

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 87 of 2021

Arjuna Behera

..... Petitioner

Mr. Gokha Behera, Advocate

-versus-

Jemamani Behera and another

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

29.04.2022

Order No.

6. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM prays for a direction to quash the proceeding in Cr.P No.68 of 2018 pending before learned Judge, Family Court, Keonjhar, filed under Section 128 Cr.P.C.
3. Mr. Behera, learned counsel for the Petitioner submits that the Opposite Party filed Cr.P No.68 of 2018 under Section 128 Cr.P.C. for execution of the order of maintenance passed in a proceeding under Section 125 Cr.P.C. in CMC No.99 of 2001 by JMFC, Keonjhar for the period from the year 2013 to 2018. It is his submission that in view of Section 125(3) Cr.P.C., the Opposite Party can file execution of an order of maintenance for a period of one year only and not prior to that. Since the Execution Case was filed for recovery of maintenance for a period prior to one year from the date of filing of such petition under Section 125 Cr.P.C. the same is not maintainable and liable to be quashed.
4. In obedience to the direction of this Court dated 16th February, 2022, the Petitioner has already deposited a sum of Rs.4,800/- ,i.e., maintenance for one year in terms of the order

passed in CMC No.99 of 2001. Considering the same, learned Judge, Family Court, Keonjhar vide his order dated 23rd February, 2022 in Cr.P. No.68 of 2018, has directed for withdrawal of DW and conditional NBW issued to I.I.C, Ghatagaon PS on 28th October, 2021.

5. On perusal of case record, it appears that the Petitioner has already filed his show cause before learned Judge, Family Court, Keonjhar raising issue of maintainability of Cr.P No.68 of 2018 filed under Section 128 Cr.P.C.

6. In view of the fact that DW and NBW has already been recalled and that the issue of maintainability of the proceeding is still sub judice before learned Judge, Family Court, Keonjhar, I am not inclined to entertain the prayer made in this RPFAM.

7. Accordingly, the RPFAM is disposed of with an observation that the learned Judge, Family Court may consider the show cause filed by the Petitioner raising the issue of maintainability of Cr.P No.68 of 2018 in accordance with law giving opportunity of hearing to the parties concerned.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge