

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

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

Criminal Proceeding No. 157 of 2012

1. Swगतिका Jena, aged about 24 years,
W/o-Prakash Jena,
 2. Tusarkanta Jena,
 3. Gayatree Jena,
- Petitioner No. 2 and 3 are represented through their
mother guardian Swगतिका Jena
Vill.-Alijanga, P.O.-Tendakunda, P.S.-Patkura,
Dist-Khurda
At present:- Dumuduma, Phase-III,
Plot No. 129, P.O-Dumuduma,
P.S.-Khandagiri, Dist-Khurda.

... Petitioners

... Versus...

Prakash Jena, aged about 30 years,
S/o- Surendra Jena,
At-Alijanga, P.O.-Gendakunda,
P.S.-Patkura, Dist-Kendraprada

... Opp. Party

Date of argument : 16.10.2014

Date of order : 21.10.2014

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 (in short, Cr.P.C.) filed by the petitioner claiming monthly maintenance of Rs. 8,000/- to petitioner No. 1, 2 and 3 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 Hindu customs and rites on 09.05.2006 and out of their wedlock petitioner No.2 namely Tusarkanta Jena and petitioner No.3 namely Gayatree Jena were born. The marriage was a serendipity. The der-Tag started in their life when the Opp. Party and his family members tortured her both physically and mentally and also damaged all the marriage photographs and invitation card by setting fire to the marriage documents except video C.D which she has retained with her and when the petitioner No.3 was in her womb the Opp. Party without any reasonable cause voluntarily deserted her and since then she has been residing with her old ailing parents. The Opp. Party since the date of voluntarily deserting them has not been providing any farthing to them and she is unable to maintain herself and the educational expenses of petitioner No.2 and 3. According to petitioner No.1 the Opp. Party is working in private company and is getting salary of Rs. 12,000/- to Rs. 15,000/-. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioners, who is his legally wedded wife, son and daughter, the petitioners are obliged to file the present petition claiming a monthly maintenance of Rs. 8000/- for them from the Opp. Party.

3. The Opp. Party entered contest the petition admitting his marriage with the petitioner. The Opp. Party has denied the allegations made by the petitioner No.1 against him. He has admitted that the petitioner No.1 is his legally married wife and petitioner No. 2 and 3 are their children. He has further stated that he is not capable enough to pay the maintenance as claimed by the petitioners as he is unemployed and unable to maintain himself. He has further averred that the petitioner No.1 is now working in a Beauty parlour at Bhubaneswar and earning some money. He has further averred that the Petitioner No.1 without any rhyme or reason left the matrimonial home after deserting him for which she is not entitled for any maintenance.

4. The following points are formulated to resolve the controversy:-

(i) Whether the petitioner No.1 has sufficient cause to live separately

from the Opp. Party and the petitioner No.1 has no sufficient means to support herself?

(ii) Whether the Opp. Party having sufficient means willfully refused or neglected to maintain the petitioner?

(iii) What would be the quantum of maintenance to be allowed to the petitioners, if point No. 1 and 2 are answered in their favour for their maintenance per month?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1. The Opp. Party in order to negate the claim of the petitioner, he, himself, has been examined as O.P.W. 1.

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 one son and one daughter i.e. petitioner No.2 and 3. She has further stated that at the time of marriage, her father had given cash of Rs. 1,50,000/- and gold ornaments along with other household articles to the Opp. Party as per their demand. She has further stated that after some days of marriage, the Opp. Party and his family members tortured her both physically and mentally due to additional demand of dowry. It is averred by the P.W. 1 that the Opp. Party has also damaged all the marriage photographs and invitation card by setting fire and when her daughter was in her womb, the Opp. Party voluntarily deserted her with her son without any reasonable cause and since then she has been living in her parental home and she has no income and she is unable to maintain her children who are now school going. She has further stated that her parents had visited six to seven times for amicable settlement but the Opp. Party and his family members refused to accept her.

7. O.P.W. 1 in his evidence denied the dowry articles given to him at the time of marriage and any torture to the petitioner No.1 due to additional demand of dowry either by him or his family members. However he has admitted that he was working in one of branches of the Reliance Fresh at Bhubaneswar. He has admitted that he has stopped paying maintenance to the petitioners from the date of filing of this present case. He also did not

provide any educational expenditure to his son and daughter and also do not know the educational qualification of his son and daughter. He has further stated that being unemployed, he is unable to maintain the petitioners.

8. From the aforesaid evidence of the parties, it is clear that the petitioner No.1 is a mother of two children and she has no independent income and therefore, the petitioner No.1 being a mother of two children and having no separate income as well as a Hindu lady would not have deserted her matrimonial home had there not been torture on her from the side of the Opp. Party and hence, it is due to the cruelty of the Opp. Party, the petitioner has left her matrimonial home and therefore, her living separately from the Opp. Party is justified.

9. The next question for consideration is, whether the Opp. Party has sufficient means and he has willfully neglected and refused to maintain the petitioners. The Opp. Party though stated that the petitioner No.1 is working in a beauty parlour, yet he failed to prove the same through documentary evidence. Admittedly, the petitioner wife is a house wife and therefore, she has no independent source of income. On the other hand, the petitioner-wife could establish sufficient cause for her living separately from the Opp. Party. The Opp. Party is working in a private company. As admitted by the Opp. Party he is not providing any farthing to the petitioners from the date of her filing of the case. This fact 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.

10. 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 young and able bodied person and it is his foremost duty to maintain his wife and children who are living separately from him. Considering the cost of living and other attendant circumstances, in as

much as, the income of the Opp. Party, I feel it just and proper to allow, a sum of Rs. 1,500/- per month to the petitioner No. 1 and Rs. 500/- to the petitioner No. 2 and 3 which according to me, would not allow to 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;

O R D E R

The petition is allowed contest in favour of the petitioners. The Opp. Party is directed to pay a monthly maintenance of Rs.1,500/-to the petitioner No. 1 and Rs. 500/- to each to the petitioner No.2 and 3 from the date of filing of application i.e. on 11.12.2012. 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 21st day of October, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Swagatika Jena

Witnesses examined for the Opp. Party:

O.P.W. 1 Prakash Jena

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

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