

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 107of 2022

Sanjay Kumar Bhuyan

.....

Petitioner

Mr.Niranjan Lenka, Advocate

-versus-

Sanjukta Bhuyan

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

06.07.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM seeks to assail the order dated 3rd March, 2022 passed in Cr.P No.61 of 2017, whereby learned Judge, Family Court, Mayurbhanj at Baripada, while allowing an application under Section 125 Cr.P.C., directed the Petitioner to pay maintenance of Rs.3,000/- per month to the Opposite Party and also to pay Rs.2,000/- towards the cost of litigation.
3. Mr. Lenka, learned counsel for the Petitioner submits that learned Judge, Family Court, while assessing the quantum of maintenance has not taken into consideration the income of the respective parties. None of the parties to the proceeding had filed their affidavit of disclosure. The Petitioner had also filed an application under Section 13(1) of the Hindu Marriage Act, 1955 in MAT Case No.497 of 2005 in which a *pendente lite* maintenance of Rs.2,000/- per month was directed to be paid to the Opposite Party. In spite of the same, in order to harass the Petitioner, the Opposite Party has filed an application under Section 125 Cr.P.C. and the impugned order has been passed. The Petitioner is an unemployed person. The Opposite Party-wife left

the matrimonial home voluntarily. Hence, she is not entitled to get maintenance under Section 125 Cr.P.C. These material aspects were not been taken into consideration by the learned Judge, Family Court, Mayurbhanj at Baripada and the impugned order has been passed.

4. Taking into consideration the submission made by Mr. Lenka, learned counsel for the Petitioner and on perusal of materials on record, it appears that *pendente lite* maintenance granted in favour of the Opposite Party vide order dated 8th March, 2007 was unsuccessfully challenged by the Petitioner before the learned Additional District Judge (FTC), Mayurbhanj as well as before this Court. Due to non-payment of such maintenance, the Execution Case is still pending for consideration and the arrear amount was Rs.2.67 lakh till May, 2017. It further appears that after being unsuccessful in challenging the order of *pendente lite* maintenance, the Petitioner preferred not to pursue MAT Case No.497 of 2005 for which it was dismissed for non-prosecution. Thus, the Opposite Party had no other option than to file a petition under Section 125 Cr.P.C. It appears from the case record that none of the parties have filed their affidavit disclosing their income and liabilities. However, taking into consideration, the notional income of the Petitioner, maintenance has been assessed. It further appears an amount of Rs.3,000/- per month is not unreasonable to be granted in favour of a destitute lady. In that view of the matter, I am not inclined to entertain the RPFAM.

5. Accordingly, the RPFAM is dismissed.

(K.R. Mohapatra)
Judge