

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 6095 OF 2022

Jyoti Panda

..... Petitioner

Miss Itishree Tripathy, Advocate

-versus-

Asutosh Mahapatra

.... Opp. Party

Mr. Harmohan Dhal, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

21.07.2022

Order No.

6. 1. This matter is taken up through Hybrid mode.
2. Order dated 21st October, 2021(Annexure-3) passed by learned Judge, Family Court, Bhubaneswar in IA No.35 of 2019 (arising out of CP No.234 of 2017) is under challenge in this writ petition, whereby the Opposite Party is directed to pay a sum of Rs.7,000/- per month to the wife towards her interim maintenance till disposal of the proceeding under Section 13 of the Hindu Marriage Act, 1955 (for convenience hereinafter referred to as 'the Act') with effect from the date of application, i.e., 20th April, 2019 by setting off/adjusting Rs.6,000/- thereto which she is receiving under Section 125 Cr.P.C. in Crl.MP No.273 of 2017.
3. Miss Tripathy, learned counsel for the Petitioner submits that the petitioner is the legally married wife of the Opposite Party. The Opposite Party is serving as a Manager in Jindal Infosolutions Ltd., Raigarh in State of Chhatisgarh His monthly salary is more than rupees one lakh. He is getting net salary of rupees ninety thousand per month, but the learned Judge,

Family Court, Bhubaneswar considering his net salary to be rupees sixty-five thousand per month, awarded a meager amount of rupees seven thousand that too by setting off the amount to the maintenance granted in favour of the Petitioner in a proceeding under Section 125 Cr.PC. It is her submission that the amount has been fixed taking into consideration the ability of the Petitioner to earn as well as instalments that the Opposite Party is repaying towards house building loan.

3.1 Relying upon a decision in the case of ***Pushpanjali Chhuria and another Vs. Pranab Kumar Chhuria***, reported in 2018 (Supp.I) OLR 160, Miss Tripathy, learned counsel submits that voluntary deduction from the salary cannot be taken into consideration while determining the quantum of maintenance. It is only the involuntary deductions, i.e., deduction towards income tax and GPF etc. should be the matter of consideration in a proceeding under Section 24 of the Act. Thus, the repayment of instalments towards house-building loan cannot be taken into consideration while determining the quantum of maintenance. The Petitioner has her minor son residing with her. Both of them are completely dependent on her father, who has recently faced with cardiac arrest during COVID-19 pandemic. In order to maintain themselves, the amount of *pendente lite* maintenance granted by learned Judge, Family Court, Bhubaneswar is quite insufficient and requires enhancement. It is her submission that the Petitioner is entitled to at least 1/5th of the salary of the Opposite Party as her maintenance. She also relied upon a decision of this Court in the case of ***Jyostnarani Khatua Vs. Samir Ranjan Behera***,

reported in 2022 (1) OLR 816 and submits that the Petitioner is entitled to lead a life as he would have led in her matrimonial home. Thus, the quantum of maintenance requires enhancement. She also submitted the salary slip of the Opposite Party for the month of January, 2022 to indicate his salary. She accordingly prays for enhancement of the monthly maintenance.

4. Mr. Dhal, learned counsel for the Opposite Party submits that the amount directed to be paid to the Petitioner towards *pendente lite* maintenance is just and reasonable and the same requires no interference. He further submits that very recently, i.e., by order dated 20th April, 2022 passed in CMC No.706 of 2016 initiated under the provisions under the provisions of the Prevention of the Women from Domestic Violence Act, 2005 (for short, 'DV Act'), learned JMFC, Bhubaneswar has directed the Opposite Party to pay maintenance of rupees four thousand per month. It is his submission that the Opposite Party is regularly paying maintenance to the Petitioner as per the direction of the Courts and there is no outstanding as on date. At the relevant point of time, the Opposite Party was drawing salary of rupees sixty-five thousand per month and taking into consideration the personal expenses, obligations of the Opposite Party as well as requirement of the Petitioner, learned Judge, Family Court, Bhubaneswar has directed to pay rupees seven thousand per month towards *pendente lite* maintenance which of course is subject to adjustment of rupees six thousand per month granted to her in the petition under Section 125 Cr.P.C.

4.1 He further submits that by order dated 2nd April, 2019 passed in W.P.(C) No.5536 of 2019, this Court directed learned Judge, Family Court, Bhubaneswar to dispose of the CP No.234 of 2017 within a period of six months from the date of production of certified copy of the said order. In the meantime, more than three years have already elapsed and due to non-cooperation of the Petitioner, cross-examination of PW-1 was completed only on 28th June, 2022. In one hand, the Petitioner is not cooperating learned Judge, Family Court, Bhubaneswar to conclude the proceeding and on the other she has come up before this Court for enhancement of quantum of maintenance. In that view of the matter she is not entitled to claim enhancement of maintenance.

5. Taking into consideration the submissions of learned counsel for the parties and on perusal of record, it is apparent that the Petitioner is the legally married wife of the Opposite Party. Direction was made in CrI.MP No.273 of 2017 to pay maintenance of rupees six thousand per month to the Petitioner. The Opposite Party is stated to have been paying the said amount regularly. It is also stated that the Opposite Party is complying the direction of learned Judge, Family Court, Bhubaneswar. It also appears that in the proceeding under the DV Act, the Opposite Party has been directed to pay rupees four thousand per month as maintenance to the Petitioner. The Opposite Party has his own obligations. Since he is staying in the State of Chhatisgarh he also requires money for his own expenses. On perusal of the impugned order, it appears that the learned Judge, Family Court, Bhubaneswar has taken the pain

to discuss the rival contentions and materials on record while adjudicating the application under Section 24 of the Act. Moreover, salary slip of the Opposite Party submitted by Miss Tripathy, learned counsel for the Petitioner cannot be taken into consideration as it is for the month of January, 2022.

6. Taking into consideration the facts and circumstances of the case in totality, this Court feels that the amount of rupees seven thousand per month as direction by learned Judge, Family Court, Bhubaneswar is just and reasonable. Accordingly, this Court finds no infirmity in the impugned order.

7. In the result, the writ petition stands dismissed.

8. Since there has already been a direction of this Court in earlier writ petition, i.e., W.P.(C) No.5536 of 2019 for early disposal of the CP No.234 of 2017, learned Judge, Family Court, Bhubaneswar shall make an endeavour for disposal of the same at an early date. Parties are directed to cooperate with learned Judge, Family Court, Bhubaneswar for early disposal of the CP case. It is open for the learned Judge, Family Court to take coercive measures in case any of the parties does not cooperate for early disposal of the Civil Proceeding.

Issue urgent certified copy of the order on proper application.

s.s.satapathy

(K.R. Mohapatra)
Judge