

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 213 OF 2017

Santosh Kumar Parida

.....

Petitioner

Mr. Bhagaban Mohanty, Advocate

-versus-

Archana Parida

....

Opp. Party

Mr. Trilochan Rath, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

01.08.2022

Order No.

5. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM seeks to assail order dated 24th July, 2017 (Annexure-1) passed by learned Judge, Family Court, Jajpur in Criminal Proceeding No.612 of 2011, whereby an application under Section 125 Cr.P.C. filed by the Opposite Party has been allowed directing the Petitioner to pay a sum of Rs.5,000/- per month to the Opposite Party towards maintenance from the date of application, i.e., 5th April, 2008.
3. Mr. Mohanty, learned counsel for the Petitioner submits that the Petitioner is an Advocate by profession and he is a member of Jajpur Road Bar Association. He does not have much income. From the cross-examination of PW-1, it is apparent that the Petitioner was staying in a thatched house without electricity till his marriage with the Opposite Party. He was also commuting to Court in a bicycle. Although learned Judge, Family Court by making a guess work has observed that

the monthly income of the Petitioner to be Rs.15,000/- per month but there is no material on record in support of the same. On the other hand, the Opposite Party is serving as a teacher. Hence, she is not entitled to any maintenance under Section 125 Cr.P.C. Although the Petitioner exhibited documents in support of service of the Opposite Party as a teacher, the same were not taken into consideration while determining the maintenance amount. He further relied upon a decision in the case of ***Kalyan Dey Choudhury Vs. Rita Dey Choudhury Nee Nandy***, reported in AIR 2017 SC 2383 and submits that the Opposite Party will be entitled to 1/4th income of the Petitioner-husband. He also submits that the Petitioner has his old ailing parents and unmarried daughter depending upon him. These factors were not taken into consideration while determining the amount of maintenance.

4. Pursuant to direction of this Court vide order dated 5th July, 2018, the Petitioner has paid Rs.1,00,000/- to the Opposite Party. In view of the above, he prays for setting aside of the impugned order.

5. Mr. Rath, learned counsel for the Opposite Party-wife submits that the Petitioner has 15 years' standing practice as an Advocate at the relevant time. He was also retainer of a bank. However, the Opposite Party in support of her case could not produce any material in support of income of his husband, the Petitioner. But it cannot be brushed aside that the Petitioner is an able-bodied man and earning handsome amount from the profession. He has an obligation to maintain his wife. Taking into consideration the requirement of the Opposite Party as well

as cost of living in the year 2017, impugned order has been passed. He, therefore, submits that there is no infirmity in the impugned order and prays for dismissal of the RPFAM.

6. Taking note of rival contentions of the parties and on perusal of record, it appears that learned Judge, Family Court, Jajpur Road, taking into consideration the materials on record, assessed the income of the Petitioner to be around Rs.15,000/- per month at the relevant time. True it is that, the Petitioner has his old ailing parents and unmarried daughter depending upon him, which is of course refuted by learned counsel for the Opposite Party, submitting that the Petitioner is staying alone. The ratio in the case of ***Kalyan Dey Choudhury (supra)***, clearly stipulates that the wife-Opposite Party is entitled to 1/4th of the net income of the Petitioner-husband towards her maintenance. Since there is no material contrary to the assessment made by learned Judge, Family Court, this Court accepts the income of the Petitioner to be Rs.15,000/- per month at the relevant time. There is no material on record to show that the Opposite Party is serving as a teacher although an allegation to that effect was made. Documents submitted by the Petitioner do not disclose that the Opposite Party was serving as a teacher at the relevant time.

7. In view of the discussions made above, maintenance @ Rs.5,000/- per month at the relevant time appears to be excessive. Accordingly, this Court relying upon the ratio in the case of ***Kalyan Dey Choudhury (supra)*** directs that the Petitioner shall pay maintenance of Rs.3,000/- (rupees three

thousand only) per month to the Opposite Party from the date of application, i.e., 5th April, 2008.

8. The RPFAM is disposed of with the aforesaid modification in the maintenance amount.

9. Interim order dated 5th July, 2018 passed in IA No.257 of 2018 stands vacated.

Issue urgent certified copy of the order on proper application.



s.s.satapathy