

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 73 OF 2021

Dharanidhar Mahanta

....

Petitioner

Mr. Jibananda Mohanty,
Advocate

-versus-

Sakuntala Mahanta and another

....

Opp. Parties

Mr. Partha Sarathi Das,
Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
07.03.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 28th August, 2021 passed by learned Judge, Family Court, Keonjhar in Crl. Proceeding No.118 of 2018 filed by Opposite Parties under Section 125 Cr.P.C., whereby a direction was made to the present Petitioner to pay a sum of Rs.4,000/- each to both the Opposite Parties towards maintenance from the date of filing of the application, i.e. from 10th December, 2018.
3. Mr. Mohanty, learned counsel for the Petitioner submits that the Petitioner is working as a daily labourer. He does not have any landed property and is earning his livelihood on daily wages. The Petitioner also disputes the relationship between the Opposite Parties. It is contended that the Petitioner had never married to the Opposite Party No.1 and the Opposite Party No. 2 was not born out of their wedlock. No scrap of paper was filed by the Opposite Parties to show that they did not have sufficient

means to maintain themselves and the Petitioner having sufficient means neglects to maintain the Opposite Parties. In that view of the matter, he prays for setting aside the impugned order.

4. Mr. Das, learned counsel for the Opposite Parties, on the other hand, submits that the Petitioner having sufficient means neglected to maintain the Opposite Parties. The Petitioner has also landed property. During pendency of the criminal proceeding before learned Judge, Family Court, Keonjhar, he had alienated a piece of the land for a consideration of Rs.8,00,000/-. The Opposite Parties have also filed Voter Card, Adhar Card and Matru Shishu Surakhya Card to establish the relationship between the parties. It is also submitted that the enclosures to the petition under Section 125 Cr.P.C. clearly discloses that the Petitioner is earning Rs.72,000/- per annum. But, no rebuttal evidence to the same has been filed by the Petitioner. Learned Judge, Family Court, Keonjhar taking into consideration that the income of the Petitioner is not less than Rs.40,000/- per month from all sources directed him to pay a sum of Rs.4,000/- per month to each of the Opposite Parties from the date of filing of the application. The Opposite Parties do not have any independent source of income. As such, the impugned order needs no interference.

5. Taking into consideration the rival contentions of the parties and on perusal of the record, it appears that there is no substantial evidence on record with regard to the income of either of the parties. When the Petitioner claims that he is earning his livelihood as a daily wage labour, the Opposite Parties claim that he has sufficient landed property and is earning about Rs.72,000/- per annum from the landed property. He has also other source of

income. It appears that learned Judge, Family Court, Keonjhar has made a complete guess work in awarding the monthly maintenance to the Opposite Parties.

6. At the time of issuance of notice, this Court, as an interim measure, directed the present Petitioner to pay a sum of Rs.2,000/- to the Opposite Parties in the 1st week of every succeeding English calendar month.

7. Taking into consideration the submissions made by learned counsel for the parties and the materials available on record, it appears that grant of maintenance of Rs.4,000/- to each of the Opposite Parties appears to be excessive in absence of any material in support of the same. Thus, striking a balance between the obligation of the Petitioner to maintain the Opposite Parties and his capacity to pay and also taking into consideration that as an interim measure, this Court has directed the Petitioner to pay Rs. 2000/-per month to the Opposite parties, this Court directs that the Petitioner shall pay a sum of Rs.2,500/- (Rupees two thousand five hundred) per month to each of the Opposite Parties from the date of filing of the application under Section 125 Cr.P.C., i.e. from 10th December, 2018.

8. With the aforesaid modification of the impugned order, the RPFAM is disposed of.

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

(K.R. Mohapatra)
Judge

bks