

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 254 of 2019

Manas Ranjan Kar @ Manas Kar* *Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

Sujata Das and another* *Opp. Parties

(None)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

11.07.2022

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. Order dated 13th September, 2019 (Annexure-1) passed by learned Judge, Family Court, Angul in Cr.P No.72 of 2019 is under challenge in this RPFAM, whereby learned Judge, Family Court, Angul directed as under:-

"The Cr.P. is allowed in part on contest against the O.P. He is directed to pay each of the Petitioners maintenance at the rate of Rs.1,000/- per month from the month of August, 2006 to June 2013; Rs.2,000/- per month from July, 2013 to September, 2019 and Rs.3,000/- per month from October, 2019 onwards. Apart from this, the O.P. shall also pay an amount of Rs.1000/- to the Petitioner No.1 towards costs. The amount of maintenance already paid by the O.P. to the Petitioners in MAT case No.290 of 2007, R.F.A. No.05 of 2010 and MAT case No.417 of 2015 shall stand deducted from the arrear maintenance allowance payable by him to the Petitioners from August, 2006 to September, 2019. The O.P. shall pay the current maintenance amount of both the Petitioners to the Petitioner No.1 by 10th of every succeeding month, starting from October, 2019. He shall pay the arrear maintenance amount of both the Petitioners from August, 2006 to September, 2019 after deduction of the maintenance allowances already paid by him in the aforesaid matrimonial proceedings, together with the amount of costs, to the Petitioner No.1, positively by 31.10.2019."

3. Mr. Bose, learned counsel for the Petitioner submits that the application under Section 125 Cr.P.C. was filed on 7th August, 2006 and notice was directed to be issued to the present Petitioner vide order dated 14th August, 2006. Till 3rd April, 2012, i.e., for a period of 6 years, notice could not be served on the present Petitioner. The Opposite Party-wife also did not take any step to see that notice is served on the Petitioner. On 3rd April, 2012, the Opposite Party (Petitioner therein) did not appear. However, learned Judge, Family Court directed that the Petitioner should take fresh step by 16th July, 2012. Thereafter, the matter was not posted for a considerable period and kept in dormant record. Although the case was posted to different dates thereafter, the Opposite Parties (Petitioners therein) did not choose to appear till 24th August, 2018 and did not take any step to file requisites for issuance of notice. However, the Petitioner *suo motu* appeared on 1st March, 2019, when the Opposite Party No.1, in MAT Case No.417 of 2015 pending between the parties, disclosed that she has filed a petition under Section 125 Cr.P.C. Thus, the Petitioner should not be penalized for inaction of Opposite Parties.

3.1 It is also his submission that the Petitioner is jobless and has no independent source of income. He is depending upon others to maintain his livelihood. Thus, the impugned order directing to pay maintenance at different rates from the date of application is highly prejudicial to the Petitioner. Accordingly, he prays for setting aside the order and to reduce the rate of maintenance to certain extent, so that the Petitioner can make arrangement to pay arrear as well as current maintenance.

4. Although Opposite Parties are represented through their counsel none appears on their behalf at the time of call.

5. In order to test the veracity of submission of learned counsel for the Petitioner, this Court perused the photocopy of the LCR received by this Court. On perusal of the LCR, it appears that on 7th August, 2006, an application under Section 125 Cr.P.C. was filed and on 14th August, 2006, learned Judge, Family Court, Angul directed for issuance of notice, as there was no defect in the petition and requisites were already on record for issuance of notice. It further appears that till 3rd April, 2012, notice in the matter could not be served on the Petitioner (Opposite Party therein). Further, learned Judge, Family Court, while posting the matter on 16th July, 2012, directed the Opposite Parties to take fresh steps for issuance of notice. For some reason or the other, the matter could not be taken up till 3rd November, 2019. It further appears that the Opposite Party No.1 did not take steps for issuance of notice for quite a long period probably due to the fact that she could not know about the date of posting of the case. It is settled law that the maintenance under Section 125 Cr.P.C. should ordinarily be allowed from the date of filing of the application. Although it is submitted by Mr. Bose, learned counsel for the Petitioner that the Opposite Parties were thoroughly negligent in taking steps to serve notice of the petition under Section 125 Cr.P.C. on the present Petitioner, but that cannot be ground to deny the maintenance from the date of filing of the application. Order sheet of the proceeding reveals that although the case was posted to 16th July, 2012 by order dated 3rd April, 2012, but the

case record was not placed before the Presiding Officer on the date fixed. After a lapse of more than seven years, the case record was taken up on 3rd November, 2019. However, on perusal of the impugned order, it appears that the Petitioner has not raised any objection to that effect before the learned Judge, Family Court, Angul. Law is also well-settled that for the fault of the Court a party should not suffer. Only because the case record was not placed from 16th July, 2012 till 3rd November, 2019, the Opposite Parties cannot be denied maintenance for that period. It further appears that the maintenance awarded in favour of the Opposite Parties is not excessive.

6. In view of the above, I am not inclined to interfere with the impugned order. The RPFAM is therefore being devoid of any merit, stands dismissed.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge