

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 34 OF 2019

Dolamani Sahu

.....

Petitioner

Ms. Manasi Mohapatra, Advocate

-versus-

Sukanti Kumari Sahu

....

Opp. Party

Mr. Bisal Baivab Behera, Advocate
on behalf of Mr. Suvashish Pattnaik, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

25.07.2022

Order No.

15. 1. This matter is taken up through Hybrid mode.
2. Although the matter was listed for order, taking consent of learned counsel for the parties, the same is taken up for final disposal.
3. Petitioner in this RPFAM seeks to assail the order dated 21st March, 2011 (Annexure-1) passed by learned Judge, Family Court, Bhubaneswar in Cr.P No.63 of 2011, whereby the Petitioner has been directed to pay Rs.3,500/- per month to the Opposite Party-wife towards maintenance from the date of the application, i.e., 25th January, 2010.
4. Ms. Mohapatra, learned counsel for the Petitioner submits that at the relevant time the Petitioner was serving as Sikshya Sahayak and was getting Rs.4,000/- per month as salary. He had also filed his salary certificate, which was marked as Ext.'A'. Learned Judge, Family Court, Bhubaneswar by taking into consideration the statement of Opposite Party-

wife to the effect that the Petitioner runs a NGO and executes some contract work from which he earns Rs.30,000/- per month, directed to pay Rs.3,500/- per month to the Opposite Party-wife towards maintenance. There is no documentary evidence on record to show that the Petitioner had any source of income other than his salary at the relevant time. Hence, the impugned order is not sustainable.

5. Mr. Behera, learned counsel for the Opposite Party submits that the statement of the Opposite Party-wife that the Petitioner had income through other sources was not rebutted by adducing any cogent evidence. As such, learned Judge, Family Court accepting the same has passed the impugned order. In that view of the matter, he submits that the impugned order warrants no interference.

6. Taking into consideration the submissions of learned counsel for the parties and on perusal of record, it appears that at the relevant time the Petitioner was getting salary of Rs.4,000/- per month as Sikshya Sahayak. On the basis of statement of Opposite Party-wife to the effect that the Petitioner was earning a sum of Rs.30,000/- per month from other sources, learned Judge, Family Court estimated his income to Rs.15,000/- per month and directed to pay Rs.3,500/- per month toward maintenance considering the requirement of Opposite Party-wife. No material to rebut such statement was filed before learned Family Court. As the impugned finding has been arrived at considering the evidence on record, this Court in exercise of power under Section 401 Cr.P.C., should not

interfere with the same only because a second view may be possible by re-appreciating the evidence.

7. In view of the above, I am not inclined to entertain the RPFAM, which is accordingly dismissed.

8. Learned counsel for the Petitioner submits that the Petitioner has paid some maintenance amount, which can be considered at the time of calculation of the arrear maintenance.

9. Interim order dated 5th April, 2012 passed in Misc. Case No.155 of 2011 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

