

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 276 OF 2018

Prakash Kumar Subudhi ***Petitioner***

Mr. Manmaya Kumar Dash, Advocate

-versus-

Monalisha @ Rubi Mahapatra ***Opp. Party***

Mr. Amitav Tripathy, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

21.07.2022

Order No.

16. 1. This matter is taken up through Hybrid mode.
2. This RPFAM has been filed assailing the order dated 12th November, 2018 passed in CrI.M.P. No.120 of 2017, whereby learned Judge, Family Court, Nayagarh directed the Petitioner to pay maintenance @ Rs.20,000/- per month to the Opposite Party-wife from the date of filing of the application, i.e., 24th May, 2017.
3. Mr. Dash, learned counsel for the Petitioner assailing the impugned order submits that the Opposite Party is the legally married wife of the Petitioner, but due to some physical deficiencies of the Opposite Party, the marriage could not be consummated. Two-three years after the marriage, she left the matrimonial home voluntarily and did not join the marital life with the Petitioner. Petition under Section 125 Cr.P.C. was filed after delay of more than seventeen years. Further, the Opposite Party suppressed the fact that she is working as a teacher. It is the submission of Mr. Dash, learned counsel that material evidence on record was not taken into consideration by

the learned Judge, Family Court while determining the quantum of maintenance. Section 125 (4) Cr.P.C. clearly envisages that if a wife leaves matrimonial home voluntarily or she is living in adultery or the spouses are living separately by mutual consent, the wife shall not be entitled to any maintenance under Section 125 Cr.P.C. During pendency of the Civil Proceeding, i.e., CS (MAT) No.371 of 2003 filed by the Petitioner for divorce, she was getting *pendente lite* maintenance of Rs.2,500/- per month. All these facts were not taken into consideration by the learned Judge, Family Court, Nayagarh, while passing the impugned order. Hence, the impugned order is not sustainable.

3.1 In support of his case he placed reliance on a often quoted decision in the case of ***Rajnesh Vs. Neha and another***, reported in 2021 (2) SCC 324 and submits that the Opposite Party-wife does not satisfy the criteria mentioned at Part-B (III) (*Criteria for determining maintenance*). He also relied upon a decision in the case of ***D. Velusamy Vs. D. Patchaiammal***, reported in AIR 2011 SC 479, in which the Hon'ble Supreme Court has deprecated the delay in filing the petition for maintenance under Section 125 Cr.P.C. He, therefore, prays for setting aside of the impugned order and to remit the matter back to learned Judge, Family Court, Nayagarh for fresh consideration.

4. Mr. Tripathy, learned counsel for the Opposite Party objecting to the submission of learned counsel for the Petitioner argues that the Petitioner at the relevant time was serving as Senior Manager (Electrical Engineer) in Rail Vikash Nigam Corporation Ltd. at Sukinda, Jajpur and was drawing monthly salary of more than rupees one lakh. He has also landed property from which he earns more than rupees thirty thousand per annum.

There is no material on record to show that the Opposite Party has either left the matrimonial home voluntarily or spouses are living separately on mutual consent. On the Other hand, the Opposite Party has categorically stated in her petition under Section 125 Cr.P.C. that the Petitioner was not looking after her. Due to intolerable misbehaviour and torture by the Petitioner, she left the matrimonial home on 5th March, 2001 and started living with her mother and brother. For some time, she was working as a teacher in a Convent School, but as she was not a qualified teacher, the said institution did not allow her to continue. He also submits that the Petitioner had filed Civil Proceeding, i.e. CS (MAT) No.371 of 2003 for dissolution of marriage by passing a decree of divorce. Due to difficulty in maintaining herself, she had filed an application (i.e. I.A. No. 88 of 2005) under Section 24 of the Hindu Marriage Act, 1955 in the said C.P. and learned Judge, Family Court had directed the Petitioner to pay *pendente lite* maintenance of Rs.2,500/- per month. But the said amount was never paid to the Opposite Party. However, the said MAT Case was dismissed and is pending for consideration in MATA No.42 of 2010 before this Court. Thus, it cannot be said that there is delay in filing the petition under Section 125 Cr.P.C. Taking into consideration the facts and circumstances of the case, the quantum of maintenance fixed, is just and reasonable and the same needs no interference.

5. Upon hearing learned counsel for the parties and on perusal of record, it is apparent that the Opposite Party is the legally married wife of the Petitioner and she is living separately since 2001. It is also not disputed that in MAT Case No.371 of 2003, the Petitioner was directed to pay *pendente lite* maintenance of Rs.2,500/- per month, which of course is alleged to have not

been paid to the Opposite Party. However, Mr. Dash, learned counsel for the Petitioner objected to it and submitted that direction to pay maintenance under Section 24 of the Act was scrupulously followed and the Petitioner had paid substantial amount in that regard. On perusal of the impugned order, it appears that the Petitioner failed to produce any document that he was paying *pendente lite* maintenance regularly.

5.1 Be that as it may, the Opposite Party had filed an application under Section 24 of the Act and order was passed to pay *pendente lite* maintenance to the Opposite Party. After dismissal of the Civil Proceeding, the Opposite Party filed application under Section 125 Cr.P.C. Thus, it cannot be said that the petition under Section 125 Cr.P.C. was filed after the delay of seventeen years as alleged by the Petitioner. Observation of the Hon'ble Supreme Court in the case of ***D. Velusamy (supra)*** has been made on the basis of the facts and circumstances of that case, which cannot be applicable to the present case.

5.2 There is also no material on record to show that the Opposite Party had left the matrimonial home voluntarily or the parties are living separately on mutual consent. The provision of Section 125(4) Cr.P.C. has no application to the case. It further appears that the Petitioner although admitted to be employed under Rail Vikash Nigam Corporation Ltd. at Sukinda, Jajpur, but did not file any document in support of his salary. Hence, the Court by making an assessment from the materials available on record determined the quantum of maintenance. Although the Petitioner submitted that criteria mentioned at Part-B (III) (Criteria for determining maintenance) ***Rajnesh (supra)*** are not satisfied in the present case, but he could not justify his

submission. It further appears that the Opposite Party has filed copy of the RORs showing the landed property of the Petitioner.

6. Making an overall assessment, learned Judge, Family Court, Nayagarh has directed the Petitioner to pay maintenance of Rs.20,000/- per month to the Opposite Party-wife. Application under Section 19(4) of the Family Courts Act, 1984 is in the nature of a revision under Section 401 Cr.P.C. Thus, this Court is not in a position to re-appreciate the evidence to substitute the finding arrived at by learned Judge, Family Court, Nayagarh when no material is placed to show that the same is either perverse or contrary to the materials on record.

7. In that view of the matter, I find no infirmity in the impugned order. Thus, the RPFAM *sans* merit and is dismissed accordingly.

8. In view of dismissal of the RPFAM, all interlocutory Applications stand disposed of and interim order, if any, stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

. s.s.satapathy