

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM No. 182 OF 2018

Santosh Kumar Behera *Petitioner*
Mr. Shib Shankar Mohanty, Advocate
-versus-
Sasmita Sahoo *Opp. Party*
Mr. Debasis Sahoo, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
05.04.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 29th May, 2018 passed by learned Judge, Family Court, Bhubaneswar in Criminal Proceeding No.18 of 2013, whereby a direction was made to the Petitioner to pay a maintenance at the rate of Rs.2,850/- per month to the Opposite Party from the date of application i.e. on 4th February, 2013 and Rs.3,300/- per month from the date of the order i.e. on 29th May, 2018. A further direction was made to the Petitioner to pay the arrear maintenance in three monthly installments.
3. In course of argument, Mr. Mohanty, learned counsel for the Petitioner submits that the marriage between the parties has been dissolved in the meantime and the Opposite Party-wife received permanent alimony under Section 37(1) of the Special Marriage Act, 1954 (for short 'the Act'). Since there is a provision for enhancement of the permanent alimony available under Section 37(2) of the Act, the impugned order passed is not sustainable in view of the change circumstance, as stated above.

In support of his case, he relied upon the decision in the case of ***Rakesh Malhotra -v- Krishna Malhotra*** in Criminal Appeal Nos. 246-247 of 2020, disposed on 7th February, 2020, reported in (2020) 14 SCC 150, wherein at paragraph-11 it has been held as under:

“11. Since the Parliament has empowered the Court under Section 25(2) of the Act and kept a remedy intact and made available to the concerned party seeking modification, the logical sequitor would be that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where considering the exigencies of the situation and urgency in the matter, a wife initially prefers an application under Section 125 of the Code to secure maintenance in order to sustain herself. In such matters the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a Competent Court either under the Act or similar such enactments. But the reverse cannot be the accepted norm.”

In view of the above, he submits that the impugned order is not sustainable and requires variation.

4. Mr. Sahoo, learned counsel for Opposite Party submits that the contention raised by Mr. Mohanty, learned counsel for the Petitioner is not sustainable in the eyes of law in view of the fact that change in circumstance, as submitted by the Petitioner occurred after the impugned order under Section 125 Cr.P.C. has been passed. He, however, submits that the Petitioner has a remedy under Section 127 Cr.P.C. to seek for variation of the order passed under Section 125 Cr.P.C. on the ground of change in circumstance.

5. Taking into consideration the rival contentions of the parties, this Court finds that the Petitioner seeks variation of the order of maintenance on the ground of change in circumstance. In that view of the matter, he has a remedy under Section 127 Cr.P.C. to seek for variation of the order under Section 125 Cr.P.C.

6. In that view of the matter, this RPFAM is disposed of with an observation that the Petitioner, if so advised, may file an application under Section 127 Cr.P.C. for variation of the order dated 29th May, 2018 passed by learned Judge, Family Court, Bhubaneswar in Criminal Proceeding No.18 of 2013 and in that event, learned Judge, Family Court, Bhubaneswar shall do well to consider the same in accordance with law giving opportunity of hearing to the parties concerned.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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