

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO. 314 OF 2019

Susma Biswal

....

Petitioner

Mr. B.N. Satapathy, Advocate

-versus-

Jay Jiban Biswal

....

Opp. Party

Mr. B.S. Rayaguru, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

12.05.2022

Order No.

16. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 13th December, 2019 passed in CrI. P. No. 54 of 2013, whereby learned Judge, Family Court, Jagatsinghpur refused to grant maintenance to the Petitioner in a petition filed by her under Section 125 Cr.P.C.
3. Mr. Satapathy, learned counsel for the Petitioner submits that the marital relationship between the Petitioner and Opposite Party is not disputed. Due to mental and physical torture, the Petitioner was constrained to leave the matrimonial home to live with her parents. The Opposite Party is serving as an Electrical Engineer under IFFCO. Since the Petitioner had no sufficient means to maintain herself, she filed an application under Section 125 Cr.P.C. for maintenance. Learned S.D.J.M., Jagatsinghpur while entertaining the interim application filed by the Petitioner directed the Opposite Party to pay maintenance of Rs.7,000/- per month, which the Opposite Party continued to pay till disposal of the criminal proceeding. It is his submission that frivolous

allegation of adulterous life of the Petitioner has been made. In the objection filed by Opposite Party, it has not been specifically stated that the Petitioner has left the matrimonial home voluntarily. Hence, the provision under Section 125(4) Cr.P.C. has no application to the case at hand. Further, reading out the deposition of P.W.1, he submits that the same is sufficient to grant maintenance to the Petitioner under Section 125 Cr.P.C. But, learned Judge, Family Court, Jagatsinghpur did not at all take all these material aspects into consideration and the impugned order has been passed, which is not sustainable in the eyes of law.

4. Mr. Rayaguru, learned counsel for the Opposite Party submits that in the objection at paragraph-11 itself, the Opposite Party has specifically stated that without informing the Respondent (Opposite Party), the Petitioner left the matrimonial home for her parents house leaving the minor daughter and filed C.P. No. 582 of 2012 for a decree of divorce. Such fact has been suppressed by the Petitioner in the petition filed under Section 125 Cr.P.C. The O.P.W.2 is none other than the daughter born out of wedlock of the Petitioner and Opposite Party. She, in her evidence, has categorically deposed that “.....my mother (Petitioner) left our house about ten years back when I was six years old. My mother voluntarily left our house and at that time I and my father were asleep. After waking up, we searched for her and came to know that she had left us and our house.” In her examination-in-chief, she has also stated that the Petitioner had left the matrimonial home out of her own volition. Hence, learned Judge, Family Court, Jagatsinghpur has committed no error in

holding that the Petitioner has left the matrimonial home voluntarily. As such, rigors under Section 125(4) Cr.P.C. are clearly applicable to the case at hand and the Petitioner is not entitled to any maintenance.

5. Taking into consideration the submissions of learned counsel for the parties and on perusal of photocopy of T.C.R., the submission of Mr. Rayaguru, learned counsel for the Opposite Party appears to be correct. On perusal of the impugned order, it is clear that the Petitioner was refused maintenance on the ground that she left the matrimonial home voluntarily. Thus, veracity of allegation of adulterous life of the Petitioner need not be gone into.

6. In order to test the veracity of the submission made by Mr. Satapathy, learned counsel for the Petitioner, this Court perused the objection as well as the evidence led by the parties. Although the Petitioner has categorically stated in her pleadings as well as evidence that she was constrained to leave the matrimonial home due to physical and mental torture meted out to her, but, on perusal of the evidence led by the Opposite Party, more particularly the evidence of O.P.W.2, daughter born out of wedlock of the Petitioner and Opposite Party, it is crystal clear that the Petitioner has left the matrimonial home voluntarily without informing the Opposite Party. No suggestion was made with regard to mental and physical torture meted out to the Petitioner. On the other hand, in his cross-examination at paragraph-22, the O.P.W.1 has categorically deposed that “*till date, I am interested to take the Petitioner with me*”.

7. In view of the discussions made above, I do not find any infirmity in the impugned order. Accordingly, the RPFAM being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

bks

