

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.275 of 2018

Jagabandhu Digal

....

Petitioners

Mr.Debidutta Mohapatra, Advocate
on behalf of Mr. Ramdas Achary, Advocate

-versus-

Ranjeeta Digal and others

....

Opp. Parties

Mr.Jagannath Bhuyan, Advocate
on behalf of Mr. Amulya Ratna Panda, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

06.12.2022

Order No.

2. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM seeks to assail the judgment and order dated 11th October, 2018 (Annexure-2) passed by learned Judge, Family Court, Phulbani in Criminal Proceeding No.27 of 2018, whereby the Petitioner has been directed to pay maintenance at the rate of Rs.4,000/- per month to Opposite party No.1 and Rs.3,000/- per month to each of Opposite Party Nos.2 and 3 from the date of application, i.e., 16th March, 2018 till 31st July, 2018 and thereafter maintenance at the rate of Rs.6,000/- to Opposite Party No.1 and Rs.4,000/- per month to each of Opposite Party Nos. 2 and 3 from August, 2018 onwards.
3. Mr. Mohapatra, learned counsel being authorized by Mr. Achary, learned counsel for the Petitioner submits that relation between the parties is not disputed. Opposite Parties are staying in the official quarters of the Petitioner. At the time of filing of

the petition under Section 125 Cr.P.C., the Petitioner was working as Junior Clerk and his take-home salary was rs.18,454/- per month. As the Opposite Parties are occupying his official quarters, the Petitioner is staying in a rented house. He also looks after his old parents. Thus, it is very difficult on the part of the Petitioner to pay maintenance at the aforesaid rate.

4. Considering the submission made by learned counsel for the Petitioner, this Court, while issuing notice in the matter, vide order dated 15th April, 2019, as an interim measure, directed the Petitioner to pay Rs.7,500/- to Opposite Party No.1, which he has been paying regularly except for two months because of illness of his mother. He, however, submits that the Petitioner will pay the said amount with a month.

5. It is his submission that learned Judge, Family Court, while determining the quantum of maintenance, did not at all take into consideration the requirements of obligation of the Petitioner and directed him to pay the maintenance, which is almost his entire take-home salary. Thus, the impugned order is not sustainable and the quantum of maintenance requires reconsideration.

6. Mr. Bhuyan, learned counsel for Opposite Parties submits that as Junior Clerk, the take-home salary of the Petitioner was Rs.18,454/- per month at the relevant time, but during pendency of the proceeding, he was promoted to the cadre of Senior Clerk. Taking into consideration the same, learned Judge, Family Court has determined the quantum of maintenance accordingly. It is his submission that the Petitioner did not disclose his salary as Senior Clerk. Hence, learned

Judge, Family Court had to make guess work while determining the quantum of maintenance. He also files a copy of the salary particulars of the Petitioner from May, 2019 to May, 2020, which discloses that during May, 2020, the gross salary of the Petitioner was Rs.30,771/- per month. However, the Petitioner having taken festival advance a major portion of his salary was being deducted. Hence, learned trial Court has committed no error in passing the impugned order.

7. Considering the submission made by learned counsel for the parties, this Court finds that the take-home salary of the Petitioner as Junior Clerk was Rs.18,454/- per month. But it is admitted by learned counsel for the parties that during pendency of the proceeding under Section 125 Cr.P.C., the Petitioner was promoted to the post of Senior Clerk. In all fairness, the Petitioner should have disclosed his salary in the promotional post for determination of just maintenance to Opposite Parties. It is also not disputed that Opposite Party No.1-wife has no independent source of income. Opposite Party Nos.2 and 3, the children who are pursuing their studies in +2 at Women's College, Phulbani and Saraswati Sishu Mandir respectively. Thus, the Petitioner has to bear the study as well as other expenses of his children.

7.1 Considering the matter in toto, and keeping in mind the status of the parties and their respective needs, this Court finds a sum of Rs.10,000/- per month, i.e., Rs.4,000/- per month to Opposite Party No.1-wife and Rs.3,000/- per month each to Opposite Party Nos.2 and 3 as maintenance from the date of application would be just and proper.

8. Accordingly, the RRPfam is disposed of with a direction that the Petitioner shall pay Rs.4,000/- per month to Opposite Party No.1-wife and Rs.3,000/- per month each to Opposite Party Nos.2 and 3 (children) as maintenance from the date of application, i.e., 16th March, 2018. The impugned order is accordingly modified to the above extent.

9. Interim order dated 15th April, 2019 passed in IA No.421 of 2018 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy