

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 87 of 2022

Rajendra Narayan Swain

.....

Petitioner

Mr. Mahes Das, Advocate

-versus-

Subhashree Swain

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

18.07.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM seeks to assail the order dated 12th April, 2022 passed in Cr.P. No.1215 of 2016, whereby learned Judge, Family Court, Bhadrak, directed the Petitioner to pay maintenance of Rs.4,000/- per month to the Opposite Party-wife from the date of application, i.e., 27th October, 2014.
3. Mr. Das, learned counsel for the Petitioner submits that the Petitioner does not dispute the status of the Opposite Party-wife as his legally married wife. The Opposite Party is living in adultery and she is leading an immoral life without joining the Petitioner in the matrimonial home. It is his case that although the Petitioner has led evidence to that effect the same was not considered in its proper perspective. He further submits that the petition under Section 125 Cr.P.C. is hit by Sub-section (4) of Section 125 Cr.P.C., as the Opposite Party-wife is living in adultery. It is further submitted that the Petitioner got the job only in the year 2018, but the maintenance has been awarded

from the date of application. Hence, the same requires re-consideration

4. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the impugned order, it appears that neither any independent witness nor any document with regard to allegation of adultery has been adduced by the Petitioner. Mere assertion supported by the deposition of the Petitioner cannot be a sufficient ground to accept the allegation of adultery made by the Petitioner.

5. Learned counsel for the Petitioner does not dispute that the Petitioner is serving as a teacher in a Government High School. Ordinarily, maintenance under Section 125 Cr.P.C. is granted from the date of application unless there is compelling circumstance made out in the case itself. In the present case, no such compelling circumstance has been made out to grant maintenance from a different than the date of application.

6. In view of the above, the RPFAM merits no consideration and is accordingly dismissed.

(K.R. Mohapatra)
Judge