

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM No. 210 OF 2016

Sarat Chandra Sabat

.... ***Petitioner***

Mr. Manoranjan Acharya, Advocate

-versus-

***Namita Kumari Devi @ Sabat and
another***

.... ***Opp. Parties***

Mr. Soubhagya Kumar Dash, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
12.04.2022

Order No.

7. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 5th October, 2016 passed in Cr.P. No.193 of 2015, whereby learned Judge, Family Court, Berhampur issued D.W. and N.B.W.A. against him for realization of the arrear maintenance amount.
3. Mr. Acharya, learned counsel for the Petitioner submits that the order of maintenance was passed by learned S.D.J.M., Berhampur in Misc. Case No.88 of 2003 filed under Section 125 Cr.P.C. on 30th January, 2006. Hence, a proceeding under Section 128 Cr.P.C. could not have been levied in the year, 2015 for realization of the entire arrear amount as proviso to sub-section (3) of Section 125 Cr.P.C. limits it to one year only. As such, issuance of N.B.W.A. for realization of entire amount is not sustainable in the eyes of law and the impugned order is liable to set aside.
4. Mr. Dash, learned counsel for Opposite Parties objected to the same and contended that execution proceeding for realization of unpaid arrear amount of maintenance can be levied under Section 128 Cr.P.C. Proviso to sub-section (3) of Section 125 Cr.P.C. limits

the power of Court for issuance of warrants for realization of maintenance for one year only. As such, the petition under Section 128 Cr.P.C. is maintainable and the Petitioner is liable to pay the entire unpaid arrear amount of maintenance.

5. This Court while issuing notice in the matter vide order dated 1st November, 2016 passed in Misc. Case No.320 of 2016 passed the following order:

“ This is an application for stay of D.W. and conditional NBW-A as was directed to be issued against the petitioner by the learned Judge, Family Court, Berhampur vide order dated 05.10.2016 in Cr.P. No. 193 of 2015.

It is contended by the learned counsel for the petitioner that the order of maintenance was passed by the learned S.D.J.M., Berhampur in Misc. Case No. 88 of 2003 vide order dated 30.01.2006 and the petitioner was directed to pay a sum of Rs.500/- (rupees five hundred) per month to the opposite parties towards their respective maintenance from the date of institution of the case i.e. on 23.04.2003. Learned counsel for the petitioner further submits that the execution proceeding was instituted on 23.09.2015 in which the arrear maintenance dues from 23.04.2003 till 1st August 2015 was claimed which is not permissible in view of the provision under section 125(3) of Cr.P.C. He further submits that the petitioner has already paid a sum of Rs.30,000/- (rupees thirty thousand) to the opposite parties which would be clear from the order dated 19.10.2016 and therefore, the order of issuance of DW and conditional NBW-A as was directed to be issued by the learned Judge, Family Court, Berhampur vide impugned order dated 05.10.2016 is not sustainable in the eye of law.

Considering the submissions, let there be stay of execution of DW and conditional NBW-A against the petitioner as per the impugned order dated 05.10.2015 passed by the learned Judge, Family Court, Berhampur in Cr.P. No.193 of 2015 till the next date.”

6. Mr. Dash, learned counsel for Opposite Parties fairly concedes that in the meantime, the Petitioner has already paid a sum of Rs. 30,000/- on different dates. It is also submitted that a petition with regard to maintainability of the proceeding under Section 128 Cr.P.C. and some other petitions are still pending for consideration. The Petitioner without participating in the proceeding has filed this RPFAM to set aside the impugned order. As such, the RPFAM is liable to be dismissed and the interim order passed by this Court should be vacated.

7. On the perusal of the record, it appears that this Court vide order dated 1st November, 2016 observing that the Petitioner has already paid a sum of Rs. 30,000/- to the Opposite Parties has directed stay of execution of D.W. and N.B.W.A. In the meantime, more than five years have elapsed. Hence, this Court is of the considered opinion that interest of justice will be best served, if the RPFAM is disposed of with a direction to the learned Judge, Family Court, Berhampur to consider the petition filed challenging the maintainability of the proceeding under Section 128 Cr.P.C., giving opportunity of hearing to the parties concerned. It is more so, because observation with regard to maintainability of the proceeding under Section 128 Cr.P.C., if made in this RPFAM, will certainly prejudice the case of either of the parties before learned Judge, Family Court, Berhampur.

8. In that view of the matter, this Court disposes of the RPFAM with a direction that on appearance of the Petitioner, D.W. and N.B.W.A. shall be recalled and the petitions filed by the Petitioner including the petition with regard to maintainability of the proceeding under Section 128 Cr.P.C. shall be considered in accordance with law giving opportunity of hearing to the parties

concerned. Parties are directed to cooperate with learned Judge, Family Court, Berhampur for early disposal of the proceeding in Cr.P. No.193 of 2015.

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

(K.R. Mohapatra)
Judge

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