

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 231 of 2017

Sujata Dhir Samanta @ Dehury and another ***Petitioners***

Mr. Samir Kumar Mishra, Advocate

-versus-

Satyajit Dehury ***Opp. Party***

Mr. Tusar Kumar Mishra, Advocate

And

RPFAM No. 207 of 2017

Satyajit Dehury ***Petitioner***

Mr. Tushar Kumar Mishra, Advocate

-versus-

Sujata Dhir Samanta @ Dehury and another ***Opp. Parties***

Mr. Samir Kumar Mishra, Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
07.03.2022**

Order No.

5.
 1. This matter is taken up through Hybrid mode.
 2. Both the RPFAMs arise out of common order dated 22nd July, 2017 (Annexure-2) passed by learned Judge, Family Court, Bhubaneswar in Criminal Proceeding No.129 of 2016 filed under Section 125 Cr.P.C. The proceeding was filed by the Petitioners in RPFAM No.231 of 2017 against the Opposite Party therein. For convenience, the parties are described as per their status in RPFAM No. 231 of 2017.
 - 2.1. RPFAM No.231 of 2017 has been filed for enhancement of maintenance, whereas RPFAM No.207 of 2017 has been filed for reduction of quantum of maintenance.

3. Admittedly, Petitioner No.1 is the wife of the Opposite Party and Petitioner No.2 is born out of their wedlock. It is also not in dispute that the Opposite Party is a Graduate Engineer having MBA qualification as well as Postgraduate in Mathematics.

4. It is contended by Mr. Samir Kumar Mishra, learned for the Petitioners that the Opposite Party is running a tutorial institute at Bhubaneswar and has a four storied house at Baramunda. He is earning Rs.30,000/- per month from tutorial classes and Rs.20,000/- per month towards house rent from the house situated at Baramunda. It is further submitted that the Petitioner No.1 has no independent source of income. At present, the Petitioner No.2 has been admitted to Class-I in St. Xavier High School, Satyangar, Bhubaneswar. It is therefore, contended by Mr. Mishra, learned counsel that Rs.4,500/- towards maintenance per month to Petitioner No.1 and Rs.4,200/- to the Petitioner No.2 per month are at the lower side, which requires enhancement.

5. Mr. Tusar Kumar Mishra, learned counsel for the Opposite Party referring to averments made in RPFAM No.207 of 2017 submits that in the proceeding (Cr.P. No.129 of 2016) filed under Section 125 Cr.P.C., learned Judge, Family Court issued notice to the Opposite Party on 7th February, 2017 directing him to appear on 10th March, 2017. Since the Opposite Party received the notice late, he entered appearance on 18th March, 2017 and sought for adjournment to file objection and show cause. The matter was adjourned to 15th April, 2017 for filing of show cause, but the said date was not intimated to him by his Advocate for which he could not file

the objection on the date fixed and was set *ex parte*. It is his submission that although the Opposite Party is a qualified Engineer having MBA degree, but the source of income as stated by the Petitioners is not correct. At present, he is suffering from psychiatric disorder and is dependent upon the pension of his father to maintain himself. The maintenance awarded in favour of the Petitioners is excessively high and he being an unemployed person cannot meet with the same. It is further submitted that the learned Judge, Family Court did not discuss the materials on record and only basing upon the deposition of Petitioner No.1, has passed the impugned order, which is not sustainable.

6. Upon hearing learned counsel for the parties in both the RPFAMs and on perusal of materials on record, it appears that the impugned order was passed *ex parte*. It is, however, submitted by Mr. Samir Kumar Mishra, learned counsel for the Petitioners that the Opposite Party had filed an application on 20th June, 2017 for setting aside the *ex parte* order, which is prior to the date of passing of the impugned order. He, however, does not have any up-to-date instruction about such application.

6.1. Although the Petitioner No.1 deposed that the Opposite Party is running a tutorial institute and he has other source of income, but no material is forthcoming to that effect. In the meantime, more than four years have already elapsed and the matter is pending before this Court. At the time of filing of the application under Section 125 Cr.P.C., Petitioner No.2 was only one year eight months old. It is also submitted by Mr. Tusar Kumar Mishra, learned counsel for the Opposite Party that the

Opposite Party is undergoing treatment for psychiatric disorder. All these subsequent events need to be looked into by the learned Judge, Family Court, Bhubaneswar in the event appropriate application for variation of the impugned order is filed.

7. The Opposite Party-husband has the obligation to maintain his wife and the child. Thus, the Opposite Party cannot deny the maintenance of the Petitioners. Taking into consideration the un-challenged materials the learned Family Court has passed the impugned order under Annexure-2. In view of the subsequent events, the same may require variation, if an appropriate application to that effect is/are filed.

8. In that view of the matter, I am not inclined to interfere with impugned order at Annexure-2 passed by the learned Judge, Family Court, Bhubaneswar in both the RPFAMs. It is, however, observed that the parties may seek for variation of the impugned order in view of subsequent events as pointed out by learned counsel for the parties and in that event, learned Judge, Family Court, Bhubaneswar may consider the same in accordance with law without being influenced by any observation made in this order.

9. Both the RPFAMs are disposed of accordingly. In view of disposal of both the RPFAMs, interim order dated 11th September, 2017 passed in Misc. Case No.295 of 2017 (arising out RPFAM No.207 of 2017) stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge