

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 287 OF 2019

<i>Saraswati Dei @ Behera</i>	<i>Petitioner</i>
	Miss Tapaswini Sinha, Advocate
	-versus-
<i>Abhiram Behera</i>	<i>Opp. Party</i>
	Mr. P.R. Sutar, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

Order No. **ORDER**
28.03.2022

7. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 4th October, 2019 passed by learned Judge, Family Court, Kendrapara in Cr.P. I.A. No.01 of 2017 (arising out of Cr.P. No. 704 of 2010), whereby he dismissed the petition filed under Section 127 Cr.P.C. by her.
3. Miss Sinha, learned counsel for the Petitioner submits that in a petition under Section 125 Cr.P.C. in Cr.P. No.704 of 2010, the Petitioner has been awarded a monthly maintenance of Rs.1,000/- per month. The Petitioner has also been awarded maintenance and house rent of Rs.3,000/- per month to be paid by the Opposite Party pursuant to the judgment dated 8th August, 2018 passed in CMC No.60 of 2015 filed under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'). However, the Opposite Party is not getting the said amount in view of pendency of CrI. Revision No. 16 of 2018 before learned District and Sessions Judge, Kendrapara. It is her submission that although the Petitioner is getting

a sum of Rs.3,750/- per month as Sahayika (Helper) in Badabaranga Anganbadi Centre but the same is not sufficient to maintain her. Hence, she filed an application under Section 127 Cr.P.C. for enhancement of the maintenance amount in Cr.P. I.A. No.01 of 2017 due to rise in the price of household articles in the meantime. Learned Judge, Family Court, Kendrapara holding that she has been awarded a sum of Rs.1,000/- per month towards maintenance in a petition under Section 125 Cr.P.C. and a sum of Rs. 3,000/- per month towards maintenance and house rent in a petition filed under the provisions of D.V. Act and she is getting a salary of Rs.3,750/- per month refused to enhance the maintenance awarded under Section 125 Cr.P.C. She further submitted that the maintenance of Rs.1000/- per month was awarded in the year, 2010 and in the meantime, there is huge rise in the price index and the cost of living has increased a manifold. Learned Judge, Family Court, Kendrapara without considering the same dismissed the petition. Hence, she prays for setting aside the impugned order and to enhance the monthly maintenance awarded in a petition under Section 125 Cr.P.C.

4. Mr. Sutar, learned counsel for the Opposite Party, on the other hand, submits that learned Judge, Family Court, Kendrapara while considering the petition under Section 127 Cr.P.C. has taken into consideration the amount she has been awarded from various sources. In the meantime, her allowance as Sahayika (Helper) in Badabaranga Anganwadi Centre has also been enhanced. Although the Petitioner has been directed to be paid a sum of Rs.1,000/- per month towards house rent in the proceeding under the D.V. Act, but she is residing with her parents. She is also receiving free ration under the Food Safety Scheme. He further submits that the take home salary of the Opposite Party is Rs.19,893/- and he has his dependant parents to

maintain in addition to his obligation to maintain the Opposite Party. In that view of the matter, the impugned order needs no interference.

5. Taking into consideration the rival contentions of the parties and on perusal of the impugned order, it appears that the maintenance of Rs.1,000/- per month was awarded in favour of the Petitioner vide order dated 28th April, 2012 in Cr.P. No.704 of 2010. The application under Section 127 Cr.P.C. was filed in the year, 2017. By the time, the petition under Section 127 Cr.P.C. was filed, five years had already elapsed. Definitely there is a rise in the price index and the cost of living. Although it is claimed that allowance of the Petitioner as Sahayika (Helper) in Badabaranga Anangwadi Centre has been enhanced, but the materials on record show that she is receiving a monthly salary of Rs.3,750/- per month. It is further observed that although the Petitioner has been awarded maintenance as well as house rent of Rs.3,000/- under the provisions of the D.V. Act, but she is not receiving the same due to pendency of Cr. Revision No. 16 of 2018 before learned District and Sessions Judge, Kendrapara.

6. Miss Sinha, learned counsel for the Petitioner submits that the mother of Opposite Party is a pension holder and she is not depending upon him. But, no material to that effect is available on record.

7. This Court taking into consideration the aforesaid facts and circumstances in its totality feels it proper to enhance the monthly maintenance of Rs.1,000/- (Rupees one thousand only) to be paid by the Opposite Party to the Petitioner over and above Rs.1,000/- per month as she is already receiving pursuant to the order dated 28th April, 2012 passed in Cr.P. No.704 of 2010.

8. Accordingly, the impugned order is set aside. The Opposite Party is directed to pay an enhanced sum of Rs.2,000/- (Rupees two thousand only) per month to the Petitioner from the date of the

application made under Section 127 Cr.P.C. by adjusting the amount of maintenance paid, if any, in the meantime.

8. The RPFAM is accordingly disposed of.

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

(K.R. Mohapatra)
Judge

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