

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 182 of 2022

Sanjay Nayak

Petitioner

Mr. Somdarsan Mohanty, Advocate

-versus-

Sanghamitra Giri

.... ***Opp. Party***

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

**ORDER
26.10.2022**

Order No.

2. 1. This matter is taken up through hybrid mode.
2. Petitioner in this RPFAM seeks to assail the order dated 13th June, 2022 (Annexure-4) passed in Criminal Proceeding No.229 of 2021, whereby allowing an application filed by the Petitioner under Section 127 of Cr.P.C., learned Judge Family Court, Balasore cancelled the order of maintenance granted in favour of the Opposite Party in Cr.P No.1250 of 2010 (Misc. Case No.134 of 2004) with effect from 11th November, 2014.
3. Mr. Mohanty, learned counsel submits that marriage between the Petitioner and the Opposite Party was solemnized on 10th March, 2002. On the very next month of marriage, the Opposite Party left the matrimonial home and filed an application for maintenance under the provisions of Hindu Adoptions and Maintenance Act, 1956 in T No.537 of 2003, which is pending for adjudication. Subsequently, she filed an application under Section 125 Cr.P.C. in Misc. Case No.134 of 2004, which was transferred to the Court of learned Judge, Family Court, Balasore and re-numbered as Cr.P. No.1250 of 2010. Said application was allowed vide order dated 24th November, 2010 and the Petitioner was directed to pay monthly

maintenance to the Opposite Party from 12th July, 2004. Subsequently, the Opposite Party also filed CP No.338 of 2011 under Section 13(1) of the Hindu Marriage Act, 1955 for dissolution of marriage by a decree of divorce. The said Civil Proceeding was allowed vide judgment dated 11th November, 2014 dissolving the marriage by a decree of divorce with the following order:-

“The petition is disposed of on contest but without cost. The marriage between the petitioner and respondent No.1 be dissolved. Respondent No.1 is directed to pay Rs.1,45,000/- towards permanent alimony to the petitioner within one month hence.

Pronounced in the open court on this the 11th day of November, 2014. ”

Accordingly, the Petitioner paid the permanent alimony. Immediately after the decree of divorce passed, the Opposite Party got re-married. Accordingly, the Petitioner filed an application under Section 127 Cr.P.C. to cancel the order of maintenance granted in favour of the Opposite Party. Learned Judge, Family Court in spite of cancelling the order of maintenance from its inception, allowed the same only with effect from 11th November, 2014, i.e., from the date of dissolution of the marriage. He further submits that the Opposite Party has in the meantime filed Cr.P. No.217 of 2014 seeking enforcement of the order dated 24th November, 2010 for release of arrear maintenance amount for the period from 1st December, 2013 to 31st October, 2014. These material aspects were concealed by the Opposite Party while contesting the petition under Section 127 Cr.P.C. Although the aforesaid circumstances were brought to the notice of learned Judge, Family Court, he

failed to appreciate the same and the impugned order was passed.

3.1 He further refers to Section 25(2) of the Hindu Marriage Act, 1955 and submits that if the Opposite Party is not satisfied with the permanent alimony, she could have filed an application for enhancement of the permanent alimony. However, without resorting to the same, she filed an application for enforcement of the earlier order, which lost its enforceability in view of an order of permanent alimony. In view of the above, the impugned order is not sustainable and is liable to be set aside and prays for a direction to cancel the order of maintenance passed in Cr.P. No.1250 of 2010 (Misc. Case No.134 of 2004). It is further submitted that the Petitioner was regular in paying maintenance to the Opposite Party in terms of the said order. Mr. Mohanty, learned counsel for the Petitioner, however, admits that the Petitioner has not paid maintenance for the period from 1st December, 2013 to 31st October, 2014 in terms of the aforesaid order.

3.2 Law is well-settled that even a divorced wife is entitled to claim maintenance under Section 125 Cr.P.C. In the instant case, there is no dispute to the fact that the Opposite Party has got married for the second time in the meantime. Thus, she is not entitled to any maintenance from the date of re-marriage. Further, learned Judge, Family Court, Balasore, taking into consideration the facts and circumstances of the case, has held that the Opposite Party is not entitled to any maintenance under Section 125 Cr.P.C. with effect from 11th November, 2014, i.e., from the date of dissolution of the marriage between the parties. However, the period for which the Opposite Party has filed the

petition for enforcement of the order of maintenance was prior to the date of dissolution of marriage. It is not disputed that the order passed in Cr.P. No.1250 of 2010 is neither challenged and has attained its finality. Hence, the Petitioner is liable to pay maintenance in terms of the said order till 11th November, 2014, as directed by learned Judge, Family Court. Provision of Section 25(2) of the Hindu Marriage Act, 1955 does not disentitle a wife (Opposite Party herein) to claim enforcement of an order of maintenance passed in the proceeding under Section 125 Cr.P.C.

4. In view of the above, I find no infirmity in the impugned order. Accordingly, the RPFAM stands dismissed being devoid of any merit.

(K.R. Mohapatra)
Judge

