

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**RPFAM No.153 of 2022**

***Saroj Dash***

***..... Petitioner***

Mr. S.Hota, Advocate  
on behalf of Mr. Suryakanta Dwibedi, Advocate

***-versus-***

***Giribala Dash and another***

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

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**19.09.2022**

**Order No.**

2. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM seeks to assail the order dated 20<sup>th</sup> May, 2022 (Annexure-1) passed by learned Judge, Family Court, Phulbani in CRP No.74 of 2019, whereby the Petitioner is directed to pay maintenance at the rate of Rs.8,000/- per month to Opposite Party No.1 and Rs.4,000/- per month to Opposite Party No.2 from the date of application.
3. Learned counsel for the Petitioner submits that the marriage with Opposite Party No.1 is seriously disputed. She is not the legally married wife of the Petitioner and Opposite Party No.2 is not born out of their wedlock. It is his submission that Opposite Party No.1 is legally married wife of one Kabiraj Guru and out of their wedlock two daughters and Opposite Party No.2 (son) were born. Petitioner has constructed a house at Kendupadar. The Opposite Party No.1 along with her children resided in the house of the Petitioner on rent and after some days they stopped paying rent. When the Petitioner demanded rent

from Opposite Party No.1, false case has been foisted by Opposite Party No.1 claiming to be wife of the Petitioner. It is submitted that Opposite Party No.1 has filed CS No.428 of 2005 in the Court of learned 2<sup>nd</sup> Additional Senior Civil Judge, Bhubaneswar to declare that Kabiraj Guru has a civil death. When the Opposite Party No.1 admitted her marriage with Kabiraj Guru and has filed the suit for the aforesaid relief, it is sufficient to come to a conclusion that she is not the legally married wife of the Petitioner. However, the birth certificate of Opposite Party No.2 clearly shows that he is the son of the Petitioner. Hence, direction of learned Judge, Family Court, Phulbani to pay maintenance to Opposite Party No.1 stating her to be the wife of the Petitioner is not sustainable and is liable to be set aside.

4. Heard learned counsel for the Petitioner and perused the materials on record. On perusal of record, it *prima facie* shows that Opposite Party No.1 has relied upon Ext.13, the marriage certificate issued by AMOFOI issued on 28<sup>th</sup> May, 2021, which clearly disclosed that Opposite Party No.1 is the wife of the Petitioner. Adhar Card, photocopy of the statement of marks of Opposite Party No.2, photocopy of the ROR etc. clearly disclose that Petitioner is the husband of Opposite Party No.1. Learned counsel for the Petitioner submits that since the birth certificate of Opposite Party No.2 discloses that Petitioner is his father, he does not challenge the direction to pay maintenance to the son. It therefore clearly establishes that Petitioner and Opposite Party No.1 lived as husband and wife under one roof. It further discloses that Opposite Party No.1 has lodged FIR against the

Petitioner alleging ill-treatment and charge sheet has been filed under Section 498A, 323, 494, 506 and 34 of IPC. All these materials establish that Opposite Party No.1 is the wife of the Petitioner. Learned Judge, Family Court relied upon a decision of the Hon'ble Supreme Court in the case of **Chanmuniya Vs. Narendra Kumar Singh Kushwaha**, reported in JT 2010 (11) SC 132, which reads thus:-

*"25. Again in Vimala (K) v. Veeraswamy (K) [(1991) 2 SCC 375], a three-Judge Bench of this Court held that Section 125 of the Code of 1973 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. Explaining the meaning of the word 'wife' the Court held:*

*"...The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term 'wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective..."*

*26. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent."*

*(emphasis supplied)*

In view of the discussions made above together with the ratio relied upon by learned Family Court I am of the considered opinion that learned Family Court has not committed any error in

directing payment of maintenance in favour of Opposite Party Nos.1 and 2.

5. In view of the above, the RPFAM being devoid of any merit stands dismissed.

Issue urgent certified copy of the order on proper application.

**(K.R. Mohapatra)**  
**Judge**



*s.s.satapathy*