IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.227 of 2022

Mamatarani Guru @ Das and another .... ***Petitioners***

Mr. Digambara Sethi, Advocate

-versus-

Braja Kishore Das .... ***Opp. Party***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No. **06.12.2022**

2. 1. This matter is taken up through Hybrid mode.

2. Petitioners in this RPFAM seek to assail the judgment and order dated 9th August, 2022 (Annexure-5) passed by learned Judge, Family Court, Jajpur in Criminal Proceeding No.201 of 2012, whereby entertaining an application under Section 127 Cr.P.C., the Opposite Party has been directed to pay Rs.6,000/- per month to the Petitioner No.1 and Rs.4,000/- per month to Petitioner No.2 from the date of order, i.e., 9th August, 2022.

3. By order dated 22nd November, 2022, this Court directed learned counsel for the Petitioners to take instruction as to whether the Opposite Party has filed any RPFAM assailing the order impugned herein. On instruction, Mr. Sethi, learned counsel for the Petitioner submits that accepting the impugned order, the Opposite Party is paying the maintenance to the Petitioners regularly at the enhanced rate.

3.1 It is his submission that the maintenance awarded is not sufficient taking into consideration the need of the Petitioners. It is also not proportionate to the enhancement of the salary of the Opposite Party. Referring to the examination in-chief of PW-1 (PetitionerNo.1), Mr. Sethi, learned counsel submits that the Petitioner No.2 is reading in Std.VII of Odisha Adarsha Vidyalay, Korei, Jajpur, which is at a distance of twenty kilometers from the house of the Petitioners. There is no hostel facility for which the Petitioner No.1 has to bear a conveyance expenses of Rs.3,000/- per month. In addition to the above, the tutorial class expenses of Petitioner No.2 is Rs.2,000/- per month along with other study expenses. Petitioners are also staying in a rented house and paying rent Rs.1,500/- per month. These aspects ought to have been taken into consideration while adjudicating the petition under Section 127 Cr.P.C. A sum of Rs.2,500/- and Rs.1,500/- towards maintenance of Petitioner Nos.1 and 2 respectively was directed to be paid by the Opposite party when his income was Rs.13,000/- per month. At present, the income of the Opposite Party is Rs.58,819/- per month. Hence, the quantum of maintenance should have been enhanced accordingly keeping in mind the cost of living, need of the Petitioners and increase in the salary of the Opposite Party.

4. Taking into consideration the submissions made by learned counsel for the Petitioners and on perusal of the impugned order, it appears that learned Judge, Family Court, Jajpur has taken into consideration the enhancement of the salary of the Opposite Party, but along with increase in the

expenses of the Petitioners, the expenses of the Opposite Party has also enhanced proportionately. At para-9 of the impugned order, learned Judge, Family Curt has stated that the Opposite Party is spending Rs.15,000/- per month towards his conveyance to his work place, as he has to stay with his old ailing parents. Thus, it appears that even if the salary of the Opposite Party has increased but his expenses also got increased manifold.

5. Taking into consideration the rival contentions of the parties, striking a balance between the status of the parties, their need and the salary of the Opposite Party, learned Judge, Family Court has increased the maintenance amount of Petitioner No.1 from Rs.2,500/- to Rs.6,000/- per month and Petitioner No.2 from Rs.1,500/- to Rs.4,000/- per month. Thus, I find no ground for interference in the impugned order.

6. Accordingly, the RPFAM being devoid of any merit stands dismissed.

(K.R. Mohapatra)
Judge

s.s.satapathy