

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

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

Criminal Proceeding No. 126 of 2011

1. Sumitrarani Mohapatra @ Panda, aged about 27 years,
W/o-Pramod Kumar Panda,
AT present-C/o-Digambar Mohapatra,
At-Balichhakasahi, Jatni, P.O./P.S.-Jatni,
Dist-Khurda.
2. Pratiksha Panda, aged about 1 year and 10 months,
D/o- Pramod Kumar Panda,
being the minor represented through her mother guardian
petitioner No.1 and residing on the above address.
... Petitioners

...Versus...

Pramod Kumar Panda aged about 37 years,
S/o-Late Narasingha Panda
of Vill-Baligari, P.O.-Haridaspur, Dist-Jajpur
At present working as Khalasi, Electrical (G),
At-Senior Section Engineer (Elect.) Pump, A.C. & T.L.
East Coast Railway, Khurda Road, P.O./P.S.-Jatni,
Dist-Khurda.

... Opp. Party

Date of Argument: 31.03.2015

Date of Judgment : 16.04.2015

J U D G M E N T

The petitioner No.1 Sumitrarani Mohapatra @ Panda filed a petition u/s. 125 of the Code of Criminal procedure 1973 (in short, Cr.P.C) for self and for petitioner No. 2 Pratiksha Panda, being the mother guardian claiming a monthly maintenance of Rs. 8,000/- for both of them from the Opp. Party.

2. Admitted facts of the parties are that their marriage was solemnized in Laxmi Narayan Temple, Balichhak Sahi, Jatni on 27.04.2008 and the petitioner No.2 was born out of their wedlock in Biswanath Nursing Home at Jatni on 05.07.2009 and both parties are living separately from each other.

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

According to the petitioner No. 1 her father had given cash of Rs. 1,50,000/-, one Hero Honda Motor Cycle, gold ornaments along with household articles at the time of marriage as per demand of the Opp. Party and his family members. After six months of the marriage, the Opp. Party being instigated by his sister-in-law (Bhauja) started torturing her due to additional demand of dowry. In the month of October, 2008, the Opp. Party persuaded her to bring Rs. 1,00,000/- from her father for construction of the house at his native village. When she showed her inability, the Opp. Party and his sister-in-law brutally assaulted her. It is the further case of the petitioner No.1 that in the month of April, 2009, she was taken to her parental home by the Opp. Party for her delivery. On 05.07.2009 she gave birth to petitioner No.2 in Biswanath Nursing Home but the Opp. Party did not pay the medical expenses and also after delivery he also did not take her back. When she asked, the Opp. Party told her unless his demanded would not meet by her parents he will not take her back to her matrimonial house. It is further stated by the petitioner No.1 that the Opp. Party has kept all her gold ornaments. Thereafter several attempts have been made from her side to settle the dispute but all were in vain. On 02.04.2011, there was a meeting held in Budhapada Somanath Temple and in the said meeting the Opp. Party refused to take her back. Now she has been residing in her parental home with the petitioner No.2. According to her she is merely a house wife having no source of income to maintain herself as well as the petitioner No.2 and is depending upon her father who is unable to maintain them. She has further stated that the Opp. Party is a Central Govt. Employee and is serving as Khalasi, Electrical in the office of the Senior Divisional Electrical Engineer (G), East Coast Railway, Khurda Road at Jatni and is getting salary of Rs. 12,000/- per month after all deductions. Besides that he is getting Rs. 18,000/- per annum towards his share from his landed property at his native village. Since the Opp. Party having sufficient means willfully neglected and refused to maintain the petitioners, who have no sufficient means, the present petition is filed claiming monthly maintenance of Rs. 8,000/- for both the

petitioners from the Opp. Party.

3. The Opp. Party entered contest the proceeding by filing written objection denying all the allegations made against him by the petitioner No.1. He has averred that the petition is not maintainable in the eye of law and there is no cause of action to file the petition. He has further averred that at the time of delivery of female child in Biswanath Nursing Home at Jatni on 05.07.2009, he had discharged his responsibilities and had paid a sum of Rs. 20,000/- to the father of the petitioner No.1 for medical treatment. He and his family members also remained present in the hospital and looking after the petitioner No.1 and 2 and after delivery he requested the petitioner No.1 to return to his company but she refused the same. The petitioner No.1 and her family members compelled him to stay in their house as "Ghara Gwani". According to him he is always willing to take her back to his house but the petitioner No.1 does not agree for the same. He has further averred that after marriage, the petitioner No.1 showed an indifferent attitude towards him and his family members and made quarrels on silly matters. The petitioner No.1 always compelled him to reside in her parental home and when he did not agree for the same, her father at the time of delivery of the child took her to his house and since then she has been refusing to return back to his company. Thereafter several attempts have been made from his side to bring her back but all were in vain. One meeting was also held in Budhapada Somnath Temple to settle the dispute, where the petitioner No.1 did not agree to return his company rather, she compelled him to reside in her parental home as Ghara Jwani. He has further stated that he has visited the parental home of the petitioner No.1 but the parents of the petitioner No.1 misbehaved and manhandled him and did not allow him to meet her and his child. It is the further case of the Opp. Party that he is getting Rs. 10,000/- per month towards his salary as because he has taken loan of Rs. 2,00,000/- from Punjab National Bank for treatment of her mother for which a sum of Rs. 3,300/- is being deducted from his salary and he has also taken hand loan from different persons for treatment of his mother with 2% interest for which he has to pay Rs. 3,000/- as interest from his salary

and he is passing his days in a very miserable condition and never lead a luxurious life. According to him he has no landed property at his native village except one house situated at Haridaspur in which his brothers are resided in a joint mess. On the other hand, the petitioner No.1 is living luxurious life in her parental home and she without any rhyme or reason refused to return to her matrimonial home and therefore, the petitioner No.1 is not entitled to claim any maintenance from him.

4. From the aforesaid rival contentions of the parties, the following points are formulated for determination of the case:-

- (1) Whether petitioner No. 1 voluntarily deserted the Opp. Party?
- (2) Whether the Petitioner No. 1 is unable to maintain herself and her child?
- (3) Whether the Opp. Party having sufficient means neglected and refused to maintain the petitioners?
- (4) 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 buttress her case she, herself, has been examined as P.W. 1 and placed reliance on six documents. They are:- Ext. 1 to 3 are the Pay slips of the Opp. Party. Ext. 4 is the R.T.I application with necessary information certified by the Sr. Divisional Electrical Engineer (G) East Coast Railway Khurda Road, Ext. 5 is the Declaration furnished by the Opp. Party obtained under R.T.I. Act and Ext. 6 is the Declaration Form given by the Opp. Party in the year 2011. The Opp. Party in order to negate the claim of the petitioner No.1 he, himself examined as O.P.W. 1 and relied on four documents. They are:- Ext. A is the receipt regarding purchase of Motor Cycle, Ext. A/1 is the Insurance Paper of the Motor Cycle, Ext. B is the loan statement of Punjab National Bank, Ext. C is the loan paper of Co-operative Society Railway and Ext. D is the Birth Certificate of daughter.

6. Point No. 1 and 2.

Whether petitioner No. 1 has voluntarily deserted the Opp. Party and whether the Petitioner No. 1 is unable to maintain herself and her child?

7. The petitioner No. 1 while being examined as P.W. 1 has stated that the Opp. Party and his family members started torturing her when she refused to fulfill their additional demand of dowry of Rs. 1,00,000/-. She has further stated that the Opp. Party some affairs with his sister-in-law (Bhauja). She has further stated that the Opp. Party did not allow her to prepare coffee for him and whenever she protested, she was beaten by the Opp. Party. She has further stated that the Opp. Party threatened her that he will relinquish his properties in favour of Jyotishree Panda showing as his wife. She has further stated that the Opp. Party gives his monthly salary to Soumayashree. It is further stated by her that when she asked the Opp. Party to know who is his nominee in his Railway Provident Fund then the Opp. Party assaulted her brutally and replied that all his Railway benefits will go to his brother, sister-in-law and nephew unless and until she brings Rs. 1,00,000/- from her father. She has also stated in her evidence that Soumayashree assaulted her when she did not attend Priyansu Sahil during Dussereha 2008. She has further stated that the Opp. Party compelled her to visit her outside place like temple or market with his elder brother. She has further stated that she has not given proper medical care and nutritious food when she was pregnant. She has further stated that Prafulla, the elder brother and Soumayashree, the sister-in-law of the Opp. Party used to abuse her mother in filthy languages and sister-in-law snatched away all her gold ornaments and kept in the Godrej. The Opp. Party deprived the petitioner No.1 from getting medical treatment under the Medical Card of the Opp. Party. The Medical Cards were prepared in the name of Soumyashree. The Opp. Party did not visit her during her delivery time. The Opp. Party denied the aforesaid allegations and laid evidence refusing the all allegations. Be that as it may be, from the evidence of the parties, it is very much clear that there was constant nagging between the parties. Their family life was not cordial. A young married lady having conceived a child will never make any allegation against her husband unless there was maltreatment to her. The petitioner No.1 has categorically stated that the Opp. Party left her in her parental home when she was pregnant in the month of April, 2009. The Opp. Party even

did not visit her when she gave birth to petitioner No.2. The petitioner No.1 has further stated that the Opp. Party being a Railway Employee and having a Medical Card could not get the medical assistant in the Railway Hospital as the Opp. Party mentioned one Soumayashree Panda as the beneficiary. The petitioner No.1 when questioned this fact to the Opp. Party, the latter instead of taking the petitioner to the concerned authority to explain that the petitioner No.1 is his wife to whom she nominated in the medical card as Soumayashree assaulted the petitioner No.1 brutally. There was no challenge to the evidence of the petitioner No.1 that the Opp. Party gives salary to his sister-in-law. These facts and circumstances clearly suggestive and indicative of the fact that the Opp. Party maltreated the petitioner No.1 by snatching out all the benefits to which she is entitled as his wife. The entire marital discord between the petitioner No.1 and the Opp. Party is the interference of the sister-in-law of the Opp. Party in their marital life. Therefore, when the petitioner No.1 was deprived of love and affection from her husband, the Opp. Party and there was constant nagging between the two for plea or other, the petitioner No.1 feeling her life in peril in her matrimonial home, she left her matrimonial home and that too, the Opp. Party himself deserted her in her parental home. Therefore, it is not the petitioner No.1 herself responsible for living apart from the Opp. Party. Rather, it is the Opp. Party and his family members who are responsible for the petitioners living separately apart from the Opp. Party. Law prevents vagrancy and destitution of neglected wife and children. The petitioner No.1 is a housewife and she has no independent income and petitioner No.2 is their legitimate minor daughter. Therefore, the petitioners are entitled to get maintenance from the Opp. Party.

Point No.3

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

The Opp. Party at paragraph-28 of cross examination admitted that his monthly net salary is Rs. 15,000/-. He has been paying interim maintenance of Rs. 3,000/- to the petitioners after an order was passed by this Court. He has not paid a single farthing to the petitioners from

the date of their living separately from the Opp. Party till such an order passed by this Court on 08.02.2013. Therefore, it has safely be concluded that the Opp. Party having sufficient means neglected and refused to maintain the petitioners. Therefore, the petitioners are entitled to get maintenance from the Opp. Party.

Point No.4

9. What would be the quantum of maintenance to be allowed to the petitioners, if point No. 1 and 2 are answered in their favour?

Keeping in view of the aforesaid income, status of the parties and cost of living, it would be just and proper to allow Rs. 3,000/- to the petitioner No.1 and Rs. 2,000/- to the petitioner No. 2 and in fact, I did the same. Hence ordered;

ORDER

The petition is allowed on contest in favour of the petitioners. The Opp. Party is directed to pay a monthly maintenance of Rs. 3,000/- to the petitioner No. 1 and Rs. 2,000/- to petitioner No.2 from the date of filing of application i.e. from 06.05.2011. The interim maintenance paid earlier shall be adjusted. The Opp. Party is directed to arrear up maintenance within two months hereinafter. He is also directed to pay the 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.

Judge, Family Court,
Bhubaneswar.

Dictated, corrected by me and is pronounced on this the 16th day of April, 2015.

Judge, Family Court,
Bhubaneswar.

List of witness on behalf of petitioners

Smt. Sumitrarani Mohapatra @ Panda.

List of witness on behalf of Opp. Party

Pramod Kumar Panda

List of exhibits on behalf petitioners

- Ext. 1,2 & 3 Pay slips of the Opp. Party
Ext. 4 R.T.I application with necessary information certified by the Sr. Divisional Electrical Engineer (G) East Coast Railway Khurda Road
Ext. 5 Declaration furnished by the Opp. Party obtained under R.T.I. Act
Ext. 6 Declaration Form given by the Opp. Party in the year 2011

List of exhibits on behalf of O.P.W

- Ext. A Receipt regarding purchase of Motor Cycle
Ext. A/1 Insurance Paper of the Motor Cycle
Ext. B Loan statement of Punjab National Bank
Ext. C Loan paper of Co-operative Society Railway
Ext. D Birth Certificate of daughter

Judge, Family Court,
Bhubaneswar.