

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 24 of 2022

Sk. Liaquat Ali

....

Petitioner

Mr. Prasanta Kumar Mohanty, Advocate

-versus-

Razia Khatun

....

Opp. Party

Mr. Shaik Abdul Nayeem, Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
08.04.2022**

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 9th November, 2021 passed in Cr.P. No.207 of 2014, whereby learned Judge, Family Court, Cuttack enhanced the monthly maintenance from Rs.500/- per month granted in favour of the Opposite Party to Rs.2,000/- per month in an application filed by her under Section 127 Cr.P.C.
3. The Opposite Party along with her minor son had earlier filed Crl. P No.58 of 1995 under Section 125 Cr.P.C., which was disposed of by learned Judge Family Court, Cuttack vide order dated 6th November, 1997 directing the Petitioner to pay Rs.300/- to the Opposite Party and Rs.200/- to the minor son born out of their wedlock. Subsequently, Opposite Party filed Crl.P.No.262 of 2000 for enhancement of the amount of maintenance, which was disposed of vide order dated 12th April, 2002 by learned Judge, Family Court, Cuttack directing the Petitioner to pay a sum of Rs.350/- per month to the

Opposite Party and Rs.250/- to the minor son. Again, the amount of maintenance awarded in favour of the Opposite Party was enhanced vide order dated 31st March, 2011 passed in Crl. P. No.440 of 2005 directing the Petitioner to pay a sum of Rs.500/- per month and Rs.450/- per month to the minor son till he attains majority.

3.1 It is further submitted by Mr. Mohanty, learned counsel for the Petitioner that subsequently the Opposite Party filed another application under Section 127 Cr.P.C. (Crl.P. No.207 of 2014), praying *inter alia* for a direction to the Petitioner to pay a sum of Rs.3,000/- per month to the Opposite Party-wife by enhancing the quantum of maintenance awarded. It is his submission that learned Judge, Family Court, Cuttack, without taking into consideration the income of the Petitioner on the date of filing of the application, i.e., 15th March, 2014 enhanced the maintenance from Rs.500/- to Rs.2,000/- per month. The said order is under challenge in this RPFAM.

3.2 It is his contention that although the application under Section 127 Cr.P.C. dated 15th March, 2014, notices of the said petition was served on the Opposite Party belatedly and recording of evidence started much later. The Petitioner has no contribution for such delay in disposal of the petition under Section 127 Cr.P.C. As such, directing the Petitioner to pay the maintenance at an enhanced rate from the date of application, i.e., 15th March, 2014 is not justified and it should have been made effective from the date of the order, i.e., 9th November, 2021. The Petitioner on the date of his examination was drawing salary of Rs.13,250/- and he has his obligation to maintain his mother amongst others. He also needs some

money for his personal expenses. Learned Judge, Family Court, Cuttack, without taking into consideration the same, passed the impugned order enhancing the quantum of monthly maintenance to Rs.2,000/- per month, which is not sustainable. In course of hearing, he also submits that if this Court is of the opinion not to interfere with the quantum of maintenance, then a direction may be made to pay the same from the date of the order and not from the date of the application.

4. Mr. Nayeem, learned counsel for the Opposite Party refuting such submission contended that due to hike in price of household commodities and stiff rise in the price index, the Opposite Party who is a distress lady, could not maintain herself with meager amount of maintenance of Rs.500/- per month. Hence, she made an application for enhancement in the quantum of maintenance. He further submits that while adjudicating the matter, learned Judge, Family Court, Cuttack, taking into consideration the salary of the Petitioner as well as his liabilities, passed the impugned order. The amount of maintenance was last enhanced by order dated 31st March, 2011, i.e., more than 10 years before the impugned order was passed. Hence, learned Judge, Family Court has committed no error in enhancing the maintenance amount from Rs.500/- per month to Rs.2,000/- per month, which is directed to be paid from the date of the application. As such, he submits that the impugned order should not be interfered with and prays for dismissal of the RPFAM.

5. Upon hearing learned counsel for the parties and on perusal of record it appears that due to her necessity, the Opposite Party, who was initially granted monthly maintenance

of Rs.300/- per month made an application for its enhancement and lastly on 31st March, 2011, the maintenance amount was enhanced to Rs.500/- per month. Due to hike in price of household articles and stiff rise in price index, it is very difficult on the part of the Opposite Party to maintain herself with the meager amount of maintenance of Rs.500/- per month for which she was constrained to make an application under Section 127 Cr.P.C. on 15th March, 2014 for enhancement of the maintenance to Rs.3,000/- per month. At the time of filing of the application under Section 127 Cr.P.C., the Petitioner was drawing salary of Rs.9,500/- per month. In the meantime, his salary has been increased and his take home salary is Rs.13,250/- per month, as admitted by him in his cross-examination. The Petitioner is under legal obligation to maintain his distress wife. Of course, the Petitioner has stated in his evidence that the Opposite Party is self-sufficient and doing tailoring work. Their minor son has become major in the meantime and is serving at Hyderabad. Since the Petitioner has not led any evidence with regard to income of the Opposite Party as well as her son, the evidence of the Petitioner that the Opposite Party is capable of maintaining herself is not sustainable. The maintenance of Rs.2,000/- per month awarded by learned Judge, Family Court, Cuttack cannot be said to be excessive taking into consideration the hike in price of household articles in the present days in one hand and the salary of the Petitioner including his liabilities on the other. Hence, this Court is not inclined to interfere with the quantum of maintenance.

6. So far as contention of learned counsel for the Petitioner that the maintenance should have been awarded from the date of the order is also not sustainable in view of the ratio decided in the case of ***Rajnesh Vs. Neha***, reported in ***(2021)2 SCC 324***, wherein it has been categorically held that normal rule is to award the maintenance from the date of the application. The Petitioner has not shown any justifiable reason to award the maintenance from a subsequent date.

7. In that view of the matter, I am not inclined to interfere with the impugned order. Accordingly, RPFAM stands dismissed.



s.s.satapathy