

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 157 of 2022

Pradeep Kumar Dash @ Luna Dash ***Petitioner***
Mr. S.Mohapatra, Advocate

-versus-

Gitanjali Dash @ Panigrahi ***Opp. Party***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

11.11.2022

Order No.

03. 1. This matter is taken up through Hybrid mode.
2. Judgment and Order dated 20th April, 2022 (Annexure-1) passed in CRP No.47 of 2021 is under challenge in this RPFAM, whereby learned Judge, Family Court, Phulbani directed the Petitioner to pay maintenance of Rs.3,000/- per month to the Opposite Party from the date of filing of such application, i.e., with effect from 27th July, 2021.
3. Mr. Mohapatra, learned counsel for the Petitioner submits that before filing of the petition under Section 125 Cr.P.C., the Opposite Party was staying separately without any reasonable cause. She has also been convicted for committing murder in ST No.79 of 2014. He further submits that an ex parte decree of divorce has also been passed by learned Judge, Family Court in CP No.3 of 2019, which is under challenge by the Opposite Party before this Court in MATA No.49 of 2020. The son of the Petitioner is staying with him. The Petitioner is

running a small grocery business and is earning Rs.3,000/- per month. Ignoring such contentions made by the Petitioner, learned Family Court relying upon the statement of the Opposite Party to the effect that the Petitioner is an established businessman and his monthly income is Rs.50,000/- and is also earning Rs.2.00 lakh from cultivation, directed to pay maintenance of Rs.3,000/- per month. It is his submission that there is likelihood of settlement between the parties in MATA No.49 of 2020 pending before this Court. He, therefore, submits that the quantum of maintenance granted in favour of the Opposite Party requires reconsideration.

4. Submission of learned counsel for the Petitioner makes it clear that the Petitioner only assails the quantum of maintenance directed to be paid to the Opposite Party. Petitioner has stated that he is running a small grocery business and is earning Rs.3,000/- per month. But learned Judge, Family Court, Phulbani on assessment of evidence, came to a conclusion that OPW-2-Rajesh Maharatha (a co-villager of the Petitioner) in his evidence categorically stated that the Petitioner has a small godown in his village Krandimaska. In view of the above, the Family Court, in absence of any evidence to the contrary, came to the conclusion that the Petitioner might be earning Rs.10,000/- per month. It also appears that the contention raised by Mr. Mohapatra, learned counsel for the Petitioner has been taken into consideration by learned Judge, Family Court, while adjudicating the matter and it has been categorically held that the petition under Section 125 Cr.P.C. is maintainable. Mr.

Mohapatra, learned counsel for the Petitioner in course of argument conceded to the same.

5. It appears that learned Judge, Family Court considering the materials on record, directed the Petitioner to pay Rs.3,000/- per month to the Opposite Party, who has no source of livelihood. Rs.3,000/- as maintenance cannot be treated to be unreasonable taking into consideration the cost of living during the relevant period. Learned Judge, Family Court on assessment of materials on record has come to the conclusion that the Petitioner must be earning Rs.10,000/- per month. In absence of any material to the contrary, this Court is not in a position to disturb the said finding.

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

