

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10870 OF 2022

Swarnalata Mallick

.....

Petitioner

Mr. R.K.Samantasinghar, Advocate

-versus-

Benudhar Mallick

....

Opp. Party

Mr. Prasanta Kumar Nanda, Advocate

On behalf of Mr. Amlan Shakti Paul, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

26.07.2022

Order No.

- 5.
1. This matter is taken up through Hybrid mode.
 2. This writ petition has been filed assailing order dated 2nd April, 2022 (Annexure-3) passed in IA No.29 of 2020 (arising out of CP No.254 of 2016), whereby learned Judge, Family Court, Bhubaneswar refused to entertain the application filed by the Petitioner-wife and her son under Section 24 of the Hindu Marriage, 1955 (for short, 'the Act')
 3. Mr. Samantasinghar, learned counsel for the Petitioner submits that at the time of consideration of application under Section 24 of the Act, the gross salary of the Opposite Party-husband was Rs.70,668/-. An amount of Rs.13,000/- is being deducted from his salary every month towards maintenance granted in the criminal proceeding. After other involuntary deductions, take-home salary of the Opposite Party is Rs.18,404/- per month, but in the meantime, salary of the Opposite Party has been enhanced to Rs.80,000/- per month. Further the son of the Petitioner is pursuing his study in +2

Science stream and his study expenses has gone high. In view of the above, the impugned order under Annexure-3 requires reconsideration.

4. Mr. Nanda, learned counsel appearing on behalf of the Opposite Party vehemently objects to the same and contends that taking into consideration the facts and circumstances and materials available on record at the time of adjudication of criminal Proceeding, i.e., CP No.63 of 2015, learned Judge, Family Court, Bhubaneswar holding the Petitioner and her son are getting Rs.13,000/- per month (as per interim order passed by this Court in RPFAM No.295 of 2019), refused to entertain the application under 24 of the Act. After usual deductions as well as deduction of Rs.13,000/- per month the take-home salary of the Opposite Party was Rs.18,404/- at the relevant time. Hence, there is no infirmity in the impugned order, which would warrant interference by this Court.

5. Taking into consideration the submissions of learned counsel for the parties, this Court is of the considered opinion that at the time of adjudication of application under Section 24 of the Act, the gross salary of the Opposite Party was Rs.70,668/-. A sum of Rs.52,264/- (including Rs.13,000/- towards interim maintenance per month) was being deducted from the salary of the Opposite Party. As such, his take-home salary was 18,404/- at the relevant time. The Opposite Party has his personal expenses and other obligations. Hence, refusal to entertain application under Section 24 of the Act is justified.

6. In view of order passed in the criminal proceeding under Section 125 Cr.P.C., I find no infirmity in the impugned order and moreover, RPFAM No.295 of 2019 is disposed vide

separate order of the even date without interfering with the impugned order granting maintenance of Rs.10,000/- to the Petitioner-wife and Rs.5,000/- per month to her son.

6.1 Mr. Samantasinghar, learned counsel for the Petitioner, however, submits that the salary of the Opposite Party has been enhanced to Rs.80,000/- per month. If that be so, the Petitioner, if so advised, may seek for enhancement of the maintenance amount in the criminal proceeding, i.e., CP No.63 of 2015.

7. Taking into consideration the discussions made above, I am of the considered opinion that the impugned order warrants no interference. Accordingly, the writ petition stands dismissed being devoid of any merit.

(K.R. Mohapatra)
Judge

