

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 93 OF 2022

B. Niraj @ Niroj Digal

.....

Petitioner

Mr. Rabi Narayan Behera, Advocate

-versus-

Hemalata Mishal

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

25.07.2022

Order No.

3. 1. This matter is taken up through Hybrid mode.
2. Order dated 21st April, 2022 (Annexure-1) passed by learned Judge, Family Court, Parlakhemundi in Criminal Proceeding No.32 of 2021 is under challenged in this RPFAM, whereby the Petitioner is directed to pay maintenance @ Rs.5,000/- per month to the Opposite Party.
3. Mr. Behera, learned counsel submits that the Opposite Party is the legally married wife of the Petitioner. But she voluntarily left the matrimonial home and is residing with her parents. The Petitioner was working at Raipur in a Tin and Plastic factory, but during outbreak of COVID-19 pandemic, he left the job. Now he is jobless. Hence, a direction to pay maintenance of Rs.5,000/- per month is inflated and the Petitioner is not in a position to pay the same. Hence, he prays for setting aside the impugned order and remit the matter back to learned Judge, Family Court, Parlakhemundi to determine the quantum of maintenance afresh.

4. Taking into consideration the submission of Mr. Behera, learned counsel for the Petitioner and on perusal of the deposition of RW-1 (the Petitioner), it appears that in the cross-examination at para-3 RW-1 has stated as under:-

“3. It is not a fact that my wife has asked me not to mix with other women and that I ill-treated her and tortured her when she asked so. It is a fact that I was working at Raipur but after outbreak of Covid-19 I have left the job. It is not a fact that I was getting salary of Rs.40,000/- p.m.”

5. In view of the above, the Petitioner during outbreak of COVID-19 has left the job voluntarily. Law is well-settled, even if a husband has no source of income he has to maintain his wife. Since no evidence is available on record with regard to the income of the husband, learned Judge, Family Court had to make a guess work and determined the quantum of maintenance. It is also not disputed that the Opposite Party-wife has no independent source of income. In that view of the matter, I find no infirmity in the impugned order directing the Petitioner to pay Rs.5,000/- per month to the Opposite party towards maintenance.

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

(K.R. Mohapatra)
Judge