

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.123 OF 2017

Sunil Kumar Jena

.....

Petitioner

Mr. Amitav Tripathy, Advocate

-versus-

Sailabala Paschimakabat

....

Opp. Party

Mr. Manas Chand, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

20.07.2022

Order No.

RPFAM No.123 OF 2017

& I.A. No.118 of 2020

11. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 20th November, 2015 (Annexure-1) passed in Criminal Petition No.122 of 2013, whereby learned Judge, Family Court, Khurda directed him to pay a monthly maintenance of Rs.4,000/- to the Opposite Party from the date of application i.e. on 1st May, 2013.
3. Mr. Tripathy, learned counsel for the Petitioner submits that the Opposite Party is the legally married wife of the Petitioner. In a proceeding under provisions of Protection of Women from Domestic Violence Act, 2005 (for short 'the D.V.Act') in Criminal Misc. Case No.17 of 2014, the Petitioner has been directed to be paid a monthly maintenance of Rs.10,000/- to the Opposite Party vide order dated 15th April, 2015 (Annexure-2), which is being deducted from the salary of the Petitioner by way of attachment. The take home salary of the Petitioner at the relevant time was about Rs.13,000/- per

month.. Hence, it is impossible on his part to pay a further sum of Rs.4,000/- per month as directed in the impugned order. It is his submission that said fact could not be brought to the notice of learned Judge, Family Court at the time of hearing of Criminal Petition No.122 of 2013. He, therefore, prays for setting aside the impugned order and to remit the matter back to learned Judge, Family Court, Khurda to adjudicate Criminal Petition No.122 of 2013 afresh giving opportunity of hearing to the parties by bringing the aforesaid order to the notice of the Court.

4. Mr. Chand, learned counsel for the Opposite Party vehemently objects to the same and submits that there is no bar for initiation of a proceeding under Section 125 Cr.P.C. during pendency of a proceeding under the D.V. Act. Both the proceedings can run simultaneously. Separate order directing the Petitioner to pay maintenance can also be made in the said proceedings. Although the order passed under the D.V. Act was earlier to the impugned order, but the Petitioner for the reason best known to him did not bring the same to the notice of the Family Court. Hence, for the laches of the Petitioner, the Opposite Party should not suffer. The Opposite Party is a destitute lady and has no independent source of income. She has to take shelter of different Courts as she has been treated with cruelty and denied maintenance. Due to non-payment of maintenance in the proceeding under the D.V. Act, the amount directed to be paid therein is being deducted from the salary of the Petitioner by way of attachment. It shows conduct of the Petitioner. Hence, no sympathy should be shown to a person

who has no respect for the order of the Court. He, therefore, prays for dismissal of the RPFAM.

5. Taking into consideration the submission made by learned counsel for the parties, this Court finds that the Opposite Party is receiving maintenance at the rate of Rs.10,000/- per month by virtue of order passed in Criminal Misc. Case No.17 of 2014. The said order was passed prior to the impugned order. Although Mr. Tripathy, learned counsel for the Petitioner submits that the order passed under the D.V. Act is under challenge in the appeal, but it appears that no interim protection has been given to the Petitioner in the said appeal. No doubt, parallel proceedings under the D.V. Act and under Section 125 Cr.P.C. are maintainable. However, the maintenance awarded under the D.V. Act could have been taken into consideration by learned Judge, Family Court, had it been brought to its notice (of learned Judge, Family Court). Thus, the impugned order has been passed apparently without considering the order passed under the D.V. Act.

6. Hence, this Court feels that the impugned order under Annexure-1 requires re-consideration by giving opportunity of hearing to the Petitioner to bring the aforesaid order passed under the D.V. Act to the notice of the Court. Accordingly, the impugned order under Annexure-1 is set aside and the matter is remitted back to the learned Judge, Family Court, Khurda for adjudication afresh giving opportunity of hearing to the Petitioner by bringing the aforesaid order passed under the D.V. Act to its notice. The Opposite Party is at liberty to adduce rebuttal evidence.

7. It is further directed that if the Petitioner goes on paying a sum of Rs. 4,000/- (Rupees four thousand) per month to the Opposite Party, no coercive action for recovery of the arrear maintenance pursuant to the impugned order shall be taken till disposal of the Criminal Proceeding No.122 of 2013 afresh.

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

(K.R. Mohapatra)
Judge

