

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 63 OF 2018

Laxmidhar Nath

.....

Petitioner

Mr. Manoranjan Das, Advocate
on behalf of Mr. Biswaranjan Dalai, Advocate

-versus-

Mrunali Nath

....

Opp. Party

Mr. Shishir Kumar Samal, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

25.07.2022

Order No.

3.
 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 16th December, 2017 (Annexure-1) passed by learned Judge, Family Court, Sambalpur in Cr. Misc. Case No.4 of 2015, whereby entertaining an application under Section 127 Cr.P.C. learned Judge, Family Court enhanced the amount of maintenance and directed the Petitioner to pay Rs.7,000/- per month to the Opposite Party-daughter from the date of the said order. Litigation expenses of Rs.8,000/- was also directed to be paid.
 4. Mr. Das, learned counsel for the Petitioner submits that at the relevant time the Petitioner was drawing salary of Rs.16,815/- and had his old parents and other children to be maintained. Hence, direction to pay Rs.7,000/- per month

towards maintenance was not in consonance with the income of the Petitioner. That aspect was lost sight of by learned Judge, Family Court while passing the impugned order. On speculation that the Petitioner might be drawing Rs.30,000/- per month, the impugned order has been passed enhancing the maintenance from Rs.1,000/- to Rs.7,000/-. Hence, he prays for setting aside the impugned order.

5. Mr. Samal, learned counsel for the Opposite Party-wife submits that the Petitioner was drawing salary of Rs.16,815/- per month during the year 2011, but by the time the impugned order was passed he was drawing monthly salary of Rs.44,686.99. Subsequently, the salary of the Petitioner has already been enhanced to Rs.50,873.38. Thus, there is no difficulty on the part of the Petitioner to pay the maintenance at the enhanced rate.

6. Mr. Das, learned counsel for the Petitioner at this stage submits that the Opposite Party being the daughter of the Petitioner is not entitled to maintenance under Section 125 Cr.P.C. after she attained majority. He, therefore, submits that the maintenance awarded needs reconsideration.

7. Taking into consideration the submissions of learned counsel for the parties and on perusal of impugned order, this Court finds that no documentary evidence with regard to salary of the Petitioner was filed by either of the parties in the proceeding under Section 127 Cr.P.C. However, learned Judge, Family Court referring to salary slip of the Petitioner for the month of February, 2011, which disclosed that the Petitioner

was drawing salary of Rs.16,815/- per month, and as six years had elapsed in the meantime, estimated that salary of the Petitioner might have enhanced to Rs.30,000/- per month. It is, however, submitted by learned counsel for the Opposite Party that the Petitioner was drawing salary of Rs.44,686.99 per month at the relevant time. Be that as it may, when no documentary evidence was adduced by the Petitioner disclosing his salary, learned Judge, Family Court had to make a guess work and granted maintenance to the Opposite Party- daughter, who was pursuing her +2 studies at the relevant time.

8. In view of the above, this Court feels that learned Judge, Family Court, Sambalpur has committed no error in enhancing the interim maintenance from Rs.1,000/- to Rs.7,000/- per month. It is however, submitted that the Opposite Party-daughter in the meantime has become major. If that be so, the Petitioner, if so advised, may file an application for variation of the order of maintenance.

9. In view of the discussions made above, I am not inclined to interfere with the impugned order. Hence, the RPFAM stands dismissed being devoid of any merit.

10. Interim order dated 12th April, 2018 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge