

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. No. 313 of 2022

Satyabrata Sahoo ***Petitioner***

Mr. Prasanta Kumar Satapathy, Advocate

-versus-

Anita Ojha @ Sahoo and another ***Opp. Parties***

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
29.11.2022**

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this RPFAM seeks to assail the order dated 28th September, 2022 (Annexure-1) passed by learned Judge, Family Court, Jagatsinghpur in Criminal Proceeding No.106 of 2021, whereby the Petitioner has been directed to pay monthly maintenance of Rs.5,000/- to Opposite Party No.1 (wife) and Rs.2,000/- per month to Opposite Party No.2 (daughter) with effect from the date of application, i.e., 15th December, 2021.
3. Mr. Satapathy, learned counsel for the Petitioner submits that relationship between the parties is not disputed. Although the Petitioner averred in his objection that he is working as an Education Volunteer, but no document could be filed to that effect. The Petitioner is earning a meager amount of Rs.4,760/- per month as Education Volunteer and his net salary is Rs.4,189/- per month. Hence, it is impossible on the part of the Petitioner to pay the maintenance, as directed. He, therefore, prays that an opportunity should be given to the Petitioner to lead evidence with regard to his income and to adjudicate the petition under Section 125 Cr.P.C. afresh.

4. Considering the submission of Mr. Satapathy, learned counsel for the Petitioner and on perusal of the impugned order, it appears that the Petitioner has not led any evidence with regard to his income. Income of a person is in his special knowledge and burden is on him to prove the same. As no evidence was adduced with regard to his income, learned Judge, Family Court, Jagatsinghpur had no other option than to make a guess work on the basis of the materials available on record and determined the quantum of maintenance. On perusal of impugned order, it also appears that the Petitioner has a automobile workshop at Tarapur by-pass from which he is earning Rs.50,000/- per month. Mr. Satapathy, learned counsel, however, disputes the same submitting that no material was placed before the Family Court by the Opposite Parties in support of their allegation. Referring to observation made at para-11 of the impugned order, Mr. Satapathy, learned counsel further submits that the Family Court arrived at a conclusion that the monthly income of the Petitioner is Rs.15,000/- per month and a direction to pay Rs.7,000/- per month is not proportionate and is highly excessive. On perusal of the observation made at para-11 of the impugned order, it appears that along with other materials the Opposite Party No.1 had produced the disclosure affidavit, wherein, the salary of the Petitioner was stated to be Rs.15,000/- per month. On the other hand, Mr. Satapathy, learned counsel filed a document (Annexure-3) in this RPFAM stating that the monthly salary of the Petitioner is Rs.4,760/- only. Thus, the truthfulness of the Petitioner in disclosing his income is doubtful.

5. As discussed above, since no material to rebut the evidence of the Opposite Party No.1 is produced, learned Judge, Family Court has accepted the statement made by Opposite Party No.1. The petition under Section 19(4) of the Family Courts Act, 1984 is not meant to patch up the lacunae of a party in the proceeding under Section 125 Cr.P.C. Further, no explanation has been offered as to why the Petitioner did not adduce any evidence with regard to his income. Hence, this Court is not inclined to interfere with the order impugned herein.

6. Accordingly, the RPFAM stands dismissed being devoid of any merit.



(K.R. Mohapatra)
Judge

s.s.satapathy