

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

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

Criminal Proceeding No. 32 of 2014

Smt. Sweta Tiwari, aged about 34 years,
W/o- Sri Sanjeev Tiwari,
D/o.- Sri Rajendra Prasad Tiwari,
Residing at Plot No. 140, Cuttack Road,
P.O.-Budheswari Colony, Bhubaneswar-751006,
Dist-Khurda, Odisha.

... Petitioner

... Versus...

Sanjeev Tiwari, aged about 40 years,
S/o-Sri Ramashray Tiwari,
Resident of House No. B-314, Phase-4, Rapti Nagar,
P.O.-Chargawa, P.S.-Gulariha, Dist-Gorakhpur,
At present residing at Flat No. J-522, Gaur Grandeur,
Sector-119, P.S.-Sector-58, Noida, Dist-Goutambudha Nagar,
Uttar Pradesh, Pin-201301.

... Opp. Party

Date of argument : 11.09.2014

Date of order : 24.09.2014

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 claiming monthly maintenance of Rs. 60,000/- for herself from the Opp. Party.

2. The facts of the case petitioner are as follows:-

The marriage of the petitioner with Opp. Party was solemnized as per Hindu Custom and rites at Gorakhpur U.P. on 21.06.2007. The petitioner has averred that all arrangement of marriage at Gorakhpur (U.P) was made by her father and her father had spent about 15 lakhs during marriage being pressurized by her father-in-law and before solemnization of marriage and as

per demand of the Opp. Party her father had transferred Rs. 1,00,000/- on 05.06.2007 and Rs. 1,89,000/- on 13.06.2007, in the account of her father-in-law (Ramashray Tiwari) and mother-in-law (Manju Tiwari) at State Bank of India bearing A/c. No. 10346066500. The marriage was a serendipity. After 3 to 4 days of marriage at the house of the Opp. Party at Vasundhara (New Delhi) the family members of the Opp. Party expressed their unhappiness for additional demand of dowry. Thereafter, she came to Kolkata for doing M.D. Degree and stayed there from July 2007 to October 2007 and there also the Opp. Party started torturing her due to additional demand of dowry. The petitioner has averred that when she came to Delhi from Kolkata, the Opp. Party and his family members also tortured both physically and mentally and blamed her due to her, the Opp. Party is suffering from chronic pancreatic disease, blood pressure and fits and they also threatened her to drive her out from house if the additional demand dowry is not fulfilled. In the year 2008 when she went to Kolkata to complete her M.D. Degree, the Opp. Party reached there and quarreled with her and her father and during that period she stayed in Rani Guest House, Bhawanipur, Kolkata for 4 to 5 days and there the Opp. Party hacked the password of her and defamed her on social networking site for which she reported the matter to Bhawanipur Police, Kolkata on 09.03.2008 but the police did not take any action against the Opp. Party. In the month of June, 2009 after completion of her M.D. Degree again on 30.06.2009, she has filed a written complaint before D.C.P. Lalbazar, Kolkata against the Opp. Party and after knowing about the written complaint the Opp. Party assured her neither he nor his family members will harass her anymore and after that the petitioner agreed and came to Delhi and joined Gangram Hospital but the petitioner was not allowed to stay in her matrimonial home for which she was forced to stay in Giner Hotel, New Delhi and after one month of stay there she was allowed to stay in her matrimonial home. She has further averred that when she was pregnant she resigned from her job in the month of November, 2009 being pressurized by the Opp. Party and his family members. Her grandfather died due to heart attack when the

Opp. Party threatened her to commit suicide if she refused to bring more dowry. She has further averred that on 24.01.2010, the Opp. Party and his family members drove her out from his house with a ticket to Bhubaneswar and asked her to come back with more dowry for which she in a shocked mental conditions left for Bhubaneswar to her parental home and on the way due to exhaustion and severe bleeding lost the pregnancy. On 03.03.2011 she has received a notice U/s. 9 of the Hindu Marriage Act and being advised by her parents she agreed to join with the Opp. Party but the Opp. Party fled from the court on that day. On 05.03.2011 the Opp. Party took her to his home from the court but after reaching there she was again tortured by the Opp. Party and his family members for which she went to the house of her uncle in Noida (U.P.) and stayed in night there and on the next morning when she along with her uncle and aunty went to the house of the Opp. Party, the Opp. Party in his house dashed down her on the floor and her mother-in-law put hot pincer (chimta) on her leg and other family members of the Opp. Party shouted "Maar Dalo Saliko" and the Opp. Party started strangulating her with rope and she was rescued by her uncle and aunty who reached there during that time for which she lodged FIR against the Opp. Party and his family members at Sector -58 Police Station, Noida (U.P.) which was registered as Crime case No. 266/2011 U/s. 498 (A), 323, 307, 506 IPC and U/s. 4 D.P. Act and the said case is Sub-Judice now. The Opp. Party has filed a false complaint case Under Sec.312/315/316 and 12(B) IPC against her. When the torture by the Opp. Party became unbearable, she has filed a Domestic Violence case bearing No.134 of 2012 in the Court of Judicial Magistrate, Goutam Budha Nagar, (UP). According to her the Opp. Party is the owner of Software company in the name and style Centum Software at Noida and is earning Rs. 2,00,000/- per month. Apart from that the Opp. Party along with his parents and borther has got Flats bearing No. J-522, G-664 and G-216 situated at Gaur Grandeur, Section 119, Noida, Dist-Gautambudha Nagar, (U.P.) whose market value would be around 4 crores and besides that the Opp. Party also got two cars valued Rs. 10,00,000/- and the Opp. Party and

his family members have got parental properties at Gorakhpur, whereas as the petitioner has resigned from her service on the torture meted out her by the Opp. Party and at present she has no means of income. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioner, who is his legally wedded wife, the petitioner is obliged to file the present petition claiming a monthly maintenance of Rs. 60,000/- for self 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 is the legally married wife of the Opp. Party and the petitioner has sufficient cause to live separately from the Opp. Party?

(2) Whether the Opp. Party having sufficient means has neglected to refuse to maintain the petitioners?

(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 in order to prove her case she, herself, has been examined P.W. 1 and relied on some documents i.e. Ext. 1 is the receipt of transfer of money in A/c. No. 1034606655 (SBI), Ext. 2 is the FIR to Bhawanipur P.S. and D.C.P. Lalbazar Kolkata, Ext. 3 is the copy of the Train Ticket, Ext. 4 is the letter to National Commissioner for Women, New Delhi, Ext. 5 is the Copy of order U/s. 9 of Hindu Marriage Act by C.J. Sr. Division, Ext. 6 is the copy of the charge sheet, Ext. 7 is the Domestic Violence Case No. 134/12, Ext. 8 is the copy of divorce case No. 134 of 12, Ext. 9 is the copy of T.P case No. 1163/13 (Civil) and copy of T.P. Case No. 453 (Crl.) Supreme Court, Ext. 10 is the Computer generated copy of Opp. Party regarding his company and Ext. 10 is the Computer generated account statement of the Opp. Party.

6. The petitioner in her affidavit evidence stated that she married to the Opp. Party at Gorakhpur, U.P. On 21.06.2007. Her aforesaid statement has

not been challenged. Thus, it can safely be concluded that the petitioner is the legally wedded wife of the Opp. Party and their marriage was solemnized on 21.06.2007. 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 on 24.01.2010 she was driven out from her matrimonial home. Therefore, it can safely be said that the petitioner has not left the company of the Opp. Party voluntarily. It is the Opp. Party and his family members who are responsible for petitioner's living separately apart from the Opp. Party.

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 that the Opp. Party is the owner of Software company in the name and style Centum Software At Noida and is earning Rs. 2,00,000/- per month. Apart from that the Opp. Party along with his parents and brother has got Flats bearing No. J-522, G-664 and G-216 situated at Gaur Grandeur, Section 119, Noida, Dist-Gautambudha Nagar, (U.P.) whose market value would be around 4 crores and besides that the Opp. Party also got two cars valued Rs. 10,00,000/- and the Opp. Party and his family members have got ancestral properties at Gorakhpur whereas she is unemployed now and she has no separate income and is depending upon her parents. She has also stated that the Opp. Party has not provided a single farthing to the petitioner since last two years. From Ext. 10 and 11 it is apparent that the Opp. Party has also some income. This fact and circumstance is clearly suggestive of the fact 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.

8. 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. 30,000/- per month to petitioner would be just and proper, which

according to me, would not allow to petitioner 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 ex-parte in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 30,000/- to the petitioner No. 1 from the date of filing of application i.e. on 10.04.2014 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 pay litigation expenses of Rs. 5,000/- to the petitioner. Failure to carry out the order by the Opp. Party, the petitioner is at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
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Dictated, corrected by me and is pronounced on this the 24th day of September, 2014.

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Witnesses examined for the petitioner:

P.W.1 Smt. Sweta Tiwari

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

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| Ext. 1 | Receipt of transfer of money in A/c. No. 1034606655 of SBI |
| Ext. 2 | FIR to Bhawanipur P.S. and D.C.P. Lalbazar Kolkata |
| Ext. 3 | Copy of Train Ticket |
| Ext. 4 | Letter to National Commission for Women |
| Ext. 5 | Copy of Order U/s. 9 of Hindu Marriage Act |
| Ext. 6 | Copy of charge sheet |
| Ext. 7 | Copy of Domestic Violence Act case bearing No. 134/12 |
| Ext. 8 | Copy of Divorce case No. 134/12 |

- Ext. 9 Copy of T.P. Case No. 1163/13 (Civil) and copy of T.P. Case No. 453/13 (Crl.) Supreme Court.
Ext.10 Computer generated copy of Opp. Party regarding his company
Ext. 11 Computer generated account statement of Opp. Party.

List of documents by Opp. Party:

Nil

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