

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

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

Criminal Proceeding No. 129 of 2012

1. Asmini Bibi, aged about 21 years,
W/o-Sk Nausat,
D/o- Late Jabar Khan,
2. Masum Khatun, aged 11 months,
D/o- Sk Nausat,
represented through its mother guardian
petitioner No.1.
Both are resident of Ramachandrapur,
P.O.-Ambapua, P.S.-Basta, Dist-Balasore,
At present residing at-Shantipalli Basti,
Saheed Nagar, P.S.-Saheed Nagar,
Dist-Khurda.

... Petitioners

... Versus...

Sk Nausat, aged about 25 years,
S/o- Sk Kasim,
Resident of Ramachandrapur,
P.O.-Ambapua, P.S.-Basta,
Dist-Balasore.

... Opp. Party

Date of argument : 16.10.2014

Date of order : 20.10.2014

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. 10,000/- to petitioner No. 1 and Rs. 3,000/- to petitioner No.2 the minor daughter 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 according to Muslim custom and rites at Cuttack before M.A. Waheed, Mahamadian Registrar and sadar Quazi on 28.10.2010 and out of their wedlock petitioner No.2 namely Mausam Khatun was born. Their marriage was a love marriage. According to the petitioner, at the time of marriage, her father had given gold and silver ornaments and other household articles as per their capacity but the Opp. Party and his family members were not satisfied with those articles. The marriage was a serendipity. The der-Tag started in their life when the Opp. Party and his family members after birth of petitioner No.2 demanded additional dowry of Hero Honda Motor cycle and a mosaic machine and when the petitioner No.1 refused the same, the Opp. Party and his family members tortured her both physically and mentally for which a meeting was conducted by the local gentlemen of their basti between both the parties but in vain. The Opp. Party again started torturing and assaulting her with the spell of alcohol. When her mother and other persons of the Basti inquired about the matter, the Opp. Party took her to his native place i.e. Ramachandrapur under Basta Police Station from Shantipalli Basti, Bhubaneswar where being instigated by his family members, he tortured her both physically and mentally and also did not provide meal once in a day. On 13.06.2012 the Opp. Party and his family members called her mother and in presence of her mother the Opp. Party and his family members abused and assaulted her and driven out her from his house and since then she has been residing with her mother at Shantipalli Basti, Bhubaneswar. When the torture became unbearable she lodged a written report on 01.08.2012 against the Opp. Party and his family members vide Mahila P.S. case No. 334 dated 01.08.2012 U/s. 498(A), 294, 323,506, 34 IPC and 4 D.P. Act and in the case the Opp. Party was arrested by the Police. 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 and she is unable to maintain herself and unable to bear the expenses of petitioner No.2. According to the petitioner

No.1, the Opp. Party is a contractor and also a Mason from which he is earning Rs. 40,000/- per month. Besides, he has also 5 acres of agricultural land at his native village out of which he is getting Rs. 50,000/- per annum. Since the Opp. Party having sufficient means will-fully neglected and 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. 10,000/- and Rs. 3,000/- respectively 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?

(2) Whether the Opp. Party having sufficient means has neglected or refused to maintain the petitioners and the petitioners have no independent source of income?

(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 and relied on three documents i.e. Ext. A is the Nikha Nama in Form A Book, Ext. 1/1 is her signature on the Ext. 1, Ext. 1/2 is the signature of the Opp. Party on Ext. 1, Ext. 2 is the Bibaha Bandhanra Swikara Patra and Ext. 3 is the Discharge certificate of the petitioner No.1 from labour room.

6. The petitioner No.1 in her affidavit evidence has stated that she married to the Opp. Party on 28.10.2010 and out of their wedlock she is blessed with a female child i.e. petitioner No.2. 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 a Hero Honda Motor Cycle and a mosaic machine and on 13.06.2012 the Opp. Party had driven her out from her matrimonial home after abusing and assaulting her in presence of her mother and the petitioner No.1 has been 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 contractor and also a Mason from which he is earning Rs. 40,000/- per month and besides he has also 5 acres of agricultural land at his native village out of which he is getting Rs. 50,000/- per annum 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 the date of desertion 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. The Opp. Party is a Contractor and a mason. Although this part of her evidence gone unchallenged yet, the petitioner failed to lead any conclusive evidence. Considering the present day of cost of living and other

attendant circumstances, in as much as, the income of the Opp. Party, I feel that in the ends of justice shall be met by allowing, a sum of Rs. 3,000/- to the petitioner No. 1 and Rs. 2,000/- to petitioner No. 2 and in fact, I did the same. Hence ordered;

O R D E R

The petition is allowed ex-parte 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. on 15.09.2012. 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 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 20th day of October, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Asmini Bibi

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Ext. 1 Nikha Nama in Form A

Ext. 1/1 Signature of the petitioner on Ext. 1

Ext. 1/2 Signature of the Opp. Party on Ext.2

Ext. 2 Bibaha Bandhanara Swikar Patra

Ext. 3 Discharge certificate of the petitioner from Labour room.

List of documents by Opp. Party:

Nil

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