

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 261 of 2017

Iswar Ch. Nayak

.....

Petitioner

Mr. Sankaracharya Choudhury, Advocate

-versus-

Jhili Majhi and another

....

Opp. Parties

None

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

27.09.2022

Order No.

9. 1. This matter is taken up through hybrid mode.
2. Although the matter is listed for orders, on the request of learned counsel for the Petitioner, the RPFAM is taken for hearing and final disposal.
3. Order dated 28th August, 2017 (Annexure-1) passed in Crl.M.P. No.314 of 2016 (arising out of CMC No.62 of 2016) is under challenge in this RPFAM, whereby learned Judge, Family Court, Nayagarh directed the Petitioner to pay maintenance at the rate of Rs.2,000/- per month to Opposite Party No.1 and Rs.500/- per month to Opposite Party No.2 from the date of application, i.e., 5th July, 2016.
4. Mr. Choudhury, learned counsel submits that Opposite Party No.1 is not the legally married wife of the Petitioner. Petitioner has married to one Puspanjali Nayak and has proved the invitation Card and Adhar Card as Ext. 'A' and 'B' respectively in support of his case. Thus, the marriage with Opposite Party No.1 is not believable. When the Opposite Party

No.1 is not the legal married wife of the present Petitioner, Opposite Party No.2 is also not entitled to any maintenance, as he is not born out of wedlock of the Petitioner and Opposite Party No.1.

4.1 It is his submission that learned Judge, Family, Court mis-appreciated the fact and law and passed the impugned order. Hence, the same is not sustainable. Accordingly, he prays for setting aside the impugned order.

5. Although Opposite Parties are represented through their counsel, but none appears at the time of call.

6. Hearing learned counsel for the Petitioner and on perusal of record, it appears that learned Judge, Family Court proceeded on a misconception that since Opposite Party No.1 has married to the Petitioner without the knowledge that he had already married to one Puspanjali Nayak, she is entitled to maintenance. A wife is only entitled to maintenance under Section 125 Cr.P.C. Since the marriage between Puspanjali Nayak and the Petitioner has already been proved and the Opposite Party No.1 had admitted that her marriage with the Petitioner is subsequent to the marriage of the Petitioner with said Puspanjali Nayak, Opposite Party No.1 cannot be treated as wife of the Petitioner and thus, is not entitled to any maintenance under Section 125 Cr.P.C.

7. However, in order to prove that Opposite Party No.2 is born out of wedlock of the Petitioner and Opposite Party No.1, Opposite Parties have exhibited the Mother Child Protection Card (Ext.1), which clearly discloses that the Petitioner is the father of Opposite Party No.2. Even if the marriage between

Petitioner and Opposite Party No.1 is not legally sustainable, the Opposite Party No.2 cannot be denied maintenance under Section 125 Cr.PC. Section 125 (3) Cr.PC. makes it clear that an illegitimate minor child is also entitled to maintenance. Since learned Judge, Family Court relying upon Mother-Child Protection Card came to a conclusion that Opposite Party No.2 born out of wedlock of Opposite Party No.1 and the Petitioner, I am not inclined to interfere with the said finding, as it is based on materials available on record.

8. Accordingly, the RPFAM is allowed in part. It is held that Opposite Party No.1 is not entitled to any maintenance as she is not the legally married wife of the Petitioner. However, Opposite Party No.2 is entitled to maintenance, as directed by learned Judge, Family Court.

9. The impugned is modified to the aforesaid extent.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge