

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

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

Criminal Proceeding No. 148 of 2013

1. Smt. Mamata Panda, aged about 35 years,  
W/o-Debasis Dash,  
D/o-Late Kalandi Panda,
2. Akanksha Dash, aged about 4 years,  
D/o-Sri Debasis Dash,  
C/o-Kalandi Charan Panda,  
At Plot No. N-4/212, I.R.C. Village,  
P.O./P.S.-Nayapalli, Bhubaneswar,  
Dist-Khurda.  
(Being the mother guardian the petitioner No.1  
is representing the petitioner No.2)

... Petitioners

... Versus...

Debasis Dash, aged about 36 years,  
S/o-Gopabandhu Dash,  
At-M.P.-1/25, Khandagiri, Housing Board Colony,  
P.O.-Khandagiri-30, Dist-Khurda,  
At present-Badriprasad Apartment, C/102 'C' Block,  
P.S.-Baragarh Town, P.S.-Baragarh.

... Opp. Party

Date of Argument: 31.03.2015

Date of Order : 13.04.2015

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 No.1 claiming monthly maintenance of Rs. 10,000/- for both of them and litigation expenses of Rs. 7,000/- 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 as per Hindu rites and customs on 10.05.2005 and out of their wedlock one female child was born on 18.06.2006. According to the petitioner No.1 her father had given Rs. 1,00,000/- in shape of cheque, gold and silver ornaments along with household articles as per demand of the Opp. Party. It is the further case of the petitioner No.1 that after birth of the female child, the Opp. Party and his family members started torturing her both physically and mentally due to additional demand of dowry. During her stay there they did not provide food and clothes to her. On 31.03.2013 the Opp. Party and his family members had driven her out from their house along with her child. Thereafter, she has lodged an FIR in Mahila Police Station, Bhubaneswar against the Opp. Party and his family members on 11.05.2013 and there was settlement between them in Mahila Police Station and as per the settlement, the Opp. Party agreed to take her to his working place but some days after, the Opp. Party started torturing her both physically and mentally. When it became unbearable, she has filed another FIR against the Opp. Party in Baragarh P.S. vide P.S. Case No. 222(10) dated 05.07.2013 U/s. 498(A)/342 with 4 D.P. Act. Since 05.07.2013 she and her daughter have been residing in her parental home at Nayapalli Bhubaneswar. Thereafter several attempts have been made to settle the dispute but all were vain. According to the petitioner No.1, she is merely a house wife, unable to maintain herself and petitioner No.2 as her father is unable to maintain them. The Opp. Party is working as a Junior Manager (Com) Capex in the office of Executive Engineer (Elec.) WESCO at Baragarh and is getting salary of Rs. 32,000/- per month. Apart from that he is getting Rs. 10,000/- per month as house rents from his four numbers of pucca building at Bhubaneswar. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioners, who are his legally wedded wife and daughter, the petitioner No.1 is obliged to file the present petition claiming a monthly maintenance of Rs.10,000/- for both of them and Rs. 7,000/- towards litigation expenses 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 daughter of the Opp. Party and the petitioner No.1 has sufficient reasons 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 petitioners, 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 No.1 in her affidavit evidence stated that she married to the Opp. Party on 10.05.2005 and out of their wedlock one daughter namely Akanksha was born to them on 18.06.2006. Her aforesaid statement has not been challenged. Thus, it can safely be concluded that the petitioner No.1 is the legally wedded wife of the Opp. Party and the daughter namely Akanksha is their legitimate daughter.
7. She has also stated that she 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 and 05.07.2013 the Opp. Party and his family members drove out them from the house and since then she 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 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.

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 is working as a Junior Manager(Com) Capex in the office of Executive Engineer (Elec.) WESCO at Baragarh and is getting salary of Rs. 32,000/- per month. Apart from that he is getting Rs. 10,000/- per month as house rents from his four numbers of pucca building at Bhubaneswar. The above evidence of the petitioner No.1 remains unchallenged and there is no reason to disbelieve the statement of the petitioner No.1. She has also stated that the Opp. Party's has not provided a single farthing to them since 05.07.2013 when the Opp. Party and his family members had driven her out from their house. 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 maintain 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. 4,000/- per month to petitioner No.1 and Rs. 2,000/- to the petitioner No.2 would be just and proper, which according to me, would not allow the petitioners 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 petitioners. The Opp. Party is directed to pay a monthly maintenance of Rs. 4,000/-to the petitioner No.1, Rs. 2,000/- to the petitioner No.2 from the date of filing of application i.e. on 04.09.2013. 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 1<sup>st</sup> week of the succeeding month. He has further directed to pay litigation expenses of Rs. 5,000/- to the petitioners. Failure to carry out the order by the Opp. Party, the petitioner No.1 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 13<sup>th</sup> day of April, 2015.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Mamata 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.