

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO. 209 OF 2016

Ranjita Sahu

....

Petitioner

Mr. Sambeet Pattanayak, Advocate

-versus-

Krushna Chandra Sahu

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.11.2022

Order No.

- 07.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this RPFAM seeks to assail the order dated 18th July, 2016 passed by learned Judge, Family Court, Berhampur in Criminal Proceeding No.180 of 2014, whereby an application filed by the Petitioner under Section 125 Cr.P.C. has been rejected.
 3. Mr. Pattanayak, learned counsel for the Petitioner submits that the marriage between the Petitioner and Opposite Party was solemnized in the year, 2008. While staying at matrimonial home, the Petitioner-Wife was subjected to physical and mental torture. Subsequently, they stayed in a rented house for five years. Ultimately, in March, 2013, she was rescued by her father when she was driven out from her matrimonial home. The Opposite Party-Husband in his written statement denied such fact and stated that the Petitioner left the matrimonial home out of her own volition. Since the Petitioner could not adjust with the family members of Opposite Party, they started living separately in rented house in the same village for a period of five years. Said plea of

Opposite Party was not substantiated by any evidence. Learned Judge, Family Court, Berhampur by misconstruing the fact that the Petitioner is living separately since 2013 and lodged an F.I.R. on 21th May, 2004 without explaining the delay, rejected the application filed under Section 125 Cr.P.C. by the Petitioner. He further submits that such a plea is not sustainable in the eyes of law. As there are materials on record to establish that the Petitioner was driven out from her matrimonial home and she does not have any sufficient means for her maintenance, she is entitled to maintenance. He, therefore, prays for setting aside the impugned order and to remit the matter back to the learned Judge, Family Court, Berhampur for fresh adjudication.

4. Although notice has been made sufficient on the Opposite Party, none appears on his behalf at the time of call.

5. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that learned Judge, Family Court, Berhampur disbelieved the plea of the Petitioner observing that since 2013 both the parties are staying separately. Learned Family Court also took exception to the conduct of the Petitioner holding that the evidence of P.W.2 makes it clear that no step was taken on behalf of Opposite Party to resolve the matter or for reunion of the parties. It was also observed that F.I.R. was lodged with certain delay without making any attempt for reconciliation or reunion on behalf of the Petitioner. Such findings basing upon which the petition under Section 125 Cr.P.C. has been rejected cannot sustain, as the Court has to find out whether the Petitioner was compelled to stay separately and she has any sufficient means to maintain herself.

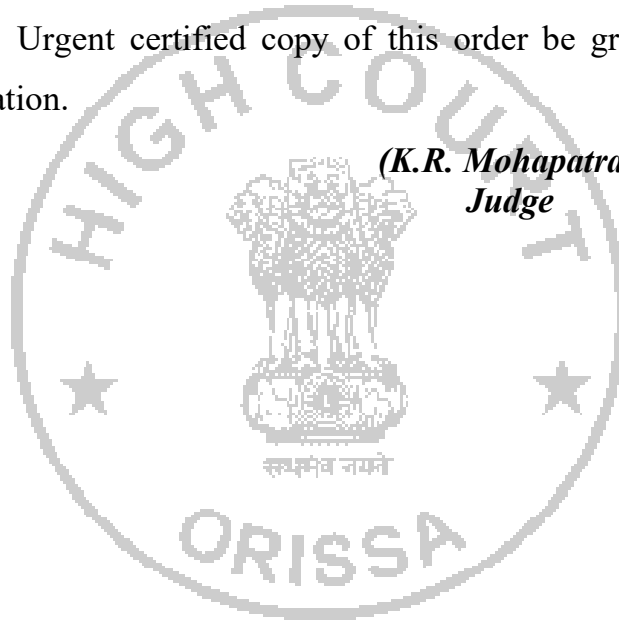
Such aspects were neither discussed nor any finding to that effect was recorded.

6. Accordingly, this Court sets aside the order dated 18th July, 2016 passed in Criminal Proceeding No. 180 of 2014 and remits the matter back to the learned Judge, Family Court, Berhampur for fresh adjudication giving opportunity of hearing to the parties concerned.

7. With the aforesaid observation and direction, the RPFAM is disposed of.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge



bks