

IN THE COURT OF JUDGE, FAMILY COURT, BHUBANESWAR.

Present: Shri Pravakar Mishra, OSJS (S.B),
Judge, Family Court, Bhubaneswar.

C.M.C No. 15 of 2012

Annanya Mohapatra, aged about 10 years,
D/o-Sri Sumanta Mohapatra,
represented through her mother guardian Sandhya Rani Mohapatra,
D/o- Sri Prafulla Mohapatra,
Both are of village/P.O./P.S.-Dhannagar, Dist-Bhadrak
At present Plot No. 342, Palasuni Canal Road, P.O.-Rasulgarh,
Bhubaneswar, Dist-Khurda.

..... Petitioner

Versus

Sri Sumanta Mohapatra, aged about 42 years,
S/o-Sri Bichitrananda Jena,
Laxmisagar Brit Colony, Plot No.-LB-129, Stage-II,
P.S.-Laxmisagar, Bhubaneswar, Dist-Khurda.

..... Opp. Party

Date of Argument : 12.04.2016

Date of Order : 21.04.2016

O R D E R

The mother of the petitioner has filed a petition U/s. 127 of the Cr.P.C. against the Opp. Party-husband for petitioner for enhancement of her monthly maintenance from Rs. 500/- to Rs. 5,000/-.

2. The case of the petitioner in a nut-shell is that, she being the minor daughter of the Opp. Party granted maintenance @ Rs.500/- vide CrI. Misc. Case No. 79/2008 (TrI. Case No. 376/2008) by the learned J.M.F.C., Bhubaneswar and as per the order of the J.M.F.C., Bhubaneswar she is getting the above maintenance amount from the Opp. Party but the said amount is not sufficient on her part to maintain her livelihood due to rise in price of essential commodities and study expenses. It is further averred that in the meanwhile the income of the Opp. Party has increased due to hike in

his business and now he is getting Rs. 30,000/- per month. With these changing circumstances, she claimed revision of her monthly maintenance to Rs. 5,000/- from Rs. 500/-.

3. The Opp. Party filed objection stating therein that he is working in a physiotherapy centre as physiotherapy assistant and is getting Rs. 3,500/- per month towards his salary and he is also paying Rs. 500/- per month with much difficulties. He has further averred that the mother of the petitioner has admitted the petitioner in English Medium School and he is not in a position to afford the said expenses due to his scanty income. It is further averred by him that since the mother of the petitioner demanded custody of the petitioner, she has certain obligation for her welfare. According to the Opp. Party, the mother of the petitioner has sufficient income to bear the day to day expenses of the petitioner but in order to harass him she has filed the present petition and therefore, the petitioner is not entitled to get any maintenance at the enhanced rate.

4. The only point to be considered is whether there is change of circumstance after previous maintenance was allowed to the petitioner so that the previous maintenance amount can be enhanced?

5. The petitioner in order to prove her case her mother-Sandhya Rani Mohapatra has been examined as P.W. 1 and one Sri Kalpataru Mohapatra as P.W. 2 and relied on three documents. They are:- Ext. 1 is the her school tuition fee, Ext. 2 is the monthly transport charges, Ext. 3 to 3/g are the progress report of the petitioner. In order to negate the claim of the petitioner, the Opp. Party himself, has been examined as O.P.W. 1 and one Smt. Indira Khanna as O.P.W. 2 and relied on three documents. They are:- Ext. A is the Xerox copy of the mutual divorce petition, Ext. A/1 is the Xerox copies of the order, Ext. A/2 is the copy of the decree, Ext. B, B/1 and B/2 are the medical diagnosis paper of the Opp. Party and Ext. C is the original employment paper of the Opp. Party.

6. The petitioner was granted maintenance of Rs. 500/- vide CrI. Misc. Case No. 79/2008 (TrI. Case No. 376/2008) by the learned J.M.F.C.,

Bhubaneswar. According to the P.W.1, the monthly income of the Opp. Party has been increased to Rs. 30,000/- from his business. The Opp. Party has stated that his monthly income is Rs. 3,500/- and vouch safe it by filing Ext. C, the pay particulars. Admittedly, the Opp. Party is a Psychotherapy Assistant and therefore, he is a skilled labourer. As per the Govt. notification, the daily wages of a skilled labourer is Rs. 240/-. The salary as per Ext. C is much below than the minimum rate of wages and therefore, the same cannot be accepted as an honest revelation of the salary of the Opp. Party. Apart from that from our growing experiences, the Psychotherapy Assistants gets Rs. 300/- in each sitting attending the patient privately. It is observed that the Opp. Party is a man of means from his gait up being well dressed up, plying motor bikes. Coalescing these facts and circumstances, it can suavely said that the income of the Opp. Party has increased in the interregnum. The prices of essential commodities and education expenses of the daughter have also increased as per Ext. 1 and 2. Additionally, the Opp. Party in Matrimonial Suit No. 257 of 2006-I has agreed to bear all the educational expenditure of the present petition. Now he cannot avoid it by saying that he has no income or paltry income. Thus, in these changing circumstances, the monthly maintenance requires to be enhanced. Accordingly, this point is also answered in favour of the petitioner.

7. Now the next question for consideration is what would be the quantum of maintenance? Considering the income of the Opp. Party and price rise of essential commodities, I feel it just and proper to direct the Opp. Party to pay Rs. 2,500/- to petitioner. Hence, it is ordered;

ORDER

The petition of the petitioner is allowed on contest in favour of the petitioner. The Opp. Party is directed to pay Rs. 2,500/- per month to the petitioner from the date of filing of this application i.e. from 05.10.2012 by adjusting the payment if any made by him in the interregnum. He is further directed to pay the arrear maintenance dues within two months to the petitioner. The current maintenance amount shall be paid within the first

week of each succeeding month. The Opp. Party is also directed to pay litigation expenses of Rs. 5,000/- to the petitioner. Any deviation in payment of maintenance dues, the petitioner is at liberty to realize the same through process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 21st day of April, 2016.

JUDGE, FAMILY COURT,
BHUBANESWAR.

List of witness on behalf of petitioner

P.W. 1 Smt. Sandhya Rani Mohapatra
P.W. 2 Sri Kalpataru Mohapatra

List of witness on behalf of Opp. Party

R.W. 1 Sri Sumanta Kumar Mohapatra
R.W. 2 Smt. Indira Khanna

List of exhibits on behalf petitioner

Ext. 1 School tuition of the daughter
Ext. 2 Monthly transport charges
Ext. 3 to 3/g Progress report of the daughter

List of exhibits on behalf of Opp. Party

Ext. A Xerox copy of the mutual divorce petition in Matrimonial
Suit No. 257/2006-I
Ext. A/1 Xerox copy of the order
Ext. A/2 Xerox copy of the decree
Ext. B and B/1 Xerox copy of the medical diagnosis paper of the Opp. Party
Ext. C Original employment paper

JUDGE, FAMILY COURT,
BHUBANESWAR.