

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 315 of 2017

Debasish Swain

.....

Petitioner

Mr. Mana Mohanty Pattnayak, Advocate

-versus-

Rashmita Ranasingh

....

Opp. Party

Mr. Pradip Kumar Ray, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

06.05.2022

Order No.

10. 1. This matter is taken up through Hybrid mode.
2. This RPFAM has been filed assailing order dated 9th November, 2017 (Annexure-4) passed in Criminal Proceeding No.33 of 2013, whereby learned Judge, Family Court, Bhubaneswar allowing an application filed by the Opposite Party-wife under Section 125 Cr.P.C., directed the present Petitioner to pay maintenance at the rate of 8,000/- per month to the Opposite Party from the date of filing of such application dated 27th February, 2013.
3. Mr. Pattnayak, learned counsel for the Petitioner submits that the Petitioner was not afforded with opportunity of hearing in the petition under Section 125 Cr.P.C. His income as well as the fact that his parents are dependent on him was not properly considered by the learned Judge, Family Court, Bhubaneswar.
- 3.1 It is his submission that in spite of difficulties, the Petitioner has been paying maintenance to the Opposite Party-wife. Hence, he prays for setting aside the impugned order and to remit the matter back to learned Judge, Family Court,

Bhubaneswar for fresh adjudication of the Criminal Proceeding in accordance with law.

4. Mr. Ray, learned counsel for the Opposite Party objecting to such submission argued that although the Petitioner was given ample opportunity of hearing he did not participate in the hearing for the reasons best known to him. With much difficulty, the Opposite Party filed the income particulars of the Petitioner before the learned Judge, Family Court, which discloses that being an Officer of Corporation Bank posted at Delhi, his monthly salary was Rs.45,958/- as on 15th November, 2016. After usual deduction, his take-home salary was Rs.36,000/- for the month of October, 2016. Taking into consideration all material facts, learned Judge, Family Court arrived at a conclusion that the Petitioner was earning Rs.30,000/- per month at the relevant time. The Opposite Party-wife is a destitute lady and has no independent source of income. He further submits that although learned Judge, Family Court assessed the income of the Petitioner (Opposite Party therein) at Rs.30,000/- per month, but awarded a meager amount of Rs.8,000/- per month towards maintenance to the Opposite Party. In that view of the matter, the Opposite Party has also filed RPFAM No.161 of 2018 for enhancement of maintenance, which is also listed today for hearing along with the present RPFAM. He, therefore, prays for dismissal of the present RPFAM and to consider RPFAM No.161 of 2018.

5. Taking into consideration the rival contentions of the parties and the materials available on record, more particularly the impugned order, it is manifest that the Petitioner was duly served with notice in Cr.P. No.33 of 2013. Although he

contested the case but did not chose to adduce any evidence. It further reveals that the Opposite Party-wife has submitted the documents with regard to salary of the Petitioner, which discloses that his gross income for the month of October, 2016. However, taking into consideration the usual deductions and other expenses of the Petitioner, learned Judge, Family Court assessed income of the Petitioner at Rs.34,000/- at the relevant time. In absence of any rebuttal evidence to that effect, learned Judge, Family Court came to hold that the parents may not be dependent on the Petitioner.

6. Thus, taking into consideration the discussions made by learned Judge, Family Court, Bhubaneswar and the materials available on record, I am of the view that the quantum of maintenance is just and reasonable taking into consideration the facts and circumstances prevalent then. Hence, the impugned order warrants no interference.

7. Accordingly, the RPFAM is dismissed being devoid of any merit.

8. Interim order dated 23rd March, 2018 passed in Misc. Case No.439 of 2017 stands vacated.

Issue urgent certified copy of the order on proper application.

s.s.satapathy

(K.R. Mohapatra)
Judge