

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

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

Criminal Proceeding No. 79 of 2014

1. Smt. Mamina Swain, aged about 35 years,
W/o-Manoranjan Swain,
D/o- Bhrat Swain

2. Sagarika Swain, aged 4 years,
D/o- Manoranjan Swain
Both are of Plot No. 1007, Laxmisagar,
P.S.-Laxmisagar, Bhubaneswar,
Dist-Khurda.

Being the mother guardian, Petitioner No.2 represented through
its mother guardian petitioner No.1.

... Petitioners

... Versus...

Manoranjan Swain, aged about 38 years,
S/o- Chintamani Swain,
of Anantapur, P.S.-Balianta,
Dist-Khurda.

... Opp. Party

Date of argument : 17.11.2014

Date of order : 22.11.2014

ORDER

1. 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. 20,000/- to both the petitioner No. 1 and No.2, the minor daughter and litigation expenses of Rs. 5,000/- 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 in the residence of the petitioner as per Hindu custom and rites on

31.05.2004 and out of their wedlock two daughters namely Chandrakanti Swain and petitioner No.2 namely Sagarika Swain were born in the month of October, 2005 and in the month of November, 2010 respectively. According to the petitioner at the time of marriage, her father had given cash of Rs. 50,000/-, gold and silver ornaments, double cot, T.V., Refrigerator, Almirah, Dressing Table along with household articles as per demand of the Opp. Party. After few days of their marriage, the Opp. Party started torturing on her everyday with the spell of alcohol and due to newly wedded woman, she tolerated the torture with a hope that one day the Opp. Party will amend his attitude but all were in vain. The Opp. Party regularly threatened her to bring more money from his parents to meet his expenses i.e. for consuming alcohol and when the petitioner No.1 showed her inability, the Opp. Party assaulted her mercilessly for which she sustained injuries many times and in order to get rid of that, she requested her parents to send money to her, finding no other alternatives and in order to save the life of their daughter, her parents sent thousands of rupees to her. It is averred by the petitioner No.1 that during her first pregnancy, the Opp. Party did not provide adequate medical facilities and nutritious food to her and after delivery of the first child namely Chandrika Swain at Capital Hospital, Bhubaneswar in the month of October, 2005, the Opp. Party became more violent as to why she have given birth to a female child and started torturing on her each and everyday and did not provide proper nourishment to the newly born child. She has further averred that when she was carrying for nine months, the Opp. Party suspecting that the next child will be a female child assaulted on her inhumanly with an intention to finish the inborn child inside the womb. After delivery of the second child at Municipality Hospital, Bhubaneswar in the month of November, 2010, the Opp. Party became more violent and started keeping extra marital relationship with many other women and when she opposed for the same, she was brutally tortured and the Opp. Party forced her to bring more dowry or else to leave the house but seeing the future of their children, she became silent. Petitioner No.1 further averred that after crossing all limits,

the Opp. Party kept a concubine namely Leena Pradhan along with him and after keeping her with him, the Opp. Party started torturing on her and her daughters. In the month of September, 2012 when she requested to the Opp. Party to get himself away from that concubine the Opp. Party tried to kill her with an axe for which having no alternative she concealed herself in the house of her neighbour who informed the local police station who rescued her and after that the Opp. Party had given an undertaking in the Pahala Out Post Staffs that he will not assault/torture the petitioner No.1 anymore and will not keep any relation with that concubine and will maintain his family members peacefully but after returning from the Pahala Out Post, the Opp. Party did not amend his nature rather forcibly took all her gold ornaments and after selling the same, spent money lavishly with the said Leena Pradhan and behaved her like a slave. She has further averred that on 01.08.2014 the Opp. Party threatened her to bring additional dowry of Rs. 5,00,000/- and when the petitioner No.1 refused the same, the Opp. Party tortured her both physically and mentally and also threatened her if she will not bring the additional demand Rs. 5,00,000/- he will kill her elder daughter and live with Leena Pradhan. Since then she has been residing with her parents. The well wishers and relatives of the petitioner No.1 tried to settle the disputes but it could not yield any positive result. The Opp. Party since then has not been providing any farthing to them. She is unable to maintain herself and to bear the educational expenses of petitioner No.2. The Opp. Party is a businessman and is earning Rs. 30,000/- per month. Apart from that he is earning Rs. 5,00,000/- per annum from agriculture. Since the Opp. Party having sufficient means will-fully neglected or refused to maintain the petitioners, who is his legally wedded wife and daughter, the petitioners are obliged to file the present petition claiming a monthly maintenance of Rs. 20,000/- for both of them and Rs. 5,000/- towards litigation expenses 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:-
- (1) Whether petitioner No.1 is the legally married wife and petitioner No.2 is the legitimate daughter of the Opp. Party and the petitioner No.1 has sufficient cause to live separately from the Opp. Party with her daughter?
 - (2) Whether the Opp. Party having sufficient means has neglected or refused to maintain the petitioners?
 - (3) 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 P.W. 1.
6. The petitioner No.1 in her affidavit evidence has stated that she married to the Opp. Party on 31.05.2004 and out of their wedlock she is blessed with two daughter namely Chandrika Swain in Capital Hospital in the month of October, 2005 and Sagarika Swain in Municipality Hospital in the month of November, 2010 i.e. petitioner No.2. P.W. 1 further stated that the Opp. Party kept a concubine namely Leena Pradhan along with him. 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 is their legitimate child. She has also stated that the petitioner No.1 was subjected to torture not only by the Opp. Party but also by her in-laws for non fulfillment of their additional demand of dowry of Rs. 5,00,000/- and when the torture became unbearable she was forced to leave her matrimonial home and started residing in her parental home with her legitimate daughter. 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 petitioners living separately apart from the Opp. Party. The petitioner No.1 is a house wife and therefore, she has no independent source of income.
7. 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 a businessman and is earning Rs. 30,000/- per month. Apart from that he is earning Rs. 5,00,000/- per annum from agriculture whereas the petitioner No.1 is unable to maintain herself and her legitimate child. She has also stated that the Opp. Party has not provided a single farthing to them since her leaving from her matrimonial home. This facts and circumstance is clearly suggestive of the facts that the Opp. Party having sufficient means not only willfully neglected but also refused to maintain the petitioners, who have no sufficient means to support themselves. Law prevents vagrancy and destitution of married woman and children. Therefore, the Opp. Party is liable to provide maintenance to the petitioners.

8. The next question for consideration is the quantum of maintenance. P.W. 1 has stated that she is a house wife and she has no independent source of income. P.W. 1 in her evidence has stated that the Opp. Party is a Carpenter. Although this part of her evidence gone unchallenged yet, the petitioner failed to lead any conclusive evidence. Be that as it may, it steer clear that the Opp. Party is a skill labourer. The income of a skilled labourer as per Govt. Notification is Rs. 180/- per day. The average working day in a month is calculated at 25 days. Thus, the income of the Opp. Party per month will come around Rs. 4,500/-. Taking these factors into consideration and present day cost of living, it would be just and proper to allow a monthly maintenance of Rs. 1,000/- to the petitioner No. 1 and Rs. 500/- to petitioner No. 2 and in fact, I did the same. Hence ordered;

ORDER

The petition is allowed ex-parte in favour of the petitioners. The Opp. Party is directed to pay a monthly maintenance of Rs. 1,000/- to the petitioner No. 1 and Rs. 500/- to petitioner No. 2 from the date of filing of application i.e. on 04.08.2014. 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 1st week of the succeeding month. Besides, he is also directed to pay Rs. 1,000/- towards cost of litigation

expenses. Failure to carry out the order by the Opp. Party, the petitioners are at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
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Dictated, corrected by me and is pronounced on this the 22nd day of November, 2014.

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Witnesses examined for the petitioner:

P.W.1 Smt. Mamina Swain

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

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