

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 114 OF 2022

Ashish Chandra Mohanty* *Petitioner

Mr. Subrata Mishra, Advocate

-versus-

Sobharani Rout and another* *Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

26.09.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 11th April, 2022 (Annexure-2) passed in Criminal Proceeding No.1 of 2015, whereby learned Judge, Family Court, Kendrapara directed the Petitioner to pay maintenance @ Rs.3,000/- per month to the Opposite Party No.2 from the date of filing of the application i.e. from 2nd January, 2015.
3. Mr. Mishra, learned counsel for the Petitioner submits that when learned Judge, Family Court, Kendrapara disbelieved the marriage between the Petitioner and Opposite Party No.1, grant of maintenance to the Opposite Party No.2 (her son) is unjustified. He further submits that the Opposite Party No.1 had married to one Nirmal Mishra and the said marriage has not yet been desolved by any decree of divorce. There are also other materials on record to show that the Opposite Party No.1 is not legally married wife of the Petitioner. Learned Judge, Family Court, Kendrapra only relying upon the birth certificate issued in favour of the Opposite Party No.2 (Ext.1), directed the Petitioner to pay maintenance to him. It is his submission that the birth certificate is a manufactured one and has no evidentiary value. He further submits that Civil

Proceeding No.222 of 2019 has been filed before learned Judge, Family Court, Kendrapara for declaration that the Opposite Party No.1 is not the wife of the Petitioner and the Opposite Party No.2 is not his son, which is still pending. At this juncture, grant of maintenance to Opposite Party No.2 under Section 125 Cr.P.C. is not justified.

4. Upon hearing learned counsel for the Petitioner and on perusal of the materials on record, it appears that Ext.1 is the birth certificate of Opposite Party No.2 in which the Petitioner has been shown to be his father. Only because the marriage between the Petitioner and Opposite Party No.1 was not established, it does not disentitle the Opposite Party No.2 to get maintenance under Section 125 Cr.P.C., when prima facie it appears that the Petitioner is the father of Opposite Party No.2. Section 125 (3) Cr.P.C. makes it clear that the legitimate or illegitimate child, who has not attained majority, is entitled to maintenance. When the material on record is available to show that the Opposite Party No.2 is the son of the Petitioner, learned Judge, Family Court has committed no error in directing the Petitioner to pay maintenance @ Rs.3,000/- per month to him. The amount of maintenance does not also appear to be unreasonable and pendency of C.P. No.222 of 2019 is not a bar to consider the application for grant of maintenance under Section 125 Cr.P.C. in favour of the Opposite Party No.2

5. Hence, I am not inclined to entertain the RPFAM. Accordingly, the RPFAM stands dismissed.

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

(K.R. Mohapatra)
Judge