

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

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

Criminal Proceeding No. 149 of 2014

1. Smt. Manorama Nayak, aged about 25 years,
W/o- Prafulla Nayak,
D/o-Purna Chandra Nayak
2. Ayush Jeet Nayak, aged about 3 years,
S/o-Prafulla Nayak,
Both are of Vill.-Dhanahara,
P.O.-Majjihara, P.S.-Balipatna,
Dist-Khurda.
At present village-Narda, P.O.-Turintira,
P.S.-Balipatna, Dist-Khurda.

... Petitioners

... Versus...

Sri Prafulla Nayak, aged about 35 years,
S/o-Manu Nayak,
of Vill.-Dhanahara, P.O.-Majjihara,
P.S.-Balipatna, Dist-Khurda.

... Opp. Party

Date of Argument: 25.06.2015

Date of Judgment : 26.06.2015

J U D G M E N T

1. The petitioner No. 1 has filed a petition U/s. 125 of the Code of Criminal Procedure (in short, Cr.P.C.) claiming monthly maintenance of Rs. 8,000/- for herself and Rs. 5,000/- for petitioner No. 2 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 as per Hindu rites and customs on 23.06.2011 and out of their wedlock a male child (petitioner No.2) was born. It is the case of the petitioner No.1 that at the time of marriage, her father had given Rs. 1,00,000/, gold ornaments of 10 bharies along with other household articles. According to the petitioner No.1 after marriage they led a happy

conjugal life for a period of three to four months. Thereafter, the Opp. Party and his family members started torturing her both physically and mentally due to non fulfillment of additional demand of dowry and was not provided with proper food. They have also told her to bring her monthly expenditure from her father otherwise she would suffer like anything and when the torture became unbearable, she was forced to leave her matrimonial home for her parental home in the month of February, 2012. Thereafter several attempts have been made from her side to settle the dispute but all were in vain. It is further stated by the petitioner No.1 after birth of the petitioner No.2 neither the Opp. Party nor his family members come to see the newly born baby. On 27.04.2014 there was a meeting between the two families and well wishers of both the family wherein the Opp. Party agreed to take them back to his house with an assurance not to torture her. Thereafter on the next day she came to her in-laws house along with petitioner No.2. After fifteen days of her stay in her matrimonial home, the Opp. Party and his family members made additional demand of money and when she showed her inability to fulfill the same, she was subjected to torture both physically and mentally. Even she was driven out along with the petitioner No.2 from their house. Finding no other alternative, she has taken shelter of her parental home and since then she has been residing in her parental home. On 21.05.2014 she has lodged an FIR before Balipatna Police Station against the Opp. Party and his family members. According to the petitioner No.1 she is merely a house wife and is depending upon the mercy of her parents for her livelihood. She has further stated that since the date of leaving separately in her parental home the Opp. Party has not been maintaining them. According to the petitioner No.1, she has no source of income whereas the Opp. Party is a businessman dealing in centric materials and diary firm out of which he is getting Rs. 25,000/- per month besides, he is getting Rs. 1,00,000/- per annum from agriculture. Since the Opp. Party having sufficient means willfully neglected and refused to maintain the petitioners, who is his legally wedded wife and son, the petitioner No.1 is obliged to file the present

petition claiming a monthly maintenance of Rs. 8,000/- for self and Rs. 5,000/- for 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 No.1 is the legally married wife and the 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 petitioner?

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 No.1 in order to prove her case she, herself, has been examined P.W. 1.

6. The petitioner No.1 in her affidavit evidence has stated that she married to the Opp. Party as per Hindu rites and customs on 23.06.2011 and out of their wedlock a male child (petitioner No.2) was born. 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 son of the Opp. Party. She has also stated that she was subjected to torture both physically and mentally by the Opp. Party and when the torture became unbearable she was forced to leave her matrimonial home in the month of February, 2012. On 27.04.2014 there was a meeting between the two families and well wishers of both the family wherein the Opp. Party agreed to take them back to his house with an assurance not to torture her. Thereafter on the next day she came to her in-laws house along with petitioner No.2. After fifteen days of her stay in her matrimonial home, the Opp. Party and his family members made additional demand of money and when she showed her inability to fulfill the same, she was subjected to torture both physically and mentally. Even she was driven out along with the petitioner No.2 from their house. Finding no other alternative, she has taken shelter of her parental home and since

then she has been residing in her parental home. 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 No.1's living separately apart from the Opp. Party. The petitioner No.1 is a house wife and therefore, she has no independent source of income and as such, unable to maintain herself as well as her minor son (petitioner No.2).

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 No.1 that the Opp. Party is a businessman dealing in centric materials and diary firm out of which he is getting Rs. 25,000/- per month besides, he is getting Rs. 1,00,000/- per annum from agriculture. 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 themselves. Law prevents vagrancy and destitution of married wife and son. Therefore, the Opp. Party is liable to provide maintenance to the petitioners.

8. The next question for consideration is what would be 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 businessman by supplying centric materials and diary firm out of which he is getting Rs. 25,000/- per month besides, he is getting Rs. 1,00,000/- per annum from agriculture. This part of her evidence gone unchallenged and therefore, 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. 3,500/- to the petitioner No.1 and Rs. 1,500/- to the petitioner No.2 be allowed as monthly maintenance. 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. 3,500/- to the petitioner No.1 and Rs. 1,500/- to the petitioner No.2 from the date of filing of application i.e. from 10.11.2014. 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 litigation expenses of Rs. 5,000/- to the petitioners. Failure to carry out the order by the Opp. Party, the petitioners are at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 26th day of June, 2015.

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Monorama Nayak

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

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