

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 103 OF 2021

Aziz Khan

....

Petitioner

Mr. Soumya Dev Ray, Advocate

-versus-

Shaikh Rehana

....

Opp. Party

Mr. Susanta Harichandan, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
10.05.2022

Order No.

- 4.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this RPFAM seeks to assail the order dated 26th November, 2021 (Annexure-5) passed in Criminal Proceeding No. 38 of 2020, whereby learned Judge, Family Court, Rourkela while allowing an application under Section 125 Cr.P.C. has directed the Petitioner to pay maintenance of Rs.20,000/- per month to the Opposite Party from the date of application, i.e. from 6th November, 2020.
 3. The contention of Mr. Ray, learned counsel for the Petitioner is that the Opposite Party left the matrimonial house out of her own volition and she was never driven out, as alleged. It is further contended that learned Judge, Family Court, Rourkela without properly assessing the income of the present Petitioner has directed to pay a hefty amount of Rs.20,000/- per month to the Opposite Party. The Petitioner has already deposited 50% of the arrear amount of maintenance as per the direction of this Court. He, therefore, prays for setting aside the impugned order and to remit

the matter back to the learned Judge, Family Court, Rourkela for consideration of the matter afresh.

4. Mr. Harichandan, learned counsel for the Opposite Party, on the other hand, submits that in paragraph-11 of the impugned order, learned Judge, Family Court, Rourkela has categorically held that the Opposite Party was subjected to cruelty. In paragraph-12 of the impugned order, learned Judge, Family Court taking into consideration that the Petitioner was getting net pay of Rs.41,471/- per month came to a conclusion that the Petitioner has sufficient means to support the Opposite Party. In that view of the matter, he submits that the impugned order warrants no interference.

5. Taking into consideration the rival contentions of the parties, this Court finds that although learned Judge, Family Court, Rourkela came to a finding that net salary of the Petitioner was Rs.41,471/- in the month of July, 2021, but fixed the quantum of maintenance of Rs.20,000/- per month, which is not in consonance with the ratio decided in the case of **Rajnish –v- Neha and another**, (2021) 2 SCC 324. It also appears from the impugned order that learned Judge, Family Court, Rourkela has not made any endeavour to discuss about the liability of the Petitioner as well as requirement of Opposite Party to maintain herself. In that view of the matter, this Court is of the considered opinion that the matter requires fresh consideration.

6. Accordingly, the impugned order under Annexure-5 is set aside and the matter is remitted back to the learned Judge, Family Court, Rourkela for fresh adjudication giving opportunity of hearing to the parties concerned. To protect the interest of Opposite Party, this Court directs that the Petitioner shall go on paying a sum of Rs.10,000/- (Rupees ten thousand) per month to the Opposite

Party towards maintenance during pendency of Criminal Proceeding No. 38 of 2020. Learned Judge, Family Court, Rourkela shall record his independent finding with regard to the quantum of maintenance without being influenced by the direction of this Court with regard to the quantum of maintenance to be paid by the Petitioner during pendency of Criminal Proceeding.

7. With the aforesaid observation and direction, the RPFAM is disposed of.

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

(K.R. Mohapatra)
Judge

bks

