

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO. 68 OF 2021

Pratp Rudra Dang

Petitioner

Mr. Sohan Mishra, Advocate

-versus-

Smt. Ranjita Dang and another

.... Opp. Parties

Mr. Abhilash Mishra, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

19.09.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 25th February, 2020 (Annexure-3) passed in CMC No.67/49 of 2006-19, whereby learned Judge, Family Court, Sonepur directed the Petitioner to pay a sum of Rs.1,500/- per month to the Opposite Party No.1 and Rs.1,000/- per month to the Opposite Party No.2 towards maintenance from the date of application i.e. on 23rd May, 2006.
3. Mr. Mishra, learned counsel for the Petitioner submits that before initiation of the proceeding under Section 125 Cr.P.C., the Opposite Party No.1 had filed a petition under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act') in C.S. No.88 of 2006 filed by the present Petitioner under Section 13(1) of the Act, wherein learned trial Court vide order dated 16th August, 2007 directed the Petitioner to pay *pendente lite* maintenance of Rs. 1,200/- per month to the Opposite Party No.1 and also to pay Rs.3,000/- towards litigation expenses. The Petitioner paid the same regularly. However, the civil suit being

dismissed, the Petitioner filed an appeal before learned District Judge, Sonapur. In the meantime, a proceeding under Section 125 Cr.P.C. was filed by the Opposite Parties. Referring to the order sheet of the proceeding under Section 125 Cr.P.C., Mr. Mishra, learned counsel for the Petitioner submits that all throughout both the parties remained absent. Only on 12th February, 2020, the Opposite Party No.1 appeared and filed her evidence in affidavit. The present Petitioner was absent on the said date and the matter was then posted to 17th February, 2020 on which date the Opposite Party No.1 filed an application for adjournment and the case was adjourned to 20th February, 2020 on which date learned Judge, Family Court, Sonapur heard the arguments. But, in fact, the present Petitioner was absent on that date and did not participate in the hearing of the proceeding. It is his submission that the Petitioner was not afforded with reasonable opportunity to adduce evidence and participate in the hearing of the case. Thus, in view of proviso to Section 126(2) Cr.P.C., learned Judge, Family Court ought to have made the Petitioner *ex parte* and proceeded with the matter. On the other hand, showing the Petitioner to be contesting in the proceeding, learned Judge, Family Court, Sonapur has passed the impugned order. Referring to Paragraph-8 of the impugned order, he submits that although the Opposite Party No.1 herself admitted in her cross-examination that she was receiving Rs.1,200/- per month pursuant to the order passed in I.A. No.13 of 2007, but did not specify the period for which she was receiving such maintenance. However, in her cross-examination, she has stated

that on the date of her deposition, she was not receiving any maintenance in terms of the order passed in I.A. No.13 of 2007. Mr. Mishra, therefore, submits that the Opposite Party No.1 herself stated to have received some maintenance during pendency of the proceeding under Section 125 Cr.P.C. The amount received by the Opposite Party during pendency of the proceeding under Section 125 Cr.P.C. should be adjusted from the arrear maintenance. Learned Judge, Family Court, Sonapur did not take into consideration the same and without recording any observation in that regard, passed the impugned order. He, therefore, prays for setting aside the impugned order and to remit the matter back to the learned Judge, Family Court, Sonapur and to allow the present Petitioner to lead evidence in the matter and contest the proceeding.

4. Mr. Abhilash Mishra, learned counsel for the Opposite Parties objecting to such submission contended that the Petitioner was thoroughly negligent in maintaining his wife and daughter (Opposite Parties). All throughout he remained absent in the proceeding under Section 125 Cr.P.C. but the Petitioner participated in the argument of the proceeding without raising any objection, as stated above. Accordingly, the impugned order has been passed on contest. If the Petitioner disputes the correctness of recording of the learned Judge, Family Court, Sonapur, then the proper procedure would be to raise the same before the concerned Court and not by filing the present revision. He further submits that after disposal of the civil proceeding, the Petitioner has not paid a single pie to the

Opposite Party No.1. Considering the materials on record, learned Judge, Family Court, Sonepur has directed the Petitioner to pay a sum of Rs.1,500/- per month to the Opposite Party No.1 and Rs.1,000/- per month to the Opposite Party No.2. As such, the same warrants no interference. He, therefore, prays for dismissal of the RPFAM.

5. Heard learned counsel for the parties and perused the material on record.

6. Although learned counsel for the Petitioner submits that the Opposite Party No.1 was receiving a sum of Rs. 1,200/- per month in terms of the order passed in the proceeding under Section 24 of the Act, but he does not specify till what date he has paid such amount to the Opposite Party No.1. He, however, has relied upon the statement of deduction of the amount of *pendente lite* maintenance from his salary as per Annexure-5. The same can only be taken into consideration at the time of computing the arrear maintenance.

7. It appears from the record that on the date of deposition, the Opposite Party No.1 was not receiving any maintenance from the Petitioner. It is also not disputed that no maintenance whatsoever was awarded in any proceeding to the Opposite Party No.2 beforehand, except the order under Section 24 of the Act. Considering the materials on record, learned Judge, Family Court, Sonepur has come to a conclusion that the Petitioner is liable to pay maintenance @ Rs.1,500/- per month to the Opposite Party No.1 and Rs.1,000/- per month to the Opposite Party No.2.

8. In view of the above, I find no infirmity in the impugned order. As such, the RPFAM merits no consideration. However, at the time of computation of the arrear maintenance, the Petitioner, if so advised, may produce the details of payment of maintenance, if any, to the Opposite Party No.1 during pendency of the proceeding under Section 125 Cr.P.C.

9. With the aforesaid observation, the RPFAM is disposed of.

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

(K.R. Mohapatra)
Judge



bks