

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM No.51 OF 2021

Deepak Kumar Acharya

Petitioner

Mr. Soubhagya Kumar Dash,
Advocate

-versus-

Jyotshnarani Dash and another

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

Mr. Tukuna Kumar Mishra,
Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
07.07.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 6th July, 2021 passed in CRP Case No.02 of 2020, whereby learned Judge, Family Court, Rayagada directed the Petitioner to pay a sum of Rs.4000/- per month to the Opposite Party No.1 and Rs.6000/- per month to the Opposite Party No.2 from the date of filing of the application i.e. on 3rd January, 2020.
3. Mr. Dash, learned counsel for the Petitioner submits that the Petitioner is serving as a Constable and his monthly net salary at the relevant period was Rs.33,320/- per month during the relevant period. At the same time, the Opposite Party No.1 had a monthly income of Rs.10,652/- per month during that period. The Opposite Party No.1 left the matrimonial home along with Opposite Party No.2 without any justifiable reason. Although the Opposite Party No.1 has sufficient means to

maintain herself, she filed an application under Section 125 Cr.P.C. claiming maintenance.

4. Mr. Dash, learned counsel further submits that the Petitioner does not challenge the quantum of maintenance, which was directed to be paid to the Opposite Party No.2 (his daughter). But the Petitioner is aggrieved by the quantum of maintenance, which was directed to be paid to the Opposite Party No.1-Wife. Learned Judge, Family Court, Rayagada although passed a lengthy judgment, but did not discuss about the assets and liabilities of the parties while determining the quantum of maintenance. The Petitioner has his ailing mother and he has filed documents vide Ext.D to show the expenditure incurred by him for his mother. He has also filed document of his ailment vide Ext.G. All these documents were not taken into consideration by the learned Judge, Family Court, Rayagada while determining the quantum of maintenance in favour of Opposite Party No.1. It is his submission that although the husband and wife should contribute for a comfortable family life, but the Opposite Party No.1 did not co-operate with him and left the matrimonial home. She has an equal responsibility to maintain their child as that of the husband-Petitioner.

5. Learned Judge, Family Court, Rayagada while determining the quantum of the maintenance ought to have taken into consideration the respective income of the parties as well as their liabilities. No discussion to that effect has been made and learned Judge, Family Court, Rayagada straight away came to the conclusion by directing the Petitioner to pay a sum of Rs.4000/- per month to the Opposite Party No.1 towards her

maintenance. Hence, he prays for setting aside the impugned order and to quash the maintenance as directed to be paid by the Petitioner to the Opposite Party No.1-Wife.

6. Mr. Mishra, learned counsel for the Opposite Parties refuting such submission contended that the Opposite Party No.1-Wife is entitled to lead a life of equal status that she would have led in her matrimonial home. It is the categorical finding of learned Judge, Family Court, Rayagada that the Opposite Parties were ill-treated by the Petitioner and his family members for which she had no other option than to leave the matrimonial home along with her child. The Opposite Party No.1 has got a temporary contractual job and her income is not sufficient for her sustenance. In that view of the matter, learned Judge, Family Court, Rayagada has committed no error in passing the impugned order.

7. Taking into consideration the rival contentions of the parties and on perusal of the record, it is apparent that although learned Judge, Family Court, Rayagada has passed a lengthy judgment, but did not at all discuss the materials on record, i.e. income and liabilities of respective parties while determining the quantum of maintenance. In the ratio decided in the case of ***Kalyan Dey Chowdhury –v- Rita Dey Chowdhury Nee Nandy***, reported in (2017) 14 SCC 200, it is held that estrange wife is entitled to get maintenance of up to 1/4th of the income of the husband. In the instance case, the net salary of the Petitioner at the relevant time was Rs.33.320/- per month out of which learned Judge, Family Court, Rayagada has directed the

Petitioner to pay a sum of Rs.6000/- per month to the Opposite Party No.2 to which the Petitioner does not challenge.

8. So far as the quantum of maintenance to the Opposite Party No.1-Wife is concerned, learned Judge, Family Court, Rayagada has directed to pay a sum of Rs.4000/- per month to the Opposite Party No.1. Admittedly, the Opposite Party No.1 is a serving lady and the Petitioner has filed the salary slip of Opposite Party No.1 vide Ext.F, which discloses that her net salary per month is Rs.9,700/-. It is, of course, not disputed that vide Ext.1 filed by the Opposite Party No.1, her net salary was Rs.10,652/- per month from the month of February, 2021. In that view of the matter, it cannot be disputed that the Opposite Party No.1 requires some more amount over and above her income for her sustenance.

9. It is submitted that the Petitioner is paying a sum of Rs.6000/- per month to the Opposite Party No.2. Apart from that, he has his ailing mother and he is taking care of her. The Petitioner has also knee problem and needs some amount for his treatment/medicines.

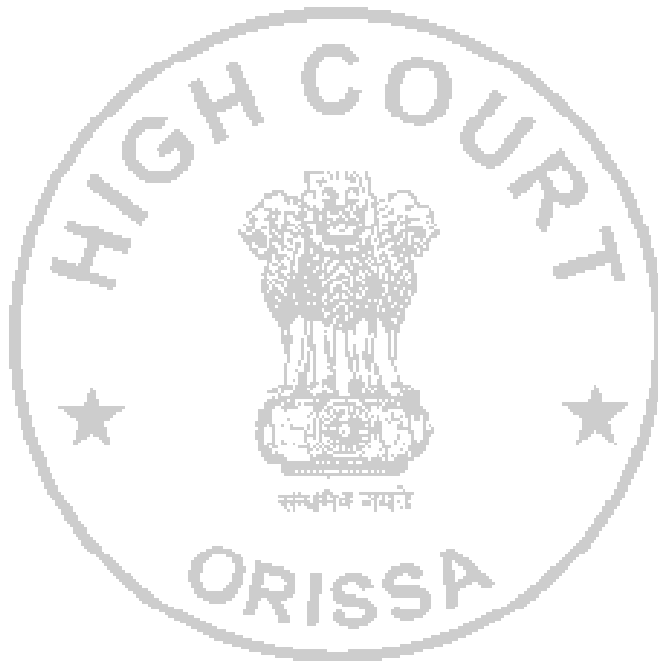
10. Thus, striking a balance income of both the parties as well as the expenditure and obligation of the Petitioner, this Court feels that a sum of Rs.3000/- (Rupees three thousand only) per month would be just and proper towards her maintenance in the facts and circumstances of the case. Accordingly, the impugned order is modified to the extent that the Opposite Party No.1-Wife shall be entitled to a sum of Rs.3,000/- per month towards her maintenance from the date of application i.e. from 3rd January, 2020. It is made clear that the quantum of

maintenance as directed to be paid by the Petitioner to Opposite Party No.2 is not interfered with.

11. With the aforesaid modification of the impugned order, the RPFAM is disposed of.

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

(K.R. Mohapatra)
Judge



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