

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.223 OF 2017

Sadhana Behera

..... Petitioner

Mr. Soubhagya Kumar Dash, Advocate

-versus-

Parameswar Behera and another

.... Opp. Parties

Mr. Bikas Karna, Advocate

(For Opposite Party No.1)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.07.2022

Order No.

RPFAM No.223 OF 2017 & RPFAM No.173 OF 2016

12. 1. This matter is taken up through Hybrid mode.
2. RPFAM No.223 of 2017 has been filed by Smt. Sadhana Behera (hereinafter referred to as 'the wife' for convenience of discussion) and RPFAM No.173 of 2016 has been filed by Parameswar Behera (hereinafter referred to as 'the husband' for convenience of discussion). Considering the fact that the self same order is challenged in both the RPFAMs and parties are also same, an analogous hearing is taken up.
3. Both the RPFAMs have been filed challenging judgment dated 13th May, 2016 passed in Criminal Proceeding No.298 of 2013 (preferred by the wife and her minor daughter), whereby learned Judge, Family Court, Berhampur refused the prayer maintenance to the wife, whereas the minor daughter has been awarded with maintenance of Rs.12,000/- per month from January, 2014.

4. Mr. Dash, learned counsel for the wife submits that the marriage between the parties was solemnized on 12th January, 2001. They were blessed with a daughter. However, the wife was subjected to torture and misbehaviour for which she has lodged an FIR on 10th June, 2013, which was registered as Bada Bazar PS Case No.121 of 2013 under Section 498-A IPC and other ancillary offences. In the meantime, charge sheet has also been submitted in the said case. The husband is serving as a Fitter/Mechanic under General Manager, Mahanadi Coal Fields Ltd., Brajaraj Nagar, Jharsuguda and engaged at Samaleswari Open Cola Mines, I.B. Valley area, Brajarajnagar. At the relevant time, he was getting salary of Rs.60,000/- per month. He is also having income of Rs.30,000/- per month from other sources. Due to ill-treatment of the husband, the wife left the matrimonial home in 2012. As she has no independent source of income she filed an application under Section 125 Cr.P.C. Learned Judge, Family Court, Berhampur disbelieving allegation of torture and misbehavior on the wife, refused to grant maintenance to the wife. However, the husband was directed to pay maintenance of Rs.12,000/- per month to the daughter, who is residing with her mother. It is submitted by Mr. Dash, learned counsel for the wife that the petition under Section 125 Cr.P.C. was dismissed in respect of the wife on flimsy ground. Only because the wife did not file any FIR till 2013, the learned Judge Family Court disbelieved the allegation of torture made to the wife. Learned Judge, Family Court also disbelieved the allegation of demand of dowry observing that the marriage with the wife was the 2nd marriage for the husband after death of his first wife. That cannot be a ground to

disbelieve demand of dowry. Further, the wife was kept in dark about the fact that the husband had a son, namely, Narendra from his 1st wife. All these pleas were not believed by the learned Judge, Family Court without assigning any cogent reason. Since it is admitted that the wife-Sadhana Behera is the legally married wife of the husband-Parameswar Behera and she has no independent source of income for her sustenance, she is entitled to maintenance under Section 125 Cr.P.C. This aspect was not considered by the learned Judge, Family Court, Berhampur. Hence, he prays for setting aside the impugned judgment and order dated 13th May, 2016 and to remit the same for adjudication afresh giving opportunity of hearing to the parties concerned.

5. Mr. Karna, learned counsel prays for an adjournment on behalf of Mr. Panda, learned counsel for the husband, to which this Court refused.

6. On perusal of the materials on record, it appears that the learned Judge, Family Court, Berhampur, without considering that marriage between the parties is admitted and the wife is residing separately having no independent source of income, ought to have considered the application under Section 125 Cr.P.C. for grant of maintenance in favour of the wife, more particularly in absence of any finding that the wife has left the matrimonial home without any reasonable cause. Hence, the matter requires fresh consideration by the learned Judge, Family Court, Berhampur.

7. Accordingly, the impugned judgment and order is set aside and the matter is remitted back to learned Judge, Family Court, Berhampur for consideration of the matter afresh giving opportunity of hearing to the parties.

8. Since this Court sets aside the impugned judgment, the quantum of maintenance directed to be paid to the daughter also requires fresh consideration. However, in the meantime, the husband shall go on paying Rs.10,000/- per month to the daughter till disposal of Criminal Proceeding No.298 of 2013 by learned Judge, Family Court, Berhampur.

9. The matter is of the year 2013. Hence, learned Judge, Family Court, Berhampur shall make an endeavour for early disposal of the Criminal Proceeding. Parties are directed to cooperate learned Judge, Family Court for early disposal of the Criminal Proceeding.

10. To avoid further delay, parties are directed to appear before learned Judge, Family Court, Berhampur on 1st August, 2022 along with certified copy of this order to receive further instruction in the matter.

11. Both the RPFAMs are disposed of accordingly.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge