

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

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

Criminal Proceeding No. 78 of 2014

1 Jyotina Pradhan, aged about 21 years,
W/o- Amit Kumar Nayak,
D/o Pratap Pradhan, At- Mayfair Nagar,
Tarini Basti
P.S- Nayapalli, Dist. Khurda
At present residing at C/o- Pratap
Pradhan,
Unit—III, Kharavel Nagar, Bhubaneswar,
Dist- Khurda.

2. Adyasa Nayak, aged about 9 months
D/o Amit Kumar Nayak
Petitioner No.2 being minor represented
through her mother guardian petitioner
no.1.

... Petitioners.

... Versus...

Amit Kumar Nayak, aged about 25 years,
S/o Ajit Kumar Nayak, presently residing at
Mayfair Nagar, Tarini Basti, P.S- Nayapalli,
Bhubaneswar, Dist- Khurda.

... Opp. Party

Date of Argument : 13.01.2015

Date of Judgment: 30.01.2015

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 claiming monthly maintenance of
Rs. 5,000/- per month for herself and Rs. 2000/- per

month for petitioner no.1 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 in a private Church in the petitioner's father's residence at Kharvel Nagar in the district of Khurda on 2.12.12. On 26.09.13 out of their wedlock petitioner No. 2 was born. According to the petitioner no.1, they led a happy conjugal life for a period of 2 months. It is averred by the petitioner no.1 that after solemnization of marriage the O.P took the petitioner No.1 to his residence at Mayfair Nagar Tarini Basti, Bhubaneswar. Both wife and husband lead a happy conjugal life and also consummated their marital life. After that the mother-in-law of the petitioner no.1 started torturing her demanding more dowry. The mother in-law always behaved the petitioner no.1 in a rough manner. The petitioner no.1 was also assaulted by her mother in-law without any reason, it became unbearable and intolerable on the part of the petitioner no.1. Further the petitioner no.1 mentioned in her petition that she informed the above things to her husband, but he did not take any steps to solve this matter rather he started to rebuke her and also manhandled her. Further the O.P also did not provide the necessary things to the petitioner no.1 and also gave kick and fist blows and also assaulted by means of bamboo sticks. Further she mentioned in her petition that on 10.2.2013 the O.P and her mother beat the petitioner No.1 brutally and mercilessly and threw her out from their residential house at Mayfair Nagar,

Tarini Basti, so the petitioner having no other alternative came to her parents house at Kharvel Nagar, Bhubaneswar.

The petitioner No.1 also mentioned in her petition that during her stay at her father's house neither the O.P nor the in-laws paid a visit to the petitioner no.1. Thereafter the petitioner no.1 informed at Mahila Police regarding suffering on dtd. 25.3.2013 and in presence of the police the matter was solved and the petitioner went to her in-laws house and after two months the O.P assaulted the petitioner no.1. Further she stated that her father is a poor and penniless person having no perennial source of income. All the delivery expenditure and expenditure for caring of child is borne by the parents of the petitioner no.1 and nobody either the O.P or the in-laws came to the petitioner's house to see their child. Now the petitioner is passing through hardship in this untouchable price hike period. The Opp. Party is working as a Driver and is getting Rs. 10,000/- per month. Since the Opp. Party having sufficient means having agricultural land in his native village and will-fully neglected and refused to maintain the petitioner no.1 and 2, who are his legally wedded wife and children, the petitioner No.1 is obliged to file the present petition claiming a monthly maintenance of Rs.5,000/-per month for petitioner no.1 and Rs. 2,000/- for petitioner no.1 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 legal married wife and petitioner No. 2 is legitimate daughter of the Opp. Party and the petitioner has sufficient cause, reason to live separately from the O.P ?

(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 stated that she married to the Opp. Party on 2.12.12 and out of their wedlock petitioners No. 2 was born on 26.9.2013. Her aforesaid statements has not been assailed. 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 his legitimate daughter.

7. She has also stated that after solemnization of marriage the O.P took her to his residence at Mayfair Nagar, where led a happy conjugal life and consummated their marital life for two months and after that her mother in-law started torture physically and mentally for demand of more dowry and also her husband had assaulted her and did not provide the necessary things to her. She has also stated that on 10.2.13 the O.P and his mother had beaten her brutally and mercilessly and thrown out from their residential

house and having no other alternative she came to her parents house at Kharavelanagar, Bhubaneswar. 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 who and his mother who are responsible for the petitioners living separately apart from the O.P. Law prevents vagrancy and destitution of neglected wife and children.

8. The next question for consideration is, whether the Opp. Party has sufficient means and he has willfully neglected or refused to maintain the petitioners. It is stated categorically by the petitioner No.1 that the Opp. Party as is working as a Driver and is getting Rs. 10,000/- per month. The above evidence of the petitioner No.1 remains unchallenged and there is no reason to disbelieve the statement of the petitioner. She has also stated that the Opp. Party has not provided a single farthing to them. 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 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.1,500/- per month to petitioner No. 1 and Rs. 500/- to the 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.1,500/- petitioner No.1 and Rs. 500/- the petitioner No.2 from the date of filing of application i.e. on 21.7.14. 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 petitioners are 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 30th day of January, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Jyotina Pradhan

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

JUDGE, FAMILY COURT,

BHUBANESWAR.