

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

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

Criminal Proceeding No. 142 of 2013

Smt. Basanti Panda, aged about 38 years,
W/o- Bijaya Kumar Panda,
Resident of Vill.-Sandagarada,
P.O.-Nuasankha, P.S.-Balanga, Dist-Puri,
At present residing at C/o-Babuli Sitha,
Plot No. 188, City Colony, Bapuji Nagar,
Near Sishu Bhawan Chhak, Bhubaneswar

... Petitioner

... Versus...

Bijaya Kumar Panda, aged about 43 years,
S/o-Kulamani Panda,
Resident of Vill-Sandagarada,
P.O.-Nuasankha, P.S.-Balanga,
Dist-Puri.

... Opp. Party

Date of argument : 06.09.2014

Date of order : 22.09.2014

ORDER

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/- for herself and for her children and litigation expenses of Rs. 7,000/- from the Opp. Party.

2. The facts of the case are as follows:-

The marriage of the petitioner with Opp. Party was solemnized in Bhubaneswar as per Hindu custom and rites on 02.03.1994. It is averred that at the time of marriage, the father of the petitioner had given cash of Rs. 15,000/-, one colour T.V., gold and silver ornaments along with other household articles valued at Rs. 50,000/- to the Opp. Party as per demand. Petitioner has averred that after 15 days of marriage, the Opp. Party and his

family members tortured her for additional demand of dowry of Rs. 50,000/-. She has averred that in spite of several attempts made by her to satisfy the Opp. Party and his family members, all were in. Rather the torture towards her day by day gradually increased. Even the Opp. Party and his family members did not come to see her at the time of first delivery when she was at her father's quarter at Hirakud and all the expenditure were borne by her father and so also at the time of second delivery while she was staying at her brother's house at Brajarajnagar. After delivery of the second child her brother sent to her to her matrimonial home but there the Opp. Party and his family members again started torturing her both physically and mentally due to additional demand of Rs. 50,000/- when she refused for the same. The Opp. Party and his family members also assaulted her by means of thenga for which she sustained bleeding injuries. They also did not provide the basic need and medicines to her and her two female children and most of the times they were giving food once at 4 P.M and no food at night. When the torture became unbearable she was forced to leave her matrimonial home and stayed in a rented house at Bhubaneswar in order to save her life as well as the life of the two female children. She has further averred that after several attempts made by her well wishers and her elder brother the Opp. Party had taken to her and her children with him but again the Opp. Party started torturing her on the same ground. Once the Opp. Party being intoxicated came at night and attempted to murder her and children for which she came to Bhubaneswar and stayed in a rented house and thereafter she shifted to Telenga Pentha and stayed therein in the rented house of Nabin Pradhan and after that in the month of October, 2012 she again shifted to Bhubaneswar and stayed in a rented house and maintaining herself by doing labourer work. She has further averred that the Opp. Party is doing business and earns Rs. 20,000/- per month. Apart from that he is earning Rs. 60,000/- per annum from agricultural source. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioners, who is his legally wedded wife and the legitimate children, the petitioner is obliged to file the present petition claiming a monthly maintenance of Rs. 10,000/- for self and for children and litigation expenses of Rs. 7,000/- 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 the petitioner is the legally wedded wife of the Opp. Party?
 - (2) Whether the petitioner has sufficient cause to live separately from the Opp. Party with her children and the petitioner has no sufficient means to support themselves?
 - (3) Whether the Opp. Party having sufficient means has neglected to refused or maintain the petitioner and the children?
 - (4) What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 and 2 are answered in their 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 stated that she married to the Opp. Party on 02.03.1994 and out of their wedlock two female child were born. Her aforesaid statement has not been challenged. Thus, it can safely be concluded that the petitioner is the legally wedded wife of the Opp. Party and their marriage was solemnized on 02.03.2007 and two female children were born out of their wedlock.
7. She has also stated that she was subjected to torture not only by the Opp. Party but also by her in-laws due to non fulfillment of additional dowry of Rs. 50,000/- and the Opp. Party without rhyme or reason neglected her to maintain. Since the torture and cruelty became unbearable she left her matrimonial house and stayed in a rented house at Bhubaneswar and then shifted to Telenga Pentha and thereafter again shifted to Bhubaneswar. Therefore, it can safely be said that the petitioner has not left the company of the Opp. Party voluntarily. It is the Opp. Party and his family members who are responsible for petitioner's living separately apart from the Opp. Party.
8. The next question for consideration is, whether the Opp. Party has sufficient means and he has willfully neglected and refused to maintain the petitioner and children. It is stated categorically by the petitioner that the Opp. Party is doing business and is getting Rs. 20,000/- per month. Apart from that he is earning Rs. 60,000/- per annum from agricultural source

whereas she maintains herself and her children by doing labourer work. She has also stated that the Opp. Party has not provided a single farthing to the petitioner since the date of leaving her. 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. Therefore, the Opp. Party is liable to provide maintenance to the petitioner and the children.

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. 6,000/- per month to petitioner 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;

ORDER

The petition is allowed ex-parte in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 6,000/- to the petitioner from the date of filing of application i.e. on 13.08.2013. 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 that the Opp. Party is directed to pay Rs. 3,000/- to the petitioner towards litigation expenses. 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 22nd day of September, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Basanti Panda

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.