

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.165 of 2022

Smitarani Mohapatra

....

Petitioner

Mr.H.S.Satapathy, Advocate

-versus-

Raghunath Mishra

....

Opp. Party

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

ORDER

12.12.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM seeks to assail the judgment and order dated 6th May, 2022 (Annexure-3) passed in Criminal Proceeding No.127 of 2016 by learned Judge, Family Court, Cuttack, wherein, allowing an application filed under Section 125 Cr.P.C. ex-parte, the Opposite Party has been directed to pay maintenance of Rs.5,000/- per month to Petitioner No.2 and refused to grant any maintenance to Petitioner No.1. It is also directed that maintenance shall be awarded from the date of application, i.e., 8th August, 2016 till the Petitioner No.2 attains majority.
3. Mr. Satapathy, learned counsel for the Petitioners submits that relationship between the Petitioners and the Opposite Party is not in dispute. Petitioner No.1 is working on contract basis as a Ayush Doctor under National Health Mission (NHM) Project and drawing Rs.8,000/- per month as consolidated salary. The same is not sufficient to maintain the Petitioners. The Opposite Party serving in a multi-national Company and is earning Rs.1,76,408/- per annum. Petitioners

are entitled to maintain the status as they would have maintained with the Opposite Party. Petitioners also have requirements of medical expenses and for education of Petitioner No.2. All these aspects were not taken into consideration by the learned Judge, Family Court while considering the petition under Section 125 Cr.P.C. It is submitted that in view of decision in the case of **Narayan Rath Vs. Sakuntala Rath and others**, reported in 2005 (I) OLR 654, Petitioner No.2 is entitled to maintenance under Section 125 Cr.P.C. till she attains majority. He, therefore, prays for setting aside the impugned order and to remit the matter to learned Judge, Family Court, Cuttack for fresh adjudication.

4. Taking into consideration the submission made by learned counsel for the Petitioners and the observations made in the impugned order, it appears that Petitioners have not led evidence with regard to their requirements. It is also not disputed that Petitioner No.1 is serving an Ayush Doctor and her monthly salary was Rs.8,000/- per month in 2008. No endeavour has been made by learned counsel for Petitioner No.1 to lead evidence as to what would be her present salary. Provision of Section 125 (1)(b)(c) of Cr.P.C. makes it clear that Petitioner No.2 is entitled to be maintained till she attains majority. This Court in RPFAM No. 12 of 2009 disposed of on 4th July, 2022 (**Reshma Lakra Vs. William Lakra**) has dealt with in detail about the entitlement of a daughter to receive maintenance under Section 125 Cr.P.C. Thus, learned trial Court has committed no error in arriving at such finding in the impugned order. Petitioners have other remedies to claim maintenance from the Opposite Party. Since the petition under Section 125 Cr.P.C. was entertained to meet the urgent need of

the Petitioners and there is insufficient material to grant maintenance to Petitioner No.1, I am satisfied that learned Judge, Family Court, Cuttack has committed no error in refusing maintenance to her particularly when she has independent source of income and there is no material on record to show that the same is not sufficient for her sustenance. As such, I find no infirmity in the impugned order.

5. Accordingly, the RPFAM stands dismissed. However, dismissal of the RPFAM shall not preclude the Petitioner from claiming maintenance as may be available to them under law.

(K.R. Mohapatra)
Judge



s.s.satapathy