a Car and for that a voluntary deduction is being made from his pension, which cannot be taken into consideration for determination of maintenance under Section 125 Cr.P.C. or 127 Cr.P.C. Learned Judge, Family Court had directed the Petitioner to pay maintenance of Rs.6,000/- per month in Criminal Proceeding No.237 of 2015 when the Petitioner was drawing pension of Rs.13,100/- per month. Since the pension has increased in the meantime and the requirements of Opposite Parties have also increased maintenance is required to be enhanced. Considering the facts and circumstances of the case, learned Judge, Family Court has passed the impugned order, which warrants no interference.

5. Mr. Mishra, learned counsel for the Petitioner, however, submits that no document was filed before the learned Judge, Family Court showing that the basic pension of the Petitioner is Rs.20,150/- per month and after deduction he is drawing Rs.18,024/- per months as net pension. Such submission should not be taken into consideration in this RPFAM.

6. Taking into consideration the rival contentions of the parties, it is apparent that learned Judge, Family Court, Khordha

considering that the Petitioner was drawing pension of Rs.13,100/- per month has directed to pay Rs.6,000/- per month as maintenance in Criminal Proceeding No.237 of 2015. Due to rise in cost of living, the Opposite Parties filed an application in Crl.P. No.250 of 2017 under Section 127 Cr.P.C. for enhancement of the maintenance amount. Although there is no evidence on record to show that the basic pension of the Petitioner was Rs.20,150/- per month and he was drawing net pension of Rs.18,024/- at the relevant time, learned Judge, Family Court has taken into consideration that the Petitioner's take home pension is Rs.13,798/- per month at the relevant time.

7. In view of the above, enhancement of maintenance from Rs.6,000/- per month to Rs.8,000/- per month does not appear to be reasonable. As such, this Court taking into consideration the facts and circumstances of the case and argument advanced by learned counsel for the parties, feels that an amount of Rs.7,000/- per month towards maintenance to the Opposite Parties shall be just and proper.

8. Accordingly, the RFAM is disposed of with the modification in the maintenance amount to the effect that Petitioner shall pay a sum of Rs.7,000/- (rupees seven thousand only) per month to Opposite Parties as maintenance from the date of application under Section 127 Cr.P.C.

Issue urgent certified copy of the order on proper application.

**(K.R. Mohapatra)**  
**Judge**