

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 236 OF 2022

Sk. Nezamuddin

....

Petitioner

Mr. Pradeep Kumar Das, Advocate

-versus-

Asma Khatun

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.11.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 7th September, 2022 (Annexure-3) passed by learned Judge, Family Court, Bhadrak in Criminal Proceeding No.290 of 2018, whereby he has been directed to pay maintenance of Rs.3,000/- per month to the Opposite Party from the date of filing of the petition i.e. on 5th December, 2018.
3. Mr. Das, learned counsel for the Petitioner submits that the marriage between the parties is seriously disputed. The Opposite Party pretending to arrange a job for the Petitioner at Gujarat, took the Petitioner with her and managed to take his signature on blank papers. By utilizing the same, the Opposite Party managed to create Nikahnama and other documents to extract the money from the Petitioner. The Opposite Party is ten years older than the Petitioner. On the alleged date of marriage, the Petitioner was a minor of seventeen years old. These aspects were not properly considered by learned Judge, Family Court while entertaining the petition under Section 125 Cr.P.C.. Hence, he prays for setting aside the impugned order under Annexure-3 and to remit the matter back to learned Judge, Family Court for fresh

consideration by re-appreciating the matter in its proper perspective.

4. Submission of learned counsel for the Petitioner makes it clear that the relationship between the parties is disputed. The documents like Nikahnama as Ext. 1, joint affidavit sworn before the Notary Public declaring their marriage as Ext.2 and evidence of the Kazi (P.W.4), who allegedly performed the marriage, establish that the Petitioner had married the Opposite Party. In Mohammedan Law, a minor can enter into a contract of marriage after attaining puberty. In absence of any material to the contrary, it is presumed that a person attains puberty at the age of fifteen, as observed by learned Judge, Family Court, Bhadrak. It further appears that the Petitioner has admitted his signature on Exts.1 and 2.

5. Strict proof of marriage is not necessary in a proceeding under Section 125 Cr.P.C.. Appreciating the materials on record as aforesaid, learned Judge, Family Court came to a conclusion that the Opposite Party is the legally married wife of the Petitioner. The same is a finding fact based on materials on record, which is not available to be re-appreciated in a proceeding under Section 19(4) of the Family Courts Act, 1984. As such, the impugned order under Annexure-3 warrants no interference.

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

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

(K.R. Mohapatra)
Judge