

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

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

Criminal Misc. Case No. 19 of 2012

Smt. Laxmipriya Panda, aged about 67 years,
W/o- Sri Gourahari Panda,
At present at Plot No. LB-291,
Badagada Brit Colony, P.O./P.S.-Badagada,
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Sri Gourahari Panda, aged about 73 years,
S/o-Late Shyam Charan Panda,
At Plot No. 273/A, Behind Sushila Apartment,
South side of Kalinga Stadium,
Bhubaneswar-12, Dist-Khurda.

... Opp. Party

Date of argument : 08.08.2014

Date of order : 25.08.2014

ORDER

This is a petition under section 127 of the Cr.P.C. filed by the petitioner against the Opp. Party for enhancement of monthly maintenance from Rs. 5,000 to Rs. 10,000/-.

2. The case of the petitioner in a nut-shell is that, she is the legally married wife of the Opp. Party. It is averred that as per order dated 04.03.2011 passed by this Court in CrI.P.No.45 of 2011 she is getting Rs. 5,000/- per month and the said amount is not sufficient on her part to maintain her livelihood due to rise in price of essential commodities, house rent and additional expenditure on medicine for her old age disease. In the meanwhile the income of the Opp. Party has increased due to hike in the monthly pension of the Opp. Party and increased house rent. The total income of the Opp. Party is Rs. 50,000/- per month. With these changing circumstances, she claimed revision of her

monthly maintenance to Rs. 10,000 from Rs. 5,000/-.

3. The Opp. Party appeared and filed objection denying his income as stated by the petitioner. He has stated that he is suffering from old age diseases for which he has been spending more money for his treatment. He has further averred that at present the petitioner bring a hermit starts residing in Trahi Achyuta Ashram, Jhintيسان, Balakati, Bhubaneswar and the amount of Rs.5000/- is sufficient for her maintenance.
3. The petitioner in order to buttress her case she, herself, has been examined as P.W.1 and relied on one document i.e. Ext. 1 is the Judgment in Criminal Petition No. 45/2011 dated 04.03.2011. The respondent in order to nix the allegation of the petitioner he, himself, has been examined as OPW. 1.
4. From the rival contention of both parties, the following points are to be determined for just decision of the case:-
 - (i) Whether the income of the Opp. Party has increased from the date of order passed by this court in Crl.P.45/2011 and whether the O.P. has got sufficient income?
 - (ii) Whether the petitioner is entitled to get maintenance at the enhanced rate?
5. P.W. 1 has stated that she has been granted with maintenance in Criminal Petition No. 45/2011 of Rs. 5,000/- per month. She proved Ext.1, the certified copy of the judgment dated 04.03.2011. P.W. 1 further stated that at present the Opp. Party is getting Rs. 25,000/- from his pension and Rs. 25,000/- from house rent and landed property at his native place. She has further stated that after granting of maintenance dues in Criminal Petition No. 45/2011 vide Ext. 1, the essential commodities have gone up. She is paying house rent of Rs. 3,500/- per month. She is unable to maintain herself with the meager amount of Rs. 5,000/- as previously ordered.
6. The O.P.W. 1-husband in his evidence has stated that except his pension, he has no other source of income and there is no changing circumstance to enhance the maintenance amount of the petitioner. He has further averred that the petitioner is residing as Mataji in the Trahi Achyut Ashram Jhint and is

maintaining her livelihood peacefully and there is no necessity for enhancement of maintenance dues.

4. It is forthcoming from the judgment passed by this court dtd.4.3.2011 in Crl. Proceeding No.45/2011, the monthly pension of the Opp. Party was Rs.19,000/-. In the meantime, three years have been elapsed and the pension amount of the Opp. Party must be hiked. The Opp. Party has not disputed the assertion of the petitioner that Opp. Party is getting Rs. 25,000/- per month from his pension. Therefore, it is established that the Opp. Party is getting the aforesaid amount towards his pension. As regards to the income from the house rent and landed property the petitioner has singularly failed to establish it. Thus, the total monthly income of the Opp. Party is Rs. 25,000/- per month. The Opp. Party has failed to prove that at present the petitioner has got some source of income other than the maintenance amount of Rs.5000/-. The petitioner has well proved that there is change of circumstance for enhancing her maintenance dues. Considering the facts and circumstances of the case, increase in the income of the Opp. Party, price rise of the articles and bare necessity of the petitioner, I am inclined to hold that the quantum of maintenance should be enhanced and as such the petitioner is entitled to get maintenance from the Opp. Party as enhanced rate. Accordingly, the petition of the petitioner succeeds. Hence, ordered;

ORDER

The Criminal proceeding of the petitioner against the Opp. Party is allowed without cost. The Opp. Party is directed to pay maintenance at the enhanced rate of Rs. 7,000/- per month to the petitioner from the date of filing of the application i.e. on 23.11.2012. The Opp. Party is directed to pay the enhanced arrear maintenance dues within one month from the date of this order. Besides, any amount enhanced under Domestic Violence Act, shall be subject to adjustment against the present award. Maintenance already paid by the Opp. Party @ Rs. 5,000/- should be adjusted. The current maintenance allowance should be paid by the 10th day of each succeeding

month. If the Opp. Party fails to comply with the order of this Court, the petitioner is at liberty to realize the same through process of Court.

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Dictated, corrected by me and is pronounced on this the 25th day of August, 2014.

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Witnesses examined for the petitioner:

P.W.1 Laxmipriya Panda

Witnesses examined for the respondent:

O.P.W. 1 Gourahari Panda

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

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