

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO. 286 OF 2018

Pravat Kumar Sathua ***Petitioner***

Mr. Samir Kumar Mishra, Advocate

-versus-

Mamata Kumari Sathua ***Opp. Party***

Mr. Sudarshan Behera, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

22.11.2022

Order No.

15. 1. This matter is taken up through hybrid mode.
2. Judgment and order dated 12th October, 2018 (Annexure-3) passed by learned Judge, Family Court, Nayagarh in CRLMP No.197 of 2017 is under challenge in this RPFAM, whereby the Petitioner has been directed to pay maintenance of Rs.8,000/- per month to the Opposite Party from the date of application, i.e. 22nd August, 2017.
3. Mr. Mishra, learned counsel submits that the Petitioner was serving as a teacher at the relevant time and his gross salary was Rs.43,350/- per month. After deduction, the Petitioner was receiving a sum of Rs.27,513/- per month. The status of the parties is not disputed. Along with the wife, the Petitioner has obligation to maintain his parents. He is also a rheumatic patient and is staying in a rented house at Balliguda, where he is serving. These material aspects though reflected in the impugned order, but not taken into consideration by learned Judge, Family Court, Nayagarh, while determining the quantum of maintenance.

Learned Family Court observing that the Petitioner failed to produce any material to show that the Opposite Party is earning Rs.50,000/- per month from two Jewelry Shops of her father at her parental place and that he could not produce any documentary evidence with regard to treatment of his parents as well as payment of rent, directed him to pay a sum of Rs.8,000/- per month. It is his submission that in view of the ratio decided in the case of ***Rajnish –v- Neha and another***, reported in (2021) 2 SCC 324, the Petitioner is liable to pay 1/4th of his income to the Opposite Party-Wife as maintenance under Section 125 Cr.P.C. The position of law was also prevailing at the relevant time. Although the Petitioner could not produce any document with regard to his treatment and payment of rent at Balliguda, but there is oral evidence to that effect. He also submits that the Petitioner has led evidence in support of his case with regard to maintenance of his parents. Learned Judge, Family Court, Nayagarh ought to have considered the same at the time of adjudication of the petition filed under Section 125 Cr.P.C. It is his submission that while issuing notice, this Court finding a prima facie case in favour of the Petitioner directed him to pay a sum of Rs.4,000/- per month to the Opposite Party as maintenance, which he is paying regularly. Hence, he prays for setting aside the impugned order.

4. Mr. Behera, learned counsel for the Opposite Party submits that in the meantime, the Petitioner is earning more than Rs.50,000/- per month and an affidavit to that effect has been filed. He further submits that learned Judge, Family Court, Nayagarh has committed no error in directing the Petitioner to pay maintenance of Rs.8,000/- per month to the Opposite Party-Wife taking into

consideration the facts and circumstances of the case as well as the materials available on record. Hence, the impugned order under Annexure-3 warrants no interference.

5. Taking into consideration the rival contentions of the parties, this Court finds that learned Judge, Family Court, Nayagarh observing that take home salary of the Petitioner is Rs.27,513/- per month after statutory deductions, directed him to pay maintenance of Rs.8,000/- per month to the Opposite Party, which is not proportionate in view of the ratio decided in the case of *Rajnesh* (supra), wherein it is held that the wife is entitled to maintenance of 1/4th salary of her husband. Accordingly, this Court feels that the amount of maintenance directed to be paid by the Petitioner requires reconsideration.

6. In the light of the aforesaid discussions, this Court holds that a sum of Rs.6,000/- (Rupees six thousand only) per month to the Opposite Party as maintenance would be just and reasonable in the facts and circumstances of the case. This order shall be effective from the date of filing of the petition under Section 125 Cr.P.C.

7. With the aforesaid modification of the impugned judgment and order, the RPFAM is disposed of.

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

(K.R. Mohapatra)
Judge

bks