

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

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

Criminal Proceeding No. 191 of 2011

1. Suprima Rath @ Panda, aged about 39 years,  
W/o- Sudhansu Sekhar Rath,  
D/o-Late Bipracharan Panda,
2. Rohit Rath, aged about 11 years,  
S/o-Sudhansu Sekhar Rath,  
Being minor represented by mother guardian petitioner No.1  
Both are residing at Flat No. E-1/142,  
Kehargouri Apartment, Garage Chhack,  
P.O.-Old Town, P.S.-Lingaraj, Bhubaneswar,  
Dist-Khurda.

... Petitioners

... Versus...

Sudhansu Sekhar Rath, aged about 44 years,  
S/o-Sri Purna Chandra Rath,  
Resident of House No. 80, H.I.G.-I, Kaliprasad,  
P.S.-Airfield, P.O.-Old Town, Bhubaneswar,  
Dist-Khurda.

... Opp. Party

Date of argument : 30.10.2014

Date of order : 11.11.2014

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 claiming monthly maintenance of Rs. 10,000/- to petitioner No.1 and Rs. 5,000/- to petitioner No.2 being the mother guardian claiming from the Opp. Party.

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

The marriage of the petitioner No. 1 with the Opp. Party was solemnized according to Hindu customs and rites on 26.01.1999 and out of their wedlock

petitioner No.2 was born. According to the petitioner No.1, her father had given dowry as per demand of the Opp. Party. The marriage was a serendipity. The der-Tag started in their life when the Opp. Party and his family members tortured her due to additional demand of Rs. 2,00,000/- and when the torture became unbearable she was constrained to leave the matrimonial home with her minor son-petitioner No.2. It is averred by the petitioner No.1 that the marriage between them was dissolved by a decree of divorce vide order dated 07.09.2007 passed by the learned Civil Judge, (Sr. Division) Bhubaneswar in MAT C.S. No. 427/2007 and after the decree of divorce was passed she is under no obligation to live with the Opp. Party but continues to enjoy the status of wife for claiming of maintenance within the meaning of Section 125 Cr.P.C. Since then she has been residing with her parents and the Opp. Party has not been providing any farthing to them and she is unable to maintain herself as she has no independent source of income and the educational expenses of petitioner No.2 who is studying in Standard-III in D.A.V. Public School, Pokhariput, Bhubaneswar. According to petitioner No.1 the Opp. Party is carrying on business and his monthly income is about 50,000/- per month. Apart from that he is getting interest from the deposits made in the Bank and also he has income from agricultural properties. Since the Opp. Party having sufficient means will-fully neglected or refused to maintain the petitioners, who are obliged to file the present petition claiming a monthly maintenance of Rs. 10,000/- for petitioner No.1 and Rs. 5,000/- to petitioner No.2 from the Opp. Party.

3. The Opp. Party entered contest the petition admitting his marriage with the petitioner No. 1 and petitioner No.2 as his son. The Opp. Party has denied the allegations made by the petitioner No.1 against him. He also denied to have received any dowry from the side of the petitioner No.1, before the marriage at the time of marriage and after the marriage as the father of the petitioner expired much before the marriage. He has also denied to have tortured the petitioner No.1 and assaulted to the petitioner No.1 for non-fulfillment of additional demand of dowry. He has stated that the petition filed

by the petitioners is misconceived and is not maintainable and the petition is full of suppression of material facts and false statements which amounts to an abuse of the process of law. He has further stated that their marriage was dissolved on mutual consent by an order dated 07.09.2007 in MAT Case No. 427/2007 and subsequent decree dated 20.09.2007. The petitioner No.1 has accepted a sum of Rs. 2,00,000/- from the Opp. Party as permanent alimony and the said amount had been received by the petitioner No.1 and is reflected order dated 07.09.2007 and after dissolution of marriage on mutual consent the petitioner No.1 is no more the wife of the Opp. Party, hence the petition filed by the petitioners is not maintainable at all. He has stated that petitioner No.1 before the Inspector of Mahila Police on 06.05.2005 has stated that the Opp. Party was unemployed and had no source of income. He has also stated that petitioner No.2 was studying in Standard-III, at the time of decree of divorce was passed and after having accepted permanent alimony on the marriage between the parties have dissolved and that a decree of divorce being passed the petitioner No.1 cannot make any further claims on the Opp. Party. However, this Opp. Party is willing to meet the entire expenses of the petitioner No.2 if the petitioner No.2 is given to his custody. He has stated that he is now totally unemployed without any source of living and unable to do any work. He has further stated that he is all along ready to accept petitioner No.2 and also ready to maintain him according to his status for which petitioners are not entitled to get any maintenance as prayed for.

4. The petitioner in order to prove her case she, herself, has been examined P.W. 1 and one Bahlab Charan Sahoo as P.W. 2. The Opp. Party in order to negate the claim of the petitioner No.1, he, himself, has been examined as O.P.W. 1 and his mother as O.P.W. 2 and relied on some documents i.e. Ext. A is the Money receipt and Ext. A/1 is the signature of the petitioner No.1 on Ext. A, Exts. B and C are the two Consultation Cards of the Opp. Party.

5. From the pleadings of the parties, it is established that the petitioner No.1 had received permanent alimony of Rs. 2,00,000/- from the Opp. Party at the time of disposal of MAT Case No. 427 of 2007 and accordingly, this

Court disowned her claim of maintenance in the present proceeding relying on *Smt. Deepa Devi Vrs. Dhiraj Kumar Singh reported in AIR 2006 Jharkhand 29* vide its order dated 18.10.2012 and that order had attained its finality as petitioner No.1 had not challenged the said order in any higher forum. However, the claim of petitioner No.2 having since been survived the following points are formulated for disposal of this proceeding.

- (i) Whether the Opp. Party having sufficient means willfully neglected or refused to maintain the petitioner No.2?
- (ii) What would be the quantum of maintenance?

6. Admittedly, petitioner No.2 is the son of the Opp. Party. Equally, it is admitted case of the parties that the petitioner No.1 is a house wife having no independent source of income. Petitioner No.2 is a minor. Right of the minor son to be maintained by the father where mother has no income is absolute. Therefore, the Opp. Party is liable to maintain petitioner No.2.

7. Now the next question for consideration is whether the Opp. Party having sufficient means neglected or refused to maintain petitioner No.2. P.W. 1 has stated that the Opp. Party is doing business. She has further stated that the Opp. Party has some income from other sources including agriculture. P.W. 1 during her cross examination has admitted that in the joint petition in MAT Case No. 427 of 2007 they have averred that she had received one time maintenance for child from the Opp. Party. A mother has no such right under the Law to forfeit the right of minor son to claim maintenance from his/her father. Therefore, divorce obtained by mutual consent would not preclude petitioner No.2 who is a minor son of Opp. Party for claiming maintenance from the Opp. Party till he becomes able to maintain himself. It is the social and moral obligation to provide maintenance to petitioner No.2. When the Opp. Party could afford two lakhs to the wife at the time of mutual divorce, it is inconceivable that he has no sufficient means. Admittedly the Opp. Party doing business with his younger brother. From the medical reports, it appears he develops some mental abnormality. The medical reports which have been exhibited as Ext. B and C do not spell out that he was totally unfit to work. It

was nowhere averred or let into evidence that the business of the Opp. Party was running with loss. Wealth springs from business. May be the Opp. Party has some mental disorder but it cannot be ruled out that he has no Estates. The Opp. Party has a sound physic and well clothed from where it can be gathered that he has sufficient means and as such the Opp. Party is liable to provide maintenance to petitioner No.2. I am saying so suavely because the Opp. Party in his pleadings has averred that he is willing to give good maintenance and education according to the status of his family, provided the petitioner No.1 leaves petitioner No.2 to his custody.

8. Now the next question for consideration is what would be the amount of maintenance:- Petitioner No. 1 claims the monthly educational expenditure of petitioner No.2 at Rs. 20,000/-. However, she could not furnish the documents showing the actual educational expenditure of petitioner No.2. Regard being had the family status of the Opp. Party and present day cost of living, I think it would be just and proper to grant a maintenance of Rs. 4,000/- per month to petitioner No.2 which according to me, would not allow to petitioner No.2 to lead a princely and luxury life not it would put the Opp. Party to any vagrancy. Hence ordered;

#### O R D E R

The petition is allowed contest in favour of the petitioner No.2. The Opp. Party is directed to pay a monthly maintenance of Rs. 4,000/-to the petitioner No.2 from the date of filing of application i.e. from 24.08.2011. The Opp. Party is further directed to clear up the arrear maintenance within two months hereinafter. He is also directed to pay the current 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 No.2 is at liberty to levy execution through due process of law.

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

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 11<sup>th</sup> day of December, 2014.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1                      Suprima Rath  
P.W.2                      Bahlab Charan Sahoo

Witnesses examined for the Opp. Party:

O.P.W. 1                  Sudhansu Sekhar Rath  
O.P.W.2                  Anasuya Rath  
O.P.W.3                  Arabinda Rath

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Ext. A                      Money Receipt  
Ext. A/1                  Signature of the petitioner on Ext. A  
Exts. B & C              Consultation Cards

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