

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

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

Criminal Proceeding No. 17 of 2012

1. Smt. Sasmita Nayak, aged about 28 years,
W/o-Sri Satyajit Pattnaik,
D/o-Fakir Charan Nayak,
of Vill.- Matagajpur, P.O.-Kadamachhanda,
P.S.-Tirtol, Dist-Jagatsinghpur,
At present Qrs. No. F-258, Block-F/43,
IRC Village, Nayapalli,
Bhubaneswar,
Dist-Khurda,
2. Swetapadma Priyadarsani, aged 7 years,
D/o- Satyajit Pattnaik,
Deepak Khatua & Laxmi Priya Khatua,
of Vill.- Matagajpur, P.O.-Kadamachhanda,
P.S.-Tirtol, Dist-Jagatsinghpur,
At present Qrs. No. F-258, Block-F/43,
IRC Village, Nayapalli,
Bhubaneswar,
Dist-Khurda
represented through its mother guardian
petitioner No.1.

... Petitioners

... Versus...

Sri Satyajit Pattnaik, aged about 30 years,
S/o- Shyama Sundar Pattnaik,
Resident of vill.-Siripur,
P.O./P.S.-Pipili, Dist-Puri,
At present Qrs. No. F/206, Block No. F/35,
IRC Village, Nayapalli,
Bhubaneswar, Dist-Khurda.

... Opp. Party

Date of Argument : 20.10.2014

Date of Judgment: 31.10.2014

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 petitioners claiming monthly maintenance of Rs. 30,000/- 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 Kalimandir, Baramunda, Bhubaneswar as per Hindu custom and rites on 13.07.2003 and out of their wedlock petitioner No.2 namely Swetapadma Priyadarsani was born. According to the petitioner at the time of marriage, her father had fulfilled all the demand of the Opp. Party as per their demand. The marriage was a serendipity. The der-Tag started in their life when the Opp. Party and his family members demanded additional dowry and when the petitioner No.1 refused the same, the Opp. Party and his family members tortured her both physically and mentally and had driven her out on 13.06.2004 and since then she along with the petitioner No.2 have been residing in her parental home. The well wishers and relatives of the petitioner No.1 tried to settle the disputes but it could not yield any positive result. The Opp. Party since then has not been providing any farthing to them. She is unable to maintain herself and to bear the educational expenses of petitioner No.2. The Opp. Party is doing business and proprietor in the name and style Elegant Agency, back side of the Bharata Motors, Mancheswar, Bhubaneswar and out of the said business he is earning Rs. 50,000/- per month. Apart from that he has landed property situated at Pipili and out of that he is getting Rs. 2,00,000/-. Besides that the Opp. Party is also getting Rs. 8,000/- per month by letting out the landed property at Nakhara. Since the Opp. Party having sufficient means will-fully neglected or refused to maintain the petitioners, who is his legally wedded wife and daughter, the petitioners are obliged to file the present petition claiming a monthly maintenance of Rs. 30,000/- from the Opp. Party.

3. The Opp. Party appeared and filed his show cause. In his show cause, has admitted that the petitioner No. 1 is his legally married wife and petitioner No. 2 is his daughter and denied other allegations made by the petitioner No.1. He has denied to have received any dowry at the time of marriage. He has also denied as to his income and business as alleged by the petitioner No.1. Rather he has stated that the petitioner No.1 ill-treated him and his other family members intending to grab his entire income for which he is suffering from mental agony. He has further stated that at the instance of petitioner No.1, he started residing in a rented house but the attitude and behaviour of the petitioner No.1 does not change towards him in the rented house also. There also petitioner No.1 mis-behaved him and deliberately disrespected his family customs and on 13.06.2004 she left his house forever with all his belongings without his knowledge and since then she has been residing with her parental home. As regards to his income, he has stated that he is working as a salary based employee in a private company and is getting Rs. 10,000/- per month and except this he has no other source of income or he purchased any land in his name. The petitioner No.1 is a highly educated and she has been working in a private stabilizer company at Bhubaneswar and is getting Rs. 8,000/- per month and she is self sufficient to maintain herself. According to him several attempts have been made for their reunion but the petitioner No.1 being adamant refused to join with him for which he has approached before State Women Commission and there petitioner No.1 did not agree to settle the matter. Thereafter the State Women Commission advised him to take shelter in appropriate Court of law and accordingly he filed Mat Case bearing No. 35/2008 against her before Civil Judge, Sr. Division, Bhubaneswar and in that case she was set ex-parte as petitioner No.1 remained absent

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 with her daughter?

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

1. 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 prove her case she, herself, has been examined P.W. 1. The Opp. Party chooses not to adduce any either oral or documentary evidence.

6. The petitioner No.1 in her affidavit evidence has stated that she married to the Opp. Party on 13.07.2003 and out of their wedlock she is blessed with a female child i.e. petitioner No.2. She has 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 of money for purchase of a motor cycle and when she refused for the same, the Opp. Party and his family members had driven her out from her matrimonial home on 13.06.2004 and since then she has been residing in her parental home along with her daughter, petitioner No.2. Although she has admitted during cross examination that there was no demand at the time of marriage yet such demand can be made after the marriage. Greed has no bound and no one can say when it comes into play. Now a days, rich and educated people have more greed than the ordinary people. More is the wealth more is the greed. Although it has been elicited that P.W. 1 has not made any complaint before police for above demand yet P.W. 1 has explained that she did not inform the police or any authority to save the dignity of the family. This explanation is acceptable. Further it that does not mean that there is no demand of dowry if no complaint is made. When no suggestion is given to P.W.1 about the demand of dowry of motor cycle, the same must be accepted as true. 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 petitioners living separately apart from the Opp. Party. The petitioner No.1 is a house wife and therefore, she has no independent source of income.

7. The next question for consideration is, whether the Opp. Party has sufficient means and he has willfully neglected and refused to maintain the petitioners. It is stated categorically by the petitioner No.1 that the Opp. Party is doing business and proprietor in the name and style Elegant Agency, back side of the Bharata Motors, Mancheswar, Bhubaneswar and out of the said business he is earning Rs. 50,000/- per month. Apart from that he has landed property situated at Pipili and out of that he is getting Rs. 2,00,000/-. Besides that the Opp. Party is also getting Rs. 8,000/- per month by letting out the landed property at Nakhara whereas the petitioner No.1 is unable to maintain herself and her legitimate child. She has also stated that the Opp. Party has not provided a single farthing to them since her 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 woman and children. Therefore, the Opp. Party is liable to provide maintenance to the petitioners.

8. The next question for consideration is about the quantum of maintenance. P.W. 1 has stated that she is a house wife and she has no independent source of income. P.W. 1 in her evidence has stated that the Opp. Party is doing his business as the proprietor of Elegant Agency and is earning Rs. 50,000/- per month. Apart from that he has also vast landed property at his native village from which he is getting RS. 2,00,000/- per annum. Besides that is getting rent Rs. 8,000/- per month by letting out his purchased landed property at Nakhara. Although this part of her evidence gone unchallenged yet, the petitioner failed to lead any conclusive evidence. 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 petitioner, who has no sufficient means to support herself. Therefore, the Opp. Party is liable to provide maintenance to the petitioner. 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. 5,000/- to each of the petitioner per month would be just and proper, 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;

ORDER

The petition is allowed ex-parte in favour of the petitioners. The Opp. Party is directed to pay a monthly maintenance of Rs. 5,000/- to each of the petitioners from the date of filing of application i.e. from 01.02.2012. 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. Further the Opp. Party is directed to pay a sum of Rs. 5,000/- towards litigation expenses.

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Dictated, corrected by me and is pronounced on this the 31st day of October, 2014.

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Sasmita 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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