

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 80 OF 2018

Rajendra Behera

.... ***Petitioner***

Miss Deepali Mohapatra, Advocate

-versus-

Smt. Srimati Behera

.... ***Opp. Party***

Mrs. C. Kasturi, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.04.2022

Order No.

- 15.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this RPFAM seeks to assail the order dated 22nd December, 2017 (Annexure-3) passed in Criminal Proceeding No. 111 of 2016, whereby learned Judge, Family Court, Berhampur allowed the petition filed by Opposite Party under Section 125 Cr.P.C. *ex parte* directing the Petitioner to pay a sum of Rs.8,000/- per month to the Opposite Party with effect from the date of the petition, i.e. 27th May, 2016. A further direction was made for payment of arrear maintenance to the Opposite Party.
 3. Miss Mahapatra, learned counsel for the Petitioner submits that the Petitioner was earlier set *ex parte* in the said Criminal Proceeding and upon filing of an application, the order setting the Petitioner *ex parte* was set aside vide order dated 2nd August, 2017 passed in Cr. P. No. 25 of 2017 and the matter was posted to 23rd August, 2017 for payment of cost and filing of written statement. The matter was ultimately posted to 5th December, 2017 on which

date the Petitioner could not appear before learned Judge, Family Court, Berhampur. Hence, learned Advocate on behalf of the Petitioner filed a petition stating that although written statement is ready for filing and due to absence of the Petitioner, the same could not be filed. Learned Judge, Family Court, Berhampur without taking into consideration the practical difficulty of the Petitioner, set him ex parte on the very same day and reserved the matter for delivery of judgment. Accordingly, the impugned order was passed on 2nd August, 2017.

4. Miss Mahapatra, learned counsel further submits that although the Petitioner has a remedy to file an application under Section 126(2) Cr.P.C. for setting aside the ex parte impugned judgment, but no fruitful purpose will be served, as the ground to be taken by the Petitioner has already been considered and rejected by setting the Petitioner ex parte vide order dated 5th December, 2017. In that view of the matter, this RPFAM has been filed assailing the impugned order.

5. This Court vide order dated 22nd March, 2018 while issuing notice to the Opposite Party, as an interim measure, directed that no coercive action shall be taken against the Petitioner in Cr.P. No. 15 of 2018 on the file of learned Judge, Family Court, Berhampur subject to depositing a sum of Rs.30,000/- towards arrear maintenance of Opposite Party. Miss Mahapatra, learned counsel submits that the Petitioner has already paid the said amount. Further, pursuant to the direction of this Court dated 3rd March, 2021, the Petitioner has already paid a further sum of Rs.30,000/- to the Opposite Party-wife. The Petitioner is serving as a Peon and has limited source of income to maintain himself. Since the Petitioner was not granted leave on the date fixed by learned Judge, Family Court, Berhampur, he

could not appear and file his written statement for which he was set *ex parte*. The Petitioner is ready and willing to contest the proceeding under Section 125 Cr.P.C., if provided with an opportunity. Hence, she prays for setting aside the impugned order and to permit him to contest the Petition filed under Section 125 Cr.P.C. by filing written statement and participating in the hearing of the proceeding.

6. Mrs. Kasturi, learned counsel for the Opposite Party refuting such submission argued that the Petitioner is thoroughly negligent in contesting the proceeding under Section 125 Cr.P.C. For deliberate absence of the Petitioner, the Opposite Party-wife is suffering a lot. Besides the aforesaid amount of Rs.60,000/-, the Petitioner has not paid the monthly maintenance to the Opposite Party as directed to be paid in the impugned order. The Petitioner was earlier set *ex parte* and the said order being set aside, the matter was posted to 23rd August, 2017 for filing of the written statement, but the Petitioner failed to file the same. Ultimately, on 5th December, 2017 when the matter was posted for hearing, the Petitioner neither appeared nor filed his written statement. Hence, learned Judge, Family Court has no other option than to set him *ex parte* and proceed with the matter. Taking into consideration the materials available on record, learned Judge, Family Court, Berhampur has directed the Petitioner to pay a sum of Rs.8,000/- per month to the Opposite Party towards maintenance. The impugned order is a reasoned one and as such, the same requires no interference. The RPFAM is, therefore, liable to be dismissed.

7. Although the Petitioner has a remedy under Section 126(2) Cr.P.C. to get the *ex parte* impugned order set aside, this Court is inclined to entertain the RPFAM for the reason that notice has been issued to the Opposite Party vide order dated 22nd March,

2018 and in the meantime, more than four years have elapsed. Further, it is submitted by Miss Mahapatra, learned counsel that the Petitioner was not granted leave on the date of posting of the proceeding under Section 125 Cr.P.C., i.e. on 5th December, 2017. This Court is persuaded to believe the same in absence of any material to the contrary. In that view of the matter, the Petitioner should be given an opportunity of hearing to prove his bona fide.

8. Thus, in order to avoid further delay in the matter, this Court sets aside the impugned *ex parte* order under Annexure-3 and remits the matter back to the learned Judge, Family Court, Berhampur for fresh adjudication giving opportunity of hearing to the Petitioner to file written statement and contest the criminal proceeding. This order is subject to payment of cost of Rs.30,000/- (Rupees thirty thousand) to the Opposite Party on the date of her first appearance before learned Judge, Family Court, Berhampur after remand. The Petitioner shall also pay a sum of Rs.4,000/- (Rupees four thousand) per month to the Opposite Party towards maintenance till disposal of the criminal proceeding. If the Petitioner fails to comply with any of the conditions stated above, learned Judge, Family Court, Berhampur will be at liberty to restore the order impugned herein.

9. It is made clear that parties shall cooperate with the learned Judge, Family Court, Berhampur for early disposal of C.P. No. 111 of 2016. No prayer for unnecessary adjournment shall be entertained.

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

(K.R. Mohapatra)
Judge