

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 294 OF 2017

Saraswati Mahanty ***Petitioner***
Mr. Soumy Mishra, Advocate

-versus-

Laxmi Charan Mahanty ***Opp. Party***

Mr. H.N. Mohapatra, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.04.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 5th September, 2017 passed in Criminal Proceeding No. 22 of 2016, whereby learned Judge, Family Court, Berhampur entertaining an application under Section 125 Cr.P.C. directed the Opposite Party to pay maintenance @ Rs.6,000/- per month to the Petitioner.
3. Mr. Mishra, learned counsel for the Petitioner submits that the Opposite Party over and above his monthly income of Rs.30,000/- towards pension, has received a lump sum amount of more than Rs.7,00,000/- towards retiral benefit. Ext.1 clearly discloses that the Opposite Party has received the aforesaid lump sum amount as his retiral dues. That aspect was not taken into consideration while fixing the amount of monthly maintenance by the Family Court. The Petitioner is an illiterate lady and has no source of income. It is very difficult on her part to maintain with a meager amount of Rs.6,000/- per month towards maintenance.

Hence, he prays for enhancement of the amount of monthly maintenance to Rs.15,000/- per month.

4. Mr. Mohapatra, learned counsel for the Opposite Party, on the other hand, contended that learned Judge, Family Court, Berhampur taking into consideration all material aspects as well as status of both the Petitioner and Opposite Party has directed the Opposite Party to pay a sum of Rs.6,000/- per month as maintenance to the Petitioner. The lump sum amount received by Opposite Party has already been spent for repairing of the house and discharging his social obligation. Thus, it is very difficult on the part of a retired person to part with any more amount towards monthly maintenance. It is his submission that the Opposite Party with much difficulty is managing with the meager amount of pension. If the amount of maintenance is enhanced, he will be seriously prejudiced and will not be in a position to arrange a square meal per day. The amount of maintenance awarded by Family Court is just and proper, and requires no interference.

5. Taking into consideration the rival contentions of the parties and the principles that the Petitioner-wife is entitled to maintenance at the rate of $1/4^{\text{th}}$ of the income of the husband, this Court is of the considered opinion that the said principles should be applied to the case at hand.

6. In the instant case, the Opposite Party had a monthly income of Rs.30,000/- at the time when the impugned order was passed. Thus, the Petitioner is at least entitled to $1/4^{\text{th}}$ of the said amount, i.e. a sum of Rs.7,000/- towards maintenance.

7. Accordingly, it is directed that the Opposite Party shall pay a sum of Rs.7,000/- (Rupees seven thousand) to the Petitioner

towards maintenance, which she is entitled to from the date of application, i.e. on 22nd January, 2016.

8. With the aforesaid modification of the impugned order, the RPFAM is disposed of.

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

(K.R. Mohapatra)
Judge

bks

