

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.171 of 2019

Mamata Mohanty and another ***Petitioners***
Mr. Aurovinda Mohanty, Advocate

-versus-

Smruti Ranjan Rout ***Opp. Party***
Mr. Deepak Kumar Sahoo, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
08.08.2022

Order No.

7. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this RPFAM seek to assail the order dated 14th March, 2019 passed by learned Judge, Family Court, Kendrapara in CC Case No.664 of 2013, which has been dismissed on contest on the ground that in a proceeding under the Protection of Women from Domestic Violence Act, 2005 (for short, 'DV Act') maintenance has been awarded in favour of Petitioner No.1.
3. Mr. Mohanty, learned counsel for the Petitioners submits that Petitioner No.1 is the legally married wife of the Opposite Party and Petitioner No.2 is the minor daughter born out of their wedlock. In a proceeding under the DV Act, the Opposite Party has been directed to pay an amount of Rs.2,000/- per month to the aggrieved person (present Petitioner No.1) from the date of the order, i.e., 22nd June, 2015. The amount directed to be paid in the said order is under challenge in CRLREV No.958 of 2017 and is pending before

this Court. As the amount is insufficient for Petitioner No.1 for her sustenance and she also requires a reasonable amount for maintenance of the minor daughter (Petitioner No.2) petition under Section 125 Cr.P.C. was filed before learned Judge, Family Court, Kendrapara. The matter was dismissed on contest on the ground that Petitioner No.1 is in receipt of maintenance in the proceeding under the DV Act. It is his submission that although Petitioner No.1 is in receipt of maintenance of Rs.2,000/- per month, but the same is not sufficient for her sustenance. Further no maintenance has been awarded to the minor daughter, namely, Petitioner No.2. Hence, the petition under Section 125 Cr.P.C. has been filed. Learned Judge, Family Court, miserably failed to appreciate that a proceeding under Section 125 Cr.P.C. is maintainable even though maintenance is awarded under the DV Act. Learned Judge, Family Court relying upon a decision in the case of ***Sri Bhabin Shah Vs. Smt. Sapna Shah***, reported in 2016 (I) OLR 755 dismissed the petition under Section 125 Cr.P.C., which is not sustainable. Hence, he prays for setting aside the impugned order and to remit the matter back to learned Judge, Family Court for adjudication of the petition under Section 125 Cr.P.C. afresh giving opportunity of hearing to the parties concerned.

4. Mr. Sahoo, learned counsel for the Opposite Party refuting the above submission of learned counsel for the Petitioners contended that Petitioner No.1 is receiving maintenance under the DV Act and it is being paid to her regularly. She has neither filed any petition for enhancement of the same nor any interim order has been passed in CRLREV

No.958 of 2017 prohibiting payment of maintenance granted in the proceeding under the DV Act. The Opposite Party is also ready and willing to deposit the arrear amount, if any in the said proceeding. As such, learned Judge, Family Court, Kendrapara has committed no error in dismissing the petition under Section 125 Cr.P.C.

5. Upon consideration of the rival contentions of the parties, this Court finds that in the proceeding under the DV Act, the Opposite Party has been directed to pay maintenance of a sum of Rs.2,000/- per month to the aggrieved person, namely, the present Petitioner No.1. The said order is under challenge in CRLRVE No.958 of 2017 pending before this Court. It is also submitted by Mr. Sahoo, learned counsel for the Opposite Party that that Petitioner No.1 is in receipt of maintenance regularly. He also undertakes to deposit the arrear maintenance, if any pursuant to the direction in the proceeding under the DV Act. It is the settled law that multiple proceedings for the self-same cause of action is not maintainable. However, a proceeding under Section 125 Cr.P.C. is maintainable even if maintenance is awarded in any other proceeding depending upon the facts and circumstances of the case. There cannot be any straight jacket formula to reject an application under Section 125 Cr.P.C. on the ground that the applicant is in receipt of maintenance in other proceeding. Further, in the instant case, Petitioner No.2, the minor daughter born out of wedlock of Petitioner No.1 and the Opposite Party has not been awarded with any maintenance. These material aspects were not taken into consideration by learned Judge, Family Court,

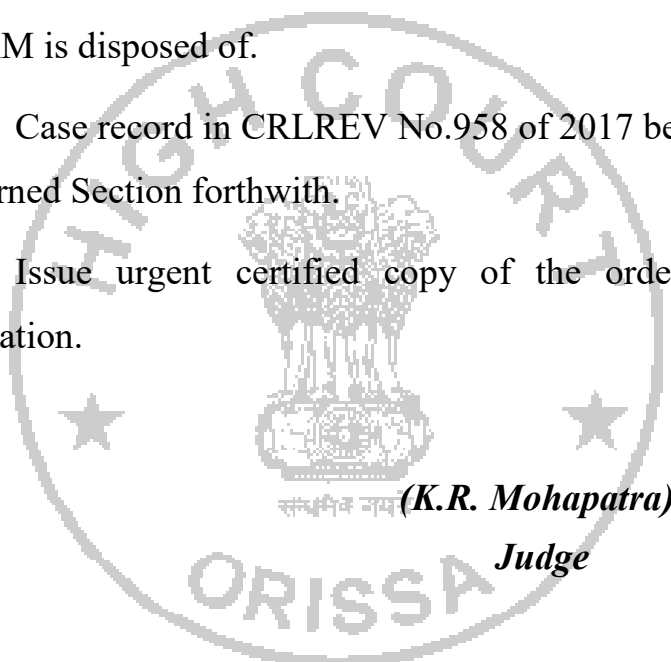
Kendrapara while adjudicating the matter. Learned Judge, Family Court, Kendrapara has also not made any endeavour to delve into the merit of the case of the Petitioners under Section 125 Cr.P.C.

6. In view of the above, the impugned order is set aside. The matter is remitted back to learned Judge, Family Court, Kendrapara for adjudication of the matter afresh giving opportunity of hearing to the parties concerned.

7. With the observation and direction, as aforesaid the RPFAM is disposed of.

8. Case record in CRLREV No.958 of 2017 be sent back to concerned Section forthwith.

Issue urgent certified copy of the order on proper application.



s.s.satapathy