

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1367 of 2022

Braja Kishore Sahoo *Petitioner*
-versus-
Soubhagini Sahoo *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

ORDER

27.07.2022

Order
No.

01. 1. This matter is taken up through hybrid mode.
2. A Memorandum in favour of Mr. Sourya Sundar Das, learned Senior Advocate is filed by the learned counsel for the Petitioner to plead for the Petitioner, which be kept on record.
3. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 12th April, 2022 passed by the learned Additional District & Sessions Judge, Athgarh in Criminal Revision No. No.02 of 2002 confirming the order dated 27th December, 2021 passed by the learned S.D.J.M., Athgarh in Criminal Misc. Case No.58 of 2016.
4. Heard Mr. Sourya Sundar Das, learned Senior Advocate appearing for the Petitioner and learned counsel appearing for the Opposite Party.

5. The Petitioner being saddled with liability to pay maintenance to his divorced wife @ Rs.8,000/- per month by the order of the trial Court, which has been confirmed by the revisional Court, has challenged the same on the ground that she having voluntarily withdrawn from the society of the Petitioner and their marriage having been dissolved by a decree of divorce, is not entitled to the maintenance and the Court below, therefore, could not have saddled the present petitioner with such liability. In alternative, it is also contended that if at all this Court does not interfere with such finding of the court below, the order as to the quantum of maintenance should be interfered with, inasmuch as the Petitioner is a retired teacher and after dissolution of marriage, he has married for second time and is having liability to maintain his family consisting of five members with an amount of Rs.27,000/- only as monthly pension. To substantiate the same, he has placed reliance on the decision of the Apex Court in the case of ***Rajnesh v. Neha, reported in (2021) 2 SCC 324*** wherein at paragraphs 80 to 84 have held as follows:-

80. *“On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife*

if he is able bodied and has educational qualifications.³⁵

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.³⁶ The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

82. Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

83. Section 20(2) of the D.V. Act provides that the monetary relief granted to the aggrieved woman and / or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

84. The Delhi High Court in *Bharat Hedge v Smt. Saroj Hegde*³⁷ laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)

- “1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.

4. The number of persons, the non-applicant has to maintain.

5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act."

6. Learned counsel for the Opposite Party, however, submits that the Opposite Party-wife being a destitute and divorcee and the Petitioner being liable to maintain the Opposite Party as mandated in the statute, the trial court has saddled the petitioner with the liability, and the revisional court did not interfere with the same. Therefore, this Court in exercise of the power under Section 482 of Cr.P.C. should not interfere with the same. So far as the quantum of the maintenance is concerned, he submits that the Petitioner is getting a provisional pension of Rs.33,000/- as per the finding of the learned Magistrate, which is a matter of record. The same is also recorded in the revision. Petitioner is found to be in receipt of provisional pension of Rs.33,000/- per month which is subject to fixation of final pension. Hence, the contention that he is getting only Rs.27,000/- is not correct. The wife is

entitled to commensurate standard of living with the husband and now-a-days Rs.8,000/- is too meagre an amount to meet the requirement of a person living independently. Therefore, this Court should not interfere in this Criminal Misc. Case which is nothing but in the guise of a second revision.

7. No evidence having been led with regard to liability of the Petitioner in the trial court and the petitioner being a retired teacher in receipt of pension, and the opposite party being entitled to commensurate standard of living with the husband, this Court is not inclined to interfere with the order of the learned S.D.J.M., Athagarh and the order of the revisional court confirming the same.

8. With the aforesaid order, this Criminal Misc. Case stands dismissed.

(S. Pujahari)
Judge