

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**RPFAM No.40 of 2022**

***Mamata Pattanaik and another* ..... *Petitioners***

Mr. Ashok Kumar Sahoo, Advocate

*-versus-*

***Kedar Chandra Pattanaik* ..... *Opp. Party***

Mr. D. Mohapatra, Advocate

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**07.09.2022**

**Order No.**

**RPFAM No. 40 of 2022 & RPFAM No. 92 of 2022**

1. This matter is taken up through Hybrid mode.
2. Both the RPFAMs have been filed assailing judgment and order dated 29<sup>th</sup> November, 2021 passed by learned Judge, Family Court, Cuttack in Crl. Proceeding No.402 of 2011 allowing an application filed under Section 125 Cr.P.C.
3. For the sake of convenience and discussion, parties are described as per their social status before learned Judge, Family Court, Cuttack. As it appears from record, Kedar Chandra Pattanaik (Petitioner in RPFAM No.92 of 2022) is the husband of Mamata Pattanaik and father of Madhusmita Pattanaik (Petitioners in RPFAM No.40 of 2022).
4. Due to a matrimonial discord, wife and daughter are staying separately. As the wife has no independent source of income and she is unable to maintain herself and her daughter, an application (Crl.P. No.402 of 2011) was filed under Section 125 Cr.P.C. claiming Rs.5,000/- per month as maintenance to

each of the wife and daughter. Learned Judge, Family Court, taking into consideration the materials on record, came to hold the gross income of the husband to be Rs.42,237/- and his net salary to be Rs.33,960/- per month and on that basis, directed the husband to pay Rs.5,000/- per month to the wife and Rs.11,000/- per month to the daughter from the date of application, i.e., 18<sup>th</sup> July, 2011.

5. Learned counsel for the husband submits that the salary of the husband for the month of June, 2021 was taken into consideration by learned Judge, Family Court, while adjudicating the petition under Section 125 Cr.P.C. The husband has his old mother depending upon him apart from his own expenses and other social obligations. Without considering the same, the impugned order has been passed. It is his contention that while issuing notice (prior to conversion, i.e., MATA No.24 of 2022) in RPFAM No.92 of 2022, this Court, vide order dated 21<sup>st</sup> March, 2022, directed the husband to pay a sum of Rs.6,000/- per month to wife and Rs.4,000/- per month to the daughter. The husband is strictly complying with the said order and is paying the aforesaid maintenance regularly.

5.1 In view of the ratio decided in the case of ***Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy*** reported in (2017) 14 SCC 200, the husband is liable to pay 1/4<sup>th</sup> of his income as maintenance to the wife. In the case of ***Rajnesh Vs. Neha and another***, reported in (2021) 2 SCC 324, Hon'ble Supreme Court has also laid down the guidelines to assess the maintenance in a petition under 125 Cr.P.C. Without applying

the principles laid down by the Hon'ble Supreme Court, the impugned order has been passed. Hence, the quantum of maintenance requires reconsideration.

6. Learned counsel for the wife and daughter vehemently objects to the above submission. It is his submission that they have also filed RPFAM No.40 of 2022 assailing the self-same impugned order for enhancement of the maintenance. Learned Judge, Family Court, while passing the impugned order, did not at all take into consideration the requirements of the wife and daughter and directed the husband to pay a meager amount of Rs.5,000/- per month to the wife. The daughter who is pursuing her studies requires an enhanced amount to meet her increasing study expenses. Hence, the impugned order requires reconsideration.

7. Upon hearing learned counsel for the parties and on perusal of record, it appears that learned Judge, Family Court on assessment of evidence, has come to the conclusion that the gross salary of the husband per month to be Rs.42,237/- and his net salary is Rs.33,960/- calculated as per his salary slip for the month of June, 2021. Taking into consideration the same, the impugned order has been passed.

8. In view of the ratio decided in the case of ***Kalyan Dey Chowdhury (supra) and Rajnesh (supra)***, this Court is of the considered opinion that the Court while assessing maintenance should have taken into consideration the respective income of the parties, dependency on the husband, requirements of wife and child as well as social obligation of the husband.

9. In that view of the matter this court accepting the submission of learned counsel for the husband that he is strictly complying with the interim order dated 21<sup>st</sup> March, 2022 passed, while issuing notice in RPFAM No.92 of 2022, this Court feels that the amount of maintenance directed to be paid by the husband to the wife by virtue of the interim order by this Court is just and reasonable.

10. Accordingly, this Court disposes of both the RPFAMs with a direction that the husband (Petitioner in MATA No.24 of 2022 before it was converted and registered as RPFAM No.92 of 2022), shall go on paying Rs.6,000/- per month to the wife- Mamata Pattnaik and Rs.4,000/- per month to the daughter- Madhusmita Pattnaik from the date of application of the petition under Section 125 Cr.P.C.

11. Interim order dated 21<sup>st</sup> March, 2022 gets merged with this order.

Issue urgent certified copy of this order on proper application.

**(K.R. Mohapatra)**  
**Judge**

*s.s.satapathy*