

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

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

Criminal Proceeding No. 112 of 2012

1. Mrs. Jayashree Nayak, aged about 33 years,
W/o-Rashmi Ranjan Das,
D/o- Late Sridhar Nayak,
2. Shreyansh, aged about 3 years,
S/o-Rashmi Ranjan Das and Smt. Jayashree Nayak,
Represented through his mother Smt. Jayashree Nayak
Both are at present residing at
C/o-Smt. Charulata Nayak,
Plot No. 3777/6558, Prachi Vihar,
Palasuni, Near Banker's Colony,
P.O.-Rasulgarh, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Rashmi Ranjan Das, aged about 33 years,
S/o-Pramod Chandra Das,
At present residing at Plot No. 1404,
Basudeb Nagar, Bomikhal, Bhubaneswar,
Dist-Khurda.
Working at Aditya Car Care Pvt. Ltd.
Plot No. 11, Dasbatia,
P.O. / P.S.-Tomando,
Dist-Khurda.
Working at Aditya Car Pvt. Ltd.
Plot No. 11, Dasbatia, P.O./P.S.-Tomando,
Dist-Khurda

... Opp. Party

Date of Argument: 04.04.2015

Date of Order : 20.04.2015

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 No.1 claiming monthly

maintenance of Rs. 7,000/- for herself and petitioner No.2 from the Opp. Party.

2. The facts of the case of the petitioner No.1 are as follows:-

The marriage of the petitioner No.1 with the Opp. Party was solemnized in the temple of Maa Kali at Baramunda in Bhubaneswar on 14.03.2005 and out of their wedlock petitioner No.2 was born on 01.03.2009. According to the petitioner No.1 their marriage was love marriage and at the time of marriage she was working in HDFC Bank and the Opp. Party was unemployed. Though her family members were not agreed for the marriage but due to her force, they agreed for the marriage. At the time of marriage, her parents gave dowry and other presentation along with gold and other household articles. It is the further case of the petitioner No.1 that due to her efforts the Opp. Party got job in Narayani Motors Pvt. Ltd. at Bhubaneswar, she hope that after employment of the Opp. Party they would lead a happy family life but the Opp. Party at the instance of his family members started torturing her both physically and mentally and did not give adequate food, clothing and medicines for which she got miscarriage. He also did not allow her to keep contact with her family members. The Opp. Party used to remain outside for days together on the plea of work, when she wanted to know the reason thereof, she was subjected to maltreatment. She has further averred that the Opp. Party got illicit relationship with one girl namely Swagatika Mohapatra of Samigadia who at present working in Chevrvole Super Sales Automobiles Pvt. Ltd. at Pahala and when she protested the same, the Opp. Party tortured her both physically and mentally even in her advanced stage of pregnancy for the second time. Most of the time the Opp. Party remained outside in the night with his concubine at her house and was spending money after her. On one occasion both of them was obstructed on the road and was severely assaulted and on information police reached there and rescued them and after warning released them but the Opp. Party suspected the she has hand behind it for which the Opp. Party and his concubine were threatening her not to come on their way or else petitioners were forced to death. When the torture became unbearable she was forced to leave her matrimonial home along with her minor child and taken shelter in her parental home. According

to the petitioner No.1 she is depending upon the charity of her mother for their livelihood. She has further stated that since the date of leaving separately in her mother's house the Opp. Party is not maintaining them. According to the petitioner No.1, she has no source of income whereas the Opp. Party is working in Aditya Car Care Pvt. Ltd. at Tamando and is getting salary of Rs. 15,000/- per month. Apart from that he is getting incentive of Rs. 5,000/- per month. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioners, who is his legally wedded wife and legitimate child, the petitioner No.1 is obliged to file the present petition claiming a monthly maintenance of Rs. 7,000/- for self and petitioner No.2 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 is the legally married wife and petitioner No.2 is the legitimate child of the Opp. Party and the petitioner No.1 has sufficient cause to live separately from the Opp. Party?
- (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 petitioner, if point No. 1 and 2 are answered in her favour?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1.

6. The petitioner in her affidavit evidence has stated that she married to the Opp. Party in the temple of Maa Kali at Baramunda on 14.03.2005 and out of their wedlock petitioner No.2 was born on 01.03.2009. Her aforesaid statement has not been challenged. Thus, it can safely be concluded that the petitioner No.1 is the legally wedded wife and petitioner No.2 is the legitimate child of Opp. Party. She has also stated that she was subjected to torture by the Opp. Party due to non fulfillment of additional demand of dowry. She has further stated that the Opp. Party has also kept one concubine namely Swagatika Mohapatra of Samigadia who is at present working in Chevorlet Super Sales Automobiles Pvt. Ltd. at Pahala, Bhubaneswar and living as

husband and wife in his rented house and now she has been residing in her parental home. The Opp. Party and the said concubine also threatened the petitioner No.1 to murder her and her minor child and when the torture became unbearable she was forced to leave the matrimonial home along with her minor child and taken the shelter of her mother. 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 is responsible for petitioner's living separately apart from the Opp. Party. The petitioner is a house wife and therefore she has no independent source of income and as such unable to maintain herself.

7. The next question for consideration is, whether the Opp. Party has sufficient means and he has willfully neglected and refused to maintain the petitioner. It is stated categorically by the petitioner that the Opp. Party is working in Aditya Car Care Pvt. Ltd. at Tamando and is getting salary of Rs. 15,000/- per month. Apart from that he is getting incentive of Rs. 5,000/- per month whereas the petitioner is unable to maintain herself as well as the day to day expenses of her minor child. She has also stated that the Opp. Party has not provided a single farthing to her since the date of 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 herself. Law prevents vagrancy and destitution of married woman and child. Therefore, the Opp. Party is liable to provide maintenance to the petitioner.

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. The Opp. Party the Opp. Party is working in Aditya Car Care Pvt. Ltd. at Tamando and is getting salary of Rs. 15,000/- per month. Apart from that he is getting incentive of Rs. 5,000/- per month. This part of her evidence gone unchallenged and there is no reason to disbelieve the said evidence of the petitioner No.1. Considering the present day of 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. 4,000/- to the

petitioner No.1 and Rs. 2,000/- to the petitioner No.2 be allowed as monthly maintenance. 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. 4,000/-to the petitioner No.1 and Rs. 2,000/- to the petitioner No.2 from the date of filing of application i.e. from 13.08.2012. 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. Failure to carry out the order by the Opp. Party, the petitioner 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 20th day of April, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Mrs. Jayashree Nayak

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

JUDGE, FAMILY COURT,
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