

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

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

Criminal Proceeding No. 124 of 2012

1. Smt. Ushalata Behera, aged about 27 years,  
W/o-Sri Prakash Chandra Behera,  
D/o-Bijaya Kumar Behera,  
Plot No. 1349/2075, Vill.-Shyampur,  
P.O.-Ghatikia, P.S.-Khandagiri,  
Bhubaneswar, Dist-Khurda  
Odisha.
2. Shibani Behera, aged about 5 years,  
D/o-Prakash Chandra Behera  
Represented through her mother guardian petitioner No.1

... Petitioners

... Versus...

Sri Prakash Chandra Behera, aged about 37 years,  
S/o- Late Udayanath Behera,  
Permanent address- Aurobindonagar, 2<sup>nd</sup> Lane,  
Main Road, Buguda, Dist-Ganjam,  
Odisha.

... Opp. Party

Date of Argument : 06.01.2015

Date of Judgment: 19.01.2015

J U D G M E N T

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 Smt. Ushalata Behera claiming monthly maintenance of Rs. 7,000/- for herself and Rs. 3,000/- for petitioner No.2 along with litigation expenses from the Opp. Party.

2. The admitted fact of the case are as follows:-

The petitioner No.1 and 2 are the legally married wife and daughter of Opp. Party respectively and their marriage was solemnized on 06.03.2006.

3. The case of the petitioner No.1 is that after two months of marriage, the Opp. Party took her to his working place to Rayagada and stayed there where he was working as a Village Agriculture Worker. During her stay at Rayagada with the Opp. Party she wanted to bring some utensils, grinder, pressure cooker and other household articles which she has brought at the time of marriage but the family members of the Opp. Party refused for the same for which she has again brought it from her father. After birth of petitioner No.2 on 16.02.2007 the family members of the Opp. Party started torturing her both physically and mentally due to additional demand of dowry of Rs. 3,00,000/-. On 05.02.2010 the marriage of the younger sister of the Opp. Party was taken place to which her parents had attended. After her younger sister's marriage and with prior permission from her in-laws she came to her parental home with her parents. After five days of stay in her parental home, the Opp. Party over phone told her not to return to the matrimonial home unless she would bring their additional demand of Rs. 3,00,000/- and rebuked her in filthy languages and also she has to sign an agreement that if she will die then Opp. Party along with his family members will not be responsible in future. When she along with her father came to Buguda, found the house was locked and thereafter they waited for some hours on the veranda and at last finding no alternative, they lodged an F.I.R. in the local police station. On 15.12.2010 basing on her FIR, the elder brother of the Opp. Party had given an undertaking to bring the Opp. Party to Police Station but they absconded somewhere by putting their house under lock and key. The police assured to inform her after catching them her but the police did not inform anything further to her. In the month of January, 2011 she had filed a case before Mahila Commissioner bearing No. 8 of 2011 and the Opp. Party had given an undertaking to take back her but he did not do so. It is the further case of the petitioner No.1 that she lodged an FIR at Chandili Police Station Rayagada, the working place of the Opp. Party and after interference of Chandili Police he agreed to return back the household articles which she brought at the time of marriage although the Opp. Party returned some

household articles yet keep some household articles with him and all the cash and gold ornaments are still with him. According to the petitioner No.1, she came to know from reliable sources that the Opp. Party has an extra marital relationship with another lady namely Sumitra Behera. Some time the Opp. Party over phone threatened if she desires live with him then she has to bring Rs. 3,00,000/- and further if she is unable to bring the said amount and will want to return back to his house then they will kill her along her child. She has further averred that several attempts have been made from the side of the petitioner but in vain. She has further averred that she has no sufficient means to maintain herself. According to her, the Opp. Party is working as a Village Agriculture Worker at Dumuriguda Panchyat, Kolnara Block in the district of Rayagada and is getting salary of Rs. 16,500/-. Apart from that he is getting interest from different deposits and he has also got income from agriculture. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioner No.1 and 2, who are his legally wedded wife and daughter respectively, the petitioner No.1 is obliged to file the present petition claiming a monthly maintenance of Rs. 7,000/- for self and Rs. 3,000/- for petitioner No.1 along with litigation expenses from the Opp. Party.

3. The Opp. Party entered contest the petition denying all the allegations made by the petitioner No.1 against him. The case of the Opp. Party is that the sole dispute between them arose regarding petitioner No.1's illicit relationship with different persons. In one occasion she was caught red handed while she was in a compromising position, since then i.e. from 02.02.2010 the petitioner No.1 voluntarily left his house on the plea she will return back after seven days but she did not return. He has further stated that the petitioner No.1 after leaving him remarried to one Bijaya Swain who works as Security-in-charge resident of Saliasahi, Nayapalli in the year 2012 but when the said Bijaya Swain came to know the petitioner No.1's earlier marriage, he left her. Finding no alternative petitioner No.1 claimed maintenance from him. It is further stated by the Opp. Party that petitioner No. 1 is presently working as a teacher in Morning Public School, Pathargadia,

Sundarban, Bhubaneswar and is getting salary of Rs. 8,000/- per month and she hails from a rich family as her father is a Civil Engineer. On the other hand, his widow mother, divorce sister and younger unmarried brother are dependent upon him for which the prayer of the petitioner No.1 for maintenance of Rs. 10,000/- per month including cost of the case is unsustainable and the petition is liable to be dismissed.

4. From the aforesaid rival contentions of the parties the following points are formulated to resolve the controversy:-

I. Whether the petitioner No.1 has sufficient cause to live separately along with petitioner No.2 from the Opp. Party and the petitioner No.1 has no sufficient means to support themselves?

II. Whether the petitioner is living in adultery?

III. Whether the Opp. Party having sufficient means willfully refused or neglected to maintain the petitioners?

IV. What would be the quantum of maintenance to be allowed to the petitioners for their maintenance per month?

5. The petitioner in order to buttress her case she, herself, has been examined as P.W. 1 and one Biswanath Behera as P.W. 2 and relied on four documents. They are:- Ext. 1 is the copy of the FIR dated 15.12.2010, Ext. 2 is the undertaking to produce the Opp. Party in Buguda Police Station on 20.04.2011, Ext. 3 is the Xerox copy of the complainant lodged before Mahila Police Station, Ext. 4 is the FIR of Chandili Police Station, Rayagada and Ext. 4/1 is the list of properties out of which the properties were returned as per tick mark. The Opp. Party in order to negate the claim of the petitioner he, examined himself as O.P.W. 1 and relied on four documents. They are:- Ext. A is the Samaj News Paper dated 06.08.2012 and Ext. A/1 is the relevant new item. Ext. B is the pleader Notice, Ext. C is the order dated 07.09.2011 passed by the Mahila Commissioner obtained on R.T.I. Application and Ext. D is the photo copy of the FIR lodged before IIC Khandagiri, Police Station.

6. Point No.1

Whether the petitioner No.1 has sufficient cause to live separately along

with petitioner No.2 from the Opp. Party and petitioner has no sufficient means to support themselves?

P.W. 1 in her evidence has stated that she was subjected to torture both physically and mentally by the Opp. Party due to non fulfillment of additional demand of dowry of Rs. 3,00,000/- and after marriage of the sister of the Opp. Party with due permission, she went to her parental home with her parents and after five days of her stay the Opp. Party over phone told her not to return to his house unless she would bring Rs. 3,00,000/- and also rebuked her in filthy languages. Thereafter when she and her father went to Buguda they found that the house was locked. After that they lodged a report in Buguda Police Station on 15.12.2010. On the same day the elder brother of the Opp. Party undertook before Police to produce the Opp. Party on 20.04.2011 but non-turned up. She has further stated that she has also filed a case before Mahila Commissioner bearing No. 8/2011 and the Opp. Party before Mahila Commission assured to take back her but did not. She has further stated that in obedience to the pleader notice sent by the Opp. Party under Ext. B, she had gone to the house of the Opp. Party and found his house under lock and key. During cross examination nothing has been brought out to shatter the stoical statement of P.W. 1 regarding torture due to none fulfillment of additional demand of dowry of Rs. 3,00,000/-. These two circumstances are sufficient indicators of curtly on the petitioner by the Opp. Party which compelled the petitioner to reside separately from the Opp. Party.

7. Point No. II

Whether the petitioner No.1 is living in adultery?

The husband in order to negate the claim of the wife has set up the defence that the wife is living in adultery. In order to substantiate that plea, the husband relied on Ext. A and A/1. Reference made to Ext. A/1 mention has been made that Khandagir Police recovered the petitioner No.1 from N.H-5 and police made a statement that Ushalata married one Security Guard-in-charge in a temple and that Security Guard had driven out the petitioner No.1 when the petitioner No.1 had gone to his house to assert her right, and the

police also made statement that Ushalata has physical relation with that Security-in-charge. The petitioner No.1 when confronted with this News items denied it. Neither the Publisher of the News Paper nor the Police Officer on his information, the publisher published the aforesaid item or any police record showing any missing record or S.D. entry to that effect, either examined or produced and as such publication is insignificant. The Opp. Party is also failed to prove the second marriage of the petitioner No.1 with Bijaya Swain. The Opp. Party has also failed to examine Bijaya to affirm the same fact. The petitioner No.1 was also not confronted with the fact that she remarried to Basanta. Let us admit for the sake of the argument though not contrary, this is a single instance of the petitioner No.1. Casual living with a person other than husband with sexual relation would not construe "living in adultery" U/s. 125 (4) of the Cr.P.C. There must be continuity of living in adultery to satisfy the ingredient of Section 125 (4) Cr.P.C. Therefore, the defence of the Opp. Party is not well founded disentitling the claim of the petitioner No.1 from maintenance.

8. Point No. III

Whether the Opp. Party having sufficient means refused or neglected to maintain the petitioners?

The Opp. Party in his cross examination has admitted that he is working as V.A.W in Kolonara under Dumuriguda Panchayat and is getting salary of Rs. 14, 169/- per month. In view of the above admission of the O.P.W. 1 he is a man of means having sufficient income. The Opp. Party in his cross examination admitted that he had not sent any money for maintenance and educational expenses of his daughter. On the other hand he has stated that he is depositing money in the name of petitioner No.2 against LIC Police and in another Insurance Police in the name of the petitioner No.2 but did not produce any document in support of it though he has stated he can produce those documents on the next day. Though the Opp. Party has stated that the petitioner No.1 is working as a teacher in Morning Glowing Public School, Pathargadia, Bhubaneswar and is getting salary of Rs. 8,000/- per month and

is getting lump sum amount to in toto she is maintaining a luxurious life than him but he has not filed any scrap of paper to vouch-safe its contention but the P.W.1 in her cross examination has admitted that she is getting a meal and Rs. 300/- to Rs. 400/- per month. P.W. 2 in his cross examination has also stated that the P.W. 1 is working as teacher and her salary is not sufficient for herself and petitioner No.2 is residing in Andhara Pradesh. In view of the above contentions of both the parties it can be safely concluded that the petitioner No.1 is working as a teacher in a private school having some income but it is not sufficient for herself and her daughter. The Opp. Party also stated in his cross examination that the petitioner No.1 is living separately from him since 02.02.2010. It is further established that the Opp. Party has not provided any farthing to the petitioners from the date of her living separately. Therefore, the Opp. Party having sufficient means has willfully neglected or refused to maintain the petitioners and therefore the petitioners are entitle to claim maintenance from the Opp. Party.

9. Point No. IV

What would be the quantum of maintenance to be allowed to the petitioners for their maintenance per month?

From the own admission of the Opp. Party, it is established that he is getting Rs. 14,169/- per month. It is also established that the Opp. Party is looking after his old ailing parents who is family pension holder. Thus, taking into all the facts and circumstances of the case into consideration, I feel it just and proper to allow a monthly maintenance of Rs. 2,500/- inclusive of the interim maintenance to the petitioner No.1 and Rs. 1,000/- to the petitioner No.2. Hence ordered;

O R D E R

The petition is allowed on contest in favour of the petitioners. The Opp. Party is directed to pay a monthly maintenance of Rs. 2,500/- to the petitioner No.1 and Rs. 1,000/- to the petitioner No.2 from the date of filing of application i.e. on 31.08.2012. Besides this Opp. Party is directed to pay litigation expenses of Rs. 5,000/- to the petitioner No.1. The Opp. Party is

further directed to clear up the arrear maintenance within two months hereinafter. He is also directed to pay the monthly maintenance within the 1<sup>st</sup> 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.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 19<sup>th</sup> day of January, 2015.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

List of witness on behalf of petitioner

P.W. 1 Smt. Ushalata Behera

P.W. 2 Biswanath Behera

List of witness on behalf of Opp. Party

O.P.W. 1 Prakash Chandra Behera

List of exhibits on behalf petitioner

Ext. 1 Copy of the FIR

Ext. 2 Undertaking to produce the Opp. Party in Buguda Police Station on 20.04.2011.

Ext. 3 Xerox copy of complaint lodged before Mahila Police Station

Ext. 4 Xerox copy of the FIR of Chandili Police Station, Rayagada

Ext. 4/1 List of properties out of which the properties were returned as per tick mark.

List of exhibits on behalf of Opp. Party

Ext. A The Samaj News Paper dated 06.08.2012

Ext. A/1 The relevant new item

Ext. B Pleader Notice

Ext. C Order dated 07.09.2011 by passed by the Mahila Commission obtained under R.T.I. application.

Ext. D Photo copy of the FIR lodged before IIC Khandagiri, Police Station.

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