

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 154 of 2022

Tabassum Parveen and another* *Petitioners

Mr. Prasanna Kumar Mishra, Advocate

-versus-

Abdul Kalam

.... *Opp. Party*

Md. Riaz, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

09.09.2022

Order No.

3.
 1. This matter is taken up through Hybrid mode.
 2. Petitioners in this RPFAM seek to assail the judgment and order dated 18th May, 2022 (Annexure-5) passed in Criminal Proceeding No.367 of 2014, whereby learned Judge, Family Court, Cuttack directed the Opposite Party to pay monthly maintenance of Rs.5,000/- to Petitioner No.2 from the date of application, i.e., 16th September, 2014 till she attains majority and Rs.6,000/- to Petitioner No.1 till end of 205 from the date of filing of the proceeding, i.e., 16th September, 2014.
 3. Mr. Mishra, learned counsel for the Petitioners submits that Petitioner No.1 is the wife of the Opposite Party and Petitioner No.2 is the daughter born out of their wedlock. Petitioner No.1 has purchased a land at Unit -7, Uttar Tulasipur near Biju Pattanayak Square, Cuttack and constructed house thereon arranging money from her own source by taking loan. After construction of the house, she remained in the ground floor along with her daughter and let out other portions to different

families for her sustenance and for repayment of loan. Since there was dissension between the parties, the Opposite Party was staying away from the Petitioners. Due to physical and mental torture, the Petitioner No.1 had also lodged an FIR in the Mahila PS, which corresponds to GR Case No.1522 of 2011. Subsequently, the Opposite Party with pretence that he would lead normal life with the Petitioners managed to stay in the said house and thereafter forcibly collected rent from the tenants till 2015. It is his submission that as the Petitioner No.1 has no independent source of income except the rent from the house she has constructed and let out and the Petitioner No.2 being the minor, the Opposite Party is under legal obligation to maintain them. Hence, a petition under Section 125 Cr.P.C. was filed, which was registered as Criminal Proceeding No.367 of 2014. The said proceeding was dismissed for default, vide order dated 3rd December, 2018, for which the Petitioners had to move this Court in RPFAM No.131 of 2019. This Court, vide order dated 5th August, 2021, disposed of the said RPFAM with the following order:-

“8. It is brought to the notice of this Court that though by order dated 9.3.2015, an interim maintenance to the tune of Rs.7,000/- per month has been directed to be paid to the wife and minor daughter by the Opposite Party-husband, but nothing has been paid by the husband except the amount of Rs.1,00,000/- (rupees one lakh) in terms of the order dated 3.1.2020 of this Court.

9. In the circumstances, the Opposite Party-husband is directed to pay the current interim maintenance amount regularly, failing which, the Petitioners are at liberty to take recourse of the provision under Section 125 (3) of the Cr.P.C. for realization of the amount.”

Accordingly, both the parties contested the RPFAM and the impugned order has been passed. It is his submission that learned

Family Court, while adjudicating the matter, did not at all take into consideration that the house building requires maintenance, payment of revenue, electricity charges etc. Further, the income from the house rent is not sufficient for her to maintain themselves. Learned Judge, Family Court on a presumption that the income from the house rent is sufficient for Petitioner No.1 to maintain herself, directed to pay maintenance at the rate of Rs.6,000/- per month till 2015. He further submits that maintenance of the minor daughter at the rate of Rs.5,000/- per month is also not reasonable and requires reconsideration.

4. Md. Riaz, learned counsel for Opposite Party-husband objecting such submission contends that there is no material on record to show that the income from the house rent is not sufficient to maintain the Petitioners. No document has been filed to substantiate the submission of Mr. Mishra, learned counsel for the Petitioners to the effect that the house building requires maintenance. Petitioners contested the petition under Section 125 Cr.P.C. on the plea that although Petitioner No.1 constructed the residential house and let it out to tenants, Opposite Party is forcibly collecting the rent. In the cross-examination, Petitioner No.1 categorically admitted that the Opposite Party was collecting rent from the tenants till 2015. Taking into consideration the same, learned Judge, Family Court in para-8 of the impugned judgment has observed that the house constructed by Petitioner No.1 fetches rent of Rs.18,000/- per month is sufficient to maintain herself. He further observed that no evidence with regard to requirement of Petitioner No.2 has been adduced by the Petitioners. Further, Petitioner No.2 is entitled to get maintenance from the Opposite Party till she

attains majority. In that view of the matter, learned Judge, Family Court committed no error in directing as above in the impugned order.

5. Upon hearing learned counsel for the parties and on perusal of record, it is apparent that the Petitioner No.1 has her residential house and she is residing therein (in the ground floor) along with Petitioner No.2. She has also let out some portion of the said house to different tenants and was getting rent of Rs.18,000/- per month. There is no material on record to show that the said income is not sufficient for her for her maintenance. As rightly pointed out by Mr. Riaz, learned counsel for the Opposite Party that there is no evidence adduced to the effect that Petitioner No.1 is incurring expenses towards maintenance of the house building and she is also paying land revenue, electricity charges etc. for the said house. There is also no evidence to show that after payment of land revenue, electricity charges etc. the rest income from the house rent is not sufficient to maintain herself. It is also apparent from record that the Petitioners are receiving rent from the said house since 2015. In absence of any material to the effect that the income from the house is not sufficient for Petitioner No.1 to maintain herself, learned Family Court has not committed no error in directing the Opposite Party to pay maintenance of Rs.6,000/- per month to Petitioner No.1 till 2005, i.e., the year from which she started receiving rent from the house she has constructed.

5.1 So far as Petitioner No.2 is concerned, learned Judge, Family Court directed the Opposite Party to give her maintenance at the rate of Rs.5,000/- per month, which is just and proper in absence of any material to the contrary. It is also

not disputed that Petitioner No.2 is entitled to any maintenance after she attains majority. The Petitioner No.2 is required to make out a case under the category as mentioned in Section 125(3) Cr.P.C. to make her entitled to receive maintenance after attaining majority.

5.2 In addition to the above, it appears that learned Judge, Family Court has passed a reasoned order taking into consideration the materials available on record. Since this Court is exercising the power of revision, it will not be competent to take a different view by substituting the finding of the learned Judge, Family Court unless a case is made out for interference, such as material irregularity and violation of the provisions of law. Learned counsel for the Petitioners could not make out a case of such nature.

6. Accordingly, the RPFAM being devoid of any merit stands dismissed.

Issue urgent certified copy of this order on proper application.

(K.R. Mohapatra)
Judge