

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 186 OF 2018

R. Srinivas Patnaik

.... ***Petitioner***

Mr. Lalit Kumar Maharana,
Advocate

-versus-

R. Jyoti and another

.... ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No.

14.03.2022

RPFAM NO. 186 OF 2018
& I.A. No. 49 of 2022

3. 1. This matter is taken up through hybrid mode.
2. The RPFAM has been filed assailing the order dated 11th June, 2018 (Annexure-5) passed in Criminal Proceeding No.43 of 2017 filed by Opposite Parties under Section 125 Cr.P.C., whereby learned Judge, Family Court, Berhampur directed the Petitioner to pay a monthly maintenance of Rs.8,000/-, i.e. Rs.6,000/- per month to the Opposite Party No.1 and Rs.2,000/- per month to the Opposite Party No.2, from the date of filing of the said petition.
3. Mr. Maharana, learned counsel for the Petitioner by filing I.A. No.49 of 2022 submitted that the Opposite Parties at present are staying with the Petitioner and the Petitioner is also maintaining them. The Petitioner has also filed an application under Section 127(1) Cr.P.C. in Criminal Proceeding No.43 of 2017 for variation of the impugned order. Learned Judge, Family Court, Berhampur, however, without considering the changed circumstances, is proceeding with the execution case filed by the Opposite Parties for realization of the arrear maintenance. The

Petitioner has once been arrested and on payment of Rs.50,000/-, he was released on bail. It is his submission that since the Opposite Parties are staying with the Petitioner at present, the impugned order is not executable.

4. Due to shortage of postal stamp, notice could not be issued to the Opposite Parties, but they are aware of the proceeding and the interim order dated 12th July, 2018 passed by this Court in I.A. No. 255 of 2018. Hence, he prays for a direction to set aside the impugned order.

5. Taking into consideration the submission of learned counsel for the Petitioner, this Court feels that interest of justice will be best served, if the application filed under Section 127(1) Cr.P.C. in Criminal Proceeding No.43 of 2017 is taken up at an early date before proceeding with the execution case, more particularly when the Opposite Parties are stated to be staying with the Petitioner at present.

6. In view of the above, the RPFAM is disposed of with a direction to the learned Judge, Family Court, Berhampur to dispose of the application under Section 127 (1) Cr.P.C. filed in Criminal Proceeding No. 43 of 2017 at an early date by serving notice on the Opposite Parties either personally or through their counsel before proceeding ahead with the Execution Case in Cr.P. No. 200 of 2018, Cr.P. No. 191 of 2019 and Cr.P. No.72 of 2021 stated to be pending before it.

7. Since the RPFAM is disposed of without serving notice on the Opposite Parties, they are at liberty to move this Court for variation of this order, if they feel aggrieved.

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

(K.R. Mohapatra)
Judge