

IN THE COURT OF THE JUDGE, FAMILY COURT,
BHUBANESWAR.

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

Criminal Misc. Case No. 223 of 2010

1. Sehnaz Bibi, aged about 21 years,
W/o- Mahammad Samser,
D/o.-Md. Rafi.
2. Lafisa Begum, aged about 2 ½ years,
D/o-Mahammad Samser,
minor represented through her mother
guardian petitioner No.1
Both are of vill.-Haridaspur, P.S.-Baliana,
Dist-Khurda
At present residing at Sabasnagar Basti
Dumduma, P.S.-Khandagiri,
Dist-Khurda.

... Petitioners

... Versus...

Mohammad Samser, aged about 30 years,
S/o-Md. Unus, Vill.-Haridaspur,
P.S.-Baliana, Dist-Khurda
At present working as Lans Naik under Col. J.S. Dodhi,
Unit-130 AD Regiment-CO/56 APO,
At/P.O.-Pathanket,
State of Punjab.

... Opp. Party

Date of argument: 28.08.2014

Date of order : 10.09.2014

ORDER

This order arises out of a petition u/s. 125 of the Code of Criminal Procedure (in short, Cr.P.C.) filed by the petitioner No.1 for self and for petitioner No. 2 being the mother guardian claiming monthly maintenance of Rs. 2,000/- for herself and Rs. 1,000/- for petitioner No.2 respectively from the Opp. Party.

2. The facts of the case of the petitioner are as follows:-

The marriage of the petitioner No.1 with Opp. Party was solemnized at

Duduma in the residence of the petitioner as per Muslim customs and rites on 14.02.2007 and marriage has been consummated in the house of the Opp. Party and out of their wedlock one female child (petitioner No.2) was born on 29.03.2008 at Jagannath Seva Sadan, Bapuji Nagar, Bhubaneswar. It is the case of petitioner No.1 that at the time of marriage, her father had given Rs. 50,000/- along with other household articles and 5 tolas of gold ornaments as per demand of the Opp. Party. The Opp. Party works in Indian Army and after availing leave the Opp. Party went to his service place to Pathankot leaving the petitioner No.1 in his house and after departure of the Opp. Party, the parents-in-law, brother-in-law when sister-in-law of the Opp. Party started torturing her both physically and mentally due to additional demand of dowry of a Hero Honda Motor Cycle when she refused for the same. She has further stated that the Opp. Party on hearing the ill-health of the petitioner No.1, told the father of the petitioner No. 1 to bring petitioner No. 1 from his house and on hearing such her father sent her brother to bring back her but the parents, brother and sister of the Opp. Party started quarreling and abusing her and also assaulted her physically and with much difficulties she escaped from them with her child on 20.07.2009. She has further averred that after reaching at her parental home she informed about these things to the Opp. Party over phone but the Opp. Party did not pay any heed to it and on the other hand, scolded her in filthy languages and rather told her that he is going to marry another lady namely Roshan of Salepur with more dowry. Since 20.07.2009 she has been residing with her parents and her father is a daily wage earner. The Opp. Party since then has not been providing any farthing to them and she is unable to maintain herself and petitioner No.2. The Opp. Party is working as Lance Naik in Army Regiment at Pathankot and is getting salary of Rs. 15,000/- per month besides, he has got residential house at his native village. Since the Opp. Party having sufficient means willfully neglected and refused to maintain the petitioners, who are his legally wedded wife and daughter, the petitioners are obliged to file the present petition claiming a monthly maintenance of Rs. 2,000/- for herself and Rs. 1,000/- for petitioner No.2 respectively from the Opp. Party.

3. The Opp. Party did not enter contest the petition and therefore, is set ex-parte.
4. The following points are formulated to resolve the controversy:-
 - (i) Whether petitioner No.1 is the legally married wife and petitioner No. 2 is the legitimate child of the Opp. Party and the petitioners have sufficient cause to live separately from the Opp. Party?
 - (ii) Whether the Opp. Party having sufficient means has neglected or refused to maintain the petitioners?
 - (iii) What would be the quantum of maintenance to be allowed to the petitioners, if point No. 1 and 2 are answered in their favour?
5. The petitioner No.1 in order to prove her case she, herself, has been examined as P.W. 1 and her father as P.W.2.
6. The petitioner No.1 in her evidence has stated that she married to the Opp. Party on 14.02.2007 and is blessed with petitioner No.2 in Jagannath Seva Sadan, Bapujinagar, Bhubaneswar on 29.03.2008. Her aforesaid statements have not been challenged. Thus, it can safely be concluded that the petitioner No.1 is the legally wedded wife of the Opp. Party and petitioner No. 2 was born to them out of their wedlock.
7. She has also stated that she was subjected to torture not only by the Opp. Party but also by her in-laws for which she was forced to leave her matrimonial house with the minor daughter. P.W.2, the father of petitioner has fully corroborated the evidence of P.W.1. Therefore, it can safely be said that the petitioner No.1 has not left the company of the Opp. Party voluntarily. It is the Opp. Party and his family members who are responsible for petitioner No.1's living separately apart from the Opp. Party.
8. The next question for consideration is, whether the Opp. Party has sufficient means and he has willfully neglected and refused to maintain the petitioners. It is stated categorically by the petitioner No.1 that the Opp. Party is working as Lance Naik in Army Regiment at Pathankot and is getting salary of Rs. 15,000/- per month besides, he has got residential house at his native village whereas she is merely a housewife having no separate income and depending upon her parents. She has also stated that the Opp. Party has not provided a

single farthing to the petitioners since the date of their leaving the house of the Opp. Party. This facts and circumstance is clearly suggesting of the facts that the Opp. Party having sufficient means not only willfully neglected but also refused to maintain the petitioner No.1, who has no sufficient means to support herself. Therefore, the Opp. Party is liable to provide maintenance to the petitioners.

9. The next question for consideration is the quantum of maintenance. Considering the cost of living and other attendant circumstances, in as much as, the income of the Opp. Party, I feel in the ends of justice and equity, a sum of Rs. 2,000/- per month to petitioner No. 1 and Rs. 1,000/- to petitioner No. 2 would be just and proper, which according to me, would not allow to petitioner to lead a princely and luxury life and also at the same time it would not put the Opp. Party to any vagrancy. Hence ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 2,000/- to the petitioner No. 1 and Rs. 1,000/- for petitioner No. 2 from the date of filing of application i.e. on 02.07.2010 The Opp. Party is further directed to clear the arrear maintenance within two months hereinafter. He is also directed to pay the current monthly maintenance within the 1st week of the succeeding month. Failure to carry out the order by the Opp. Party, the petitioner is at liberty to levy execution through due process of law.

In the peculiar fact and circumstances no order as to costs.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 10th day of September, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Kalpana Parida

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.