

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

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

Criminal Proceeding No. 155 of 2011

1. Smt. Nirmala Sahoo @ Pradhan, aged about 22 years,
W/o-Hadubandhu Sahoo,
D/o-Prahallad Pradhan,
At-Chandrasekharapur,
Saliashree Vihar, Qrs. No. LC-137/6,
Bhubaneswar, Dist-Khurda
2. Sri Om Kumar Sahoo, aged about two and half years,
Son of Hadubandhu Sahoo(minor)
represented through her mother guardian petitioner No.1-
Smt. Nirmala Sahoo @ Pradhan.

... Petitioners

...Versus...

Sri Hadubandhu Sahoo, aged about 30 years,
S/o-Abhiram Sahoo,
At-Muktapur, P.O./P.S.-Khurda,
Dist-Khurda.

... Opp. Party

Date of Argument : 17.10.2014

Date of Judgment: 28.10.2014

J U D G M E N T

1. This order arises out of a petition u/s. 125 of the Code of Criminal procedure 1973 (in short, Cr.P.C) filed by the petitioner No.1 Smt. Nirmala Sahoo @ Pradhan for self and for the petitioner No.2, Sri Om Kumar Sahoo, being the mother guardian claiming monthly maintenance of Rs. 3,000/- from the Opp. Party.

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

The petitioner No. 1 is the legally married wife of Opp. Party. Their marriage was solemnized at 05.05.2009 and out of their wedlock one male

child i.e. petitioner No.2 was born on 11.10.2010. According to the petitioner No.1, at the time of marriage her father had given Rs. 28,000/-, gold and silver ornaments along with household articles to the Opp. Party as per their demand but they were not satisfied with those articles. After the marriage, they lived together as husband and wife in the house of the Opp. Party along with other family members. The family members of the Opp. Party suppressed the true sources of income of the Opp. Party and his family members. In fact the Opp. Party is doing ferry business of bangles and stationary goods and visited village to village. The parents of the Opp. Party criticized over the household articles, dress materials and about the Bhara etc on the different occasion coming from her house and they also insulted her parents. She has further stated that during her one and half years of stay in her matrimonial home, she was tortured both physically and mentally by the Opp. Party and his family members without any rhyme or reason and when it became unbearable she has consumed poison for which she was shifted to Hospital with the help of neighbours and she saved her life by spending huge amount by her father. Thereafter there was a settlement between them and she returned to her matrimonial home and after few days the Opp. Party and his family members started torturing on her both physically and mentally and the Opp. Party assaulted her with lathi, kick, slap and dragged the hair of the petitioner in presence of his parents but they did not come to save or protest it rather scolded her in filthy language that her parents cheated them for which they lost better proposal and more dowry. Thereafter, the Opp. Party and his family members demanded additional dowry of Rs. 20,000/- for the business of the Opp. Party and when she showed her inability, the Opp. Party and his parents assaulted her and the father of the Opp. Party directed the Opp. Party to bring a Sabal (Iron Bar) to press her neck and threw her at jungle. Out of fear she informed the matter to her father for her immediate rescue and after that she came to her parental home with help of her father and neighbours of the Opp. Party. She has further stated that there was a

settlement between them at Mahila Police Station on 30.03.2010 and after that both of them were staying in a rented house for few days and thereafter the father of the Opp. Party came there and scolded her in filthy languages for which she has requested her father to take her away from the rented house for delivery as it was not safety for delivery. She gave birth of a male child petitioner No.2 on 11.10.2010 at her parental home and after fifteen days the Opp. Party came to her parental home and took her to her matrimonial home for celebration of 21st days of petitioner No.2 on 26.10.2010. On the day of 21st day ceremony, the Opp. Party and his parents rebuked her parents and threw the gift and sweets on the road and insulted before public and threatened them not to come to his house and when the petitioner is questioned it, the Opp. Party and his family members tortured her both physically and mentally and confined her in a room without supplying food and water. On 01.12.2010, the Opp. Party had driven her out from his house along with petitioner No.2 and since then she has been residing with her parents. Several attempts have been made to settle the matter by her parents but all were in vain. The petitioner No. 1 has no sufficient means to maintain herself and the minor son -petitioner No.2. The Opp. Party is a business man earning more than Rs. 8,000/- out of business. 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. 3,000/- for them from the Opp. Party.

3. The Opp. Party entered contest the proceeding by filing written objection refuting the claim of the petitioners. He has admitted that the petitioner No.1 is his legally married wife and petitioner No. 2 as his son. The Opp. Party denied regarding allegation of taking over dowry from the parents of the petitioner No. 1 as alleged. He has further averred that petitioner No. 2 is staying with petitioner No. 1 since 01.12.2010. He has further averred that the petitioner No.1 always insisted him to stay in her father's house leaving his old and ailing parents in village alone and when

he did not agree to it, the petitioner No.1 voluntarily left his society and stayed in her parental home. He has further averred that the petitioner No. 1 has voluntarily left him and despite several attempts have been made from his side for their reunion, the same failed. He has denied his monthly income of Rs. 8,000/- rather he has stated that the petitioner No. 1 is earning Rs. 10,000/- per month from tailoring and from other cottage business and as the petitioner No.1 left his society voluntarily she is not entitled to get any maintenance as claimed by the petitioners.

4. From the aforesaid rival contentions of the parties it is no more in dispute that the petitioner No.1 is the legally married wife of the Opp. Party and petitioner No.2 was born through them. However, the following points are formulated for determination of the case:-

- (1) Whether petitioner No. 1 has sufficient cause to live separately from the Opp. Party with her minor son?
- (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 No. 1 in order to buttress her case she, herself, has been examined as P.W. 1. The Opp. Party in order to negate the claim of the petitioners he, himself, examined as O.P.W. 1 and one Babaji Charan Sahoo as O.P.W.-2.

6. P.W. 1 has stated that after her marriage with the Opp. Party on 05.09.2009 and out of their wedlock petitioner No.2 was born on 11.10.2010, and thereafter the Opp. Party started torturing her by assaulting due to non-fulfillment of additional demand of dowry and lastly the Opp. Party left her at her parental home and after her return she filed an F.I.R. in Mahila Police Station, Bhubaneswar on 30.03.2010 but the said matter was compromise between them on writing and few days thereafter the father of the Opp. Party came to their rented house and created disturbance and abused her in filthy languages. On 26.10.2010 when her

father reached in her matrimonial home with Bhara sweets and dress, all of a sudden, the Opp. Party and his parents threw all the articles on the road and insulted them in public with a threatening not to come their house during their life time. When she opposed, her husband after assaulting her confined her in a room by the help of his parents without supplying food and water and on 01.12.2010 the Opp. Party drove her out from his house. The Opp. Party while being examined as O.P.W. 1 has admitted that the petitioner No. 1 has filed a case against him. The Opp. Party has not seriously disputed about his leaving the petitioner No. 1 at her parental home. A Hindu wife will never make allegation against a husband unless there is some occasion and a married woman never desires to leave her matrimonial home unless she is subjected to torture. Therefore, it is established that there was constant nagging between the petitioner No. 1 and the Opp. Party, for which the petitioner No.1 was compelled to withdraw her company from the Opp. Party. What I mean to convey is that there has existed cruelty and therefore, the petitioner No. 1 has sufficient cause to live apart from the Opp. Party.

7. It has been admitted during course of argument that the petitioner No. 1 is a housewife and has no independent source of income. The Opp. Party has admitted that he is dealing with whole-selling of stationary articles. Therefore it is clearly established that the Opp. Party is a man of means. He has also admitted that the petitioner No. 1 has been living in her parental home and since then he has not been providing any maintenance to petitioner No. 1. The Opp. Party also failed to prove any income of the petitioner No.1. Law prevents vagrancy and destitution of neglected woman and child. Therefore, the petitioner No. 1 is entitled to claim maintenance from the Opp. Party since then.

8. Now the next question for consideration is about the quantum of maintenance. Well settled is the rule of law that, wife is entitled to maintain a standard of living, which is neither luxurious nor penurious and also to lead a descent life yet, par with the dignity and status of her husband.

Quantum of maintenance depends upon the status of husband. Keeping in view of the business activities of the Opp. Party, it would be just and proper to direct the Opp. Party to pay Rs. 1,500/- to each of the petitioner towards their monthly maintenance and that is also the claim of the petitioner No. 1. Hence the order;

O R D E R

The petition is allowed on contest in favour of the petitioners. The Opp. Party is directed to pay a monthly maintenance of Rs. 1,500/- to each of the petitioner from the date of filing of application i.e. from 16.07.2011. The Opp. Party is 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 cost.

Judge, Family Court,
Bhubaneswar.

Dictated, corrected by me and is pronounced on this the 28th day of October, 2014.

Judge, Family Court,
Bhubaneswar.

List of witness on behalf of petitioners

P.W. 1 Nirmala Sahoo @ Pradhan

List of witness on behalf of Opp. Party

O.P.W. 1 Hadubandhu Sahoo

O.P.W.2 Babaji Charan Sahoo

List of exhibits on behalf petitioners

Nil

List of exhibits on behalf of O.P.W

Nil

Judge, Family Court,
Bhubaneswar.