

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.218 of 2019

Priyambada Nayak @ Pradhan and another ***Petitioners***

Ms. Sephalee Das, Advocate

-versus-

Pramod Kumar Nayak ***Opp. Party***
None

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
19.05.2022

Order No.

6. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this RPFAM assail the order dated 9th July, 2019 (Annexure-3) passed in Criminal Proceeding No.525/157 of 2012-13, whereby learned Judge Family Court, Bhawanipatna dismissed the application filed by the Petitioners under Section 125 Cr.P.C. holding that the Petitioners voluntarily left the house of the Opposite Party.
3. Ms. Das, learned counsel for the Petitioners submits that marriage between the Petitioner No.1 and the Opposite Party was solemnized on 19th April, 1995 and out of their wedlock, Petitioner No.2 was born on 10th October, 1996. After birth of Petitioner No.2, the Opposite Party demanded a house, for which father of the Petitioner No.1 purchased one house at Rourkela in the name of Petitioner No.1. Thereafter, the Opposite Party insisted the Petitioner no.1 to transfer the same to his name to which the Petitioner No.1 did not agree, as a result of which dissensions arose between the parties and the Petitioner No.1 was subjected to mental and physical torture. Ultimately,

Petitioners were driven out of the house of Opposite Party. It is the case of the Petitioners that they have no independent source of income. Petitioner No.2 is pursuing her study in +3 Science stream. As they had no sufficient means to maintain themselves, the application under Section 125 Cr.P.C. was filed claiming maintenance of Rs.15,000/- and 10,000/- per month for Petitioner Nos.1 and 2 respectively.

3.1 It is further submitted that no evidence whatsoever was led by the Opposite Party in the said proceeding. However, learned Judge, Family Court, Bhawanipatna only relying upon the objection/written statement filed by the Opposite Party, disbelieved the case of the Petitioners and rejected the application for maintenance in terms of provisions under Section 125(4) Cr.P.C.

3.2 Learned counsel for the Petitioners further submits that in an application under Section 24 of the Hindu Marriage Act, i.e., in IA No.1 of 2016 (arising out of CP No.14/43 of 2013-15, the learned Judge, Family Court, Bhawanipatna has categorically held that the Opposite Party is not willing to accept the Petitioners. These material facts were not taken into consideration by the learned Family Court while adjudicating the matter. Hence, she prays for setting aside of the impugned order under Annexure-3 and remit the matter back to learned Judge, Family Court, Bhawanipatna for fresh adjudication of the criminal proceeding in accordance with law.

4. Although notice on the Opposite Party has been made sufficient and he is represented by learned counsel, but none is present on his behalf.

5. In course of hearing learned counsel for the Petitioners filed a copy of the depositions of the witnesses examined on behalf of the Petitioners, which is taken on record.

6. On perusal of the depositions, it appears that the Opposite Party declined to cross-examine the witnesses of the Petitioners. Further, on perusal of the impugned order, it appears that the Opposite Party has neither led any oral or documentary evidence in support of his case. The only point that has to be considered in this RPFAM is whether the Petitioners have voluntarily left the house of the Opposite Party.

7. PW-1 (Petitioner No.1) in support of her averments in the petition under Section 125 Cr.P.C. deposed that she was ill-treated at the house of the Opposite Party and was ultimately driven out of her matrimonial house. Evidence of Petitioner No.1/PW-1 in that regard reads as under:-

“.....I gave birth to a daughter. My husband demanded a residential house at Rourkela and thereafter my father purchased a house in my name at Rourkela. The O.P. pressurized to transfer the ownership of the said house in his name. As I did not agree for transfer of ownership, the O.P. subjected me to cruelty by physically torturing me and by not supplying me food to eat. On 14.8.03, the O.P. finally drove me out of his house after assaulting me. Thereafter, I have been staying with my parents at Bhawanipatna with my daughter and dependants.”

Petitioner No.2 was also examined as PW-4 and she in her evidence, has categorically stated that *“....the O. P. has driven me and my mother out of his house since 2003 and till date he has not paid any amount towards our maintenance....”*

8. The evidence led by PWs-1 and 4 went uncontroverted, as they were not cross-examined. On perusal of the impugned order, it appears that learned Judge, family Court disbelieved the

statements of PWs-2 and 3 stating that they belonged to Bhawanipatna. He disbelieved the allegation of the Petitioners to the effect that the Opposite Party had demanded a house and the father of the Petitioner No.1 had purchased the residential house at Rourkela, on the ground that no documentary evidence was filed in support of the same by the Petitioners. Such findings are based on surmises and conjectures and have no legal basis. On perusal of the impugned order, it appears that the learned Judge, Family Court, Bhawanipatna has not taken into consideration the uncontroverted evidence in coming to a conclusion that the Petitioners had voluntarily left the house of the Opposite Party.

9. In view of the above uncontroverted evidence of the Petitioners, this Court is of the considered opinion that the Petitioners did not leave the house of Opposite Party voluntarily. Hence, I am of the considered opinion that the impugned order is not sustainable and the matter requires further consideration by the learned Judge, Family Court, Bhawanipatna.

10. Accordingly, this Court sets aside order dated 9th July, 2019 (Annexure-3) passed in Criminal Proceeding No.525/157 of 2012-13 and remits the matter back to learned Judge Family Court, Bhawanipatna for consideration of the matter in accordance with law giving opportunity of hearing to the parties concerned.

11. The RPFAM is accordingly disposed of with the aforesaid observation and direction.

s.s.satapathy

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge