IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 86 of 2017

Dr. Deepak Padhi ..... ***Petitioner***

Miss Deepali Mahapatra, Advocate

-versus-

Gayatri Panda .... ***Opp. Party***

Mr. J. Biswal, Advocate
on behalf of Mr. S. Das, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No. **14.07.2022**

RPFAM No. 86 of 2017 & RPFAM No. 119 of 2017

13. 1. This matter is taken up through Hybrid mode.

2. These two RPFAMs have been filed assailing order dated 3rd March, 2017 passed by learned Judge, Family Court, Ganjam at Berhampur in Criminal Proceeding No.87 of 2015 directing the Dr. Deepak Padhi (Opposite party therein) to pay a sum of Rs.20,000/- per month towards maintenance to Smt. Gayatri Panda (Petitioner therein), from the date of the application, i.e., 15th May, 2015 along with other directions.

3. RPFAM No.86 of 2017 filed by Dr. Deepak Padhi (hereinafter referred to as 'husband' for convenience) challenging the impugned order on the ground that Mrs. Gayatri Panda (hereinafter referred to as 'wife' for convenience) is not entitled to maintenance as she voluntarily left the matrimonial home and there is no material on record with regard to the income of the husband. The quantum of maintenance

determined by Family Court is a sheer guess work. As such, the same is not sustainable in the eyes of law.

3.1. RPFAM No. 119 of 2017 was filed by the wife claiming enhancement of the maintenance on the ground that the husband is earning more than Rs. 1,00,000/- per month. He is a Radiologist and is a Consultant in different multi specialty hospitals. Although documents in support of his engagement were filed before leaned Family Court, the same were not taken into consideration. No rebuttal evidence was also produced by the husband to discredit such evidence. A nominal amount of maintenance has been granted with which it is very difficult on the part of the wife to sustain herself.

4. Briefly stated, the marriage between the parties was solemnized on 5th December, 2003. It is alleged by the wife in the petition under Section 125 Cr.P.C. that on the next day of their marriage, she went to her in-laws' house with the husband. From that date, she was being ill-treated. Lastly on 28th May, 2004 she was manhandled and kicked out of the matrimonial home, for which she had to spend the entire night on the verandah of the matrimonial home. On the next day, i.e., 29th May, 2004, she left for her parental home.

4.1 On 22nd June, 2006, the husband filed MAT Case No.42 of 2006 under Section 13 (1-a) and (1-b) of the Hindu Marriage Act, 1955 (for short, 'the Act') before learned Civil Judge (Senior Division), Berhampur, which was subsequently transferred to the Court of learned Judge, Family Court, Berhampur and was re-numbered as CP No.38 of 2010.

Pendente lite maintenance of Rs.3,000/- per month was directed to be paid by the husband, which was subsequently enhanced by this Court to Rs.5,000/- per month pursuant to order passed in W.P.(C) Nos.11820 of 2007 and 8114 of 2007. Due to non-payment of *pendente lite* maintenance granted under Section 24 of the Act to the wife, the pleadings of the husband was struck off and CP No.38 of 2010 was dismissed by order dated 21st May, 2011 by the learned Judge, Family Court, Ganjam at Berhampur. However, the said order was challenged before this Court in MATA No.38 of 2015, which was allowed vide order dated 3rd March, 2017 directing disbursement of Rs. 2,00,000/- deposited by the husband before this Court along with accrued interest to the wife and permitting the husband to move an appropriate application before learned Family Court. Thereafter, the wife filed Cr.P No.87 of 2015 under Section 125 Cr.P.C. and the impugned order has been passed.

5. Miss Mahapatra, learned counsel for the husband submits that the impugned order suffers from non-consideration of material evidence on record. It is her submission that in the cross-examination, the wife candidly admitted that at the time of her marriage, father of the husband was working at Kolkata and her husband was staying with him and was pursuing his research work. On the 10th day of their marriage, the husband went to his in-laws' house (wife's parental home) as per the custom. After 10th day of the marriage, the wife went to Kolkata with her husband. Her parents also visited Kolkata in the month of June, 2004 and they resided with them for two/three days. She left for her parental home with her parents.

After few months, i.e., in the month of April/May, 2004, the husband was posted as Medical Officer at Nabarangpur. The husband came to the parental house of his wife and requested her to accompany him to Nabarangpur. Acceding to his request, the wife accompanied her husband on 28th May, 2004 and they went to their matrimonial home. But she was ill-treated there at her matrimonial home and was driven out, for which she had to spend the whole night on the verandah and on the next day she left for her parental home. It is her contention that such plea is neither believable nor probable. In order to camouflage her conduct, the wife has made such allegations. From her evidence, it is clear that she left the matrimonial home on her own volition without sufficient cause. This aspect was not considered by the learned Judge, Family Court. It is her submission that the case of the husband squarely falls under Section 125 (4) Cr.P.C. and the wife is not entitled to any maintenance. She further submits that no evidence whatsoever is available on record with regard to income of the husband. Without discussing the materials on record, learned Judge, Family Court, Berhampur has jumped to the conclusion that Rs.20,000/- per month will be the just compensation. Such a conclusion is not sustainable in absence of assessment of income of the husband. In that view of the matter, she prays for setting aside of the impugned order.

6. Mr. Biswal, learned counsel for the wife stoutly denies the submission made by Miss Mahapatra, learned counsel for the husband. It is his submission that the wife has vividly described the ill-treatment meted out to her in the matrimonial

home. She has candidly and in detail stated each of the events in her evidence. Learned Judge, Family Court, Ganjam at Berhampur considering the same has categorically observed that the plea of the husband that the wife abandoned the matrimonial home voluntarily, is not acceptable. Thus, the finding to that effect should not be interfered with in a petition under Section 19(4) of the Family Courts' Act, which is in the nature of a revision under Section 401 Cr.P.C.

6.1 He further submits that voluminous record with regard to engagement of the husband in different private clinics/hospitals were produced before learned Family Court, but the same were not taken into consideration while determining the quantum of maintenance. The wife has categorically stated that the husband is earning more than Rs.1.00 lakh per month, which was disbelieved by the learned Judge, Family Court without any justifiable reason. The quantum of monthly maintenance directed to be paid to her is not in consonance with her requirement vis-à-vis the income of the husband. Hence, it requires enhancement.

7. Taking into consideration the rival contentions of the parties, this Court on perusal of record, it is apparent that the learned Judge, Family Court discussing the materials on record, has come to the conclusion that the wife has not voluntarily deserted the matrimonial home. The said finding being based on evidence on record, more particularly the evidence of the wife, is not open to be re-appreciated in a petition under Section 19(4) of the Family Courts' Act, which is in the nature of a revision under Section 401 Cr.P.C.

8. So far as the income of the husband is concerned, it appears that there is no concrete material on record to show the income of the husband. Although the wife in her petition before this Court has annexed voluminous documents showing engagement of her husband in different private clinics and hospitals as Radiologist, but those documents do not reflect his income. Admittedly, neither of the parties adduced any evidence with regard to definite income of the husband. However, it cannot be brushed aside that the husband is a qualified doctor and is an able-bodied person. Looking at his status and requirement of the wife (in absence of any evidence to that effect), this Court is of the considered opinion that the direction for payment of Rs.20,000/- per month towards maintenance by the learned Judge, Family Court, Ganjam at Berhampur, cannot be said to be unreasonable. In absence of any evidence, this Court is not in a position to accept the prayer made by the wife for enhancement of the quantum of maintenance.

9. In view of the above, both the RPFAMs being devoid of any merit stand dismissed.

10. Interim order dated 18th June, 2018 passed in IA No.25 of 2018 and subsequent modified order dated 26th April, 2022 stand vacated.

(K.R. Mohapatra)
Judge

s.s.satapathy