

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

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

Criminal Proceeding No. 43 of 2012

Smt. Purnima Punyatoya, aged about 24 years,
W/o-Swarup Prakash Mohanty,
D/o-Abanikanta Rout,
At/P.O.-Plot No. 58, Jayadev Nagar, Lewis Road,
P.S.-Lingaraj, Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Sri Swarup Prakash Mohanty,
S/o- Surendra Kumar Mohanty,
At Flat No. N/1-95, IRC Village,
P.S.-Nayapalli, Bhubaneswar, Dist-Khurda,
At present working as J.R. Manager (Electrical) Deptt.
Code No. 319, Employers Code No. 0624, Smaller Division
NALCO-Angul.

... Opp. Party

Date of argument : 16.10.2014

Date of order : 22.10.2014

J U D G M E N T

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. 30,000/- to petitioner and litigation expenses of Rs. 50,000/- from the Opp. Party.

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

The marriage of the petitioner with the Opp. Party was solemnized in the residence of the petitioner according to Hindu customs and rites at Paramount Club, BJB Nagar, Bhubaneswar on 23.01.2011. According to the petitioner, her father had given Rs. 5,00,000/- for purchase of a car and 300 grams of gold ornaments along with all household articles as per demand of the Opp.

Party. The marriage was a serendipity. The der-Tag started in their life when the Opp. Party told her on the fourth night that he has affairs with some other lady for which he was not interested to marry her but the family members forced him for the marriage and further not to expect love and affection from him and any child also. On hearing such, she sustained severe mental trauma. On the very next day, the Opp. Party and his family members took away all her gold ornaments and demanded additional demand of LED T.V., double door refrigerator, washing machine and cash of Rs. 4,00,000/- and when she refused for the same, the Opp. Party and his family members started torturing her both mentally and physically. On 01.05.2011 again the Opp. Party asked her why her parents did not fulfill their additional demand and when she denied for the same, the Opp. Party being instigating by his family members assaulted her for which she sustained bleeding injuries on her face. The father of the Opp. Party also threatened that no one will dare to say anything if the Opp. Party will kill her. On the next day, the Opp. Party took her to G.E.T. Hostel Room No. 72 NALCO Township near Gopabandu Park and tortured her inhumanly and pressurized her to fulfill their additional demand of dowry and also four days thereafter, the Opp. Party brought her to Bhubaneswar and continued torture on her. On 08.05.2011 the father of the Opp. Party told her if her father will not fulfill their demand she would be driven out from his house for which she has told everything to her father. After hearing such, her parents and other family members reached at the house of the Opp. Party where the Opp. Party and his family members misbehaved her parents and forcibly driven the petitioner out from their house. Since then she has been residing with her parents and the Opp. Party has not been providing any farthing to her and she is unable to maintain herself. It is further averred that several attempts have been made for amicable settlement of the disputes but the Opp. Party and his family members did not cooperate. When the torture became unbearable she has lodged an F.I.R. before Mahila P.S. vide Mahila P.S. Case No. 10/12 U/s. 498 (A), 323/34 IPC and U/s. 4 D.P. Act against the Opp. Party and his family members and the said case is pending for disposal in the Court of the

S.D.J.M., Bhubaneswar. According to petitioner the Opp. Party is working as Jr. Manger, (Electrical) Department having Code No. 319 SEMELTER Division Plant, NALCO, Angual and his employee code is P.No.-06204 and he is getting salary of Rs. 59,890 per month. Since the Opp. Party having sufficient means will-fully neglected or 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. 30,000/- and litigation expenses of Rs. 50,000/- 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 against him. He also denied to have received any dowry from the side of the petitioner, before the marriage at the time of marriage and after the marriage. He has also denied to have tortured the petitioner and assaulted to the petitioner causing bleeding injury on the face of the petitioner for non-fulfillment of additional demand of dowry. In the month of May, 2011 probably either on 06.05.2011 or 07.05.2011 in his absence the petitioner left his house at about 8 A.M. and she did not return to his house and his father searched for at TIME Institution Centre, Bhubaneswar where he got her admission for five months for preparation of Bank Clerical course and came to know that she had not attended the Institution and on inquiry found her in her parent's house and requested her to return but the petitioner denied to return and told his father to inform him that she is not interested to continue her matrimonial life with him as she is not mentally capable to face him because of her lower educational qualification. He has admitted his service and he is getting salary of Rs. 30,000/- per month which will be less after deduction of income tax. He has also spending money of Rs. 15,000/- towards education of his younger brother as his father has already retired and his mother is repaying the loan incurred by his family for construction of the house and as such he is getting Rs. 15,000/- per month. He has further averred that the petitioner without any rhyme or reason left the matrimonial home after four months of marriage and resided with her parents for which she is not entitled for any maintenance. He has further stated that he is all

along ready to accept her and also ready to maintain her according to his status for which she is not entitled to get any maintenance as prayed for.

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

(i) Whether the petitioner has sufficient cause to live separately from the Opp. Party and the petitioner 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 petitioner, if point No. 1 and 2 are answered in favour of the petitioner?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1, her father as P.W. 2 and relied on some documents i.e. Ext. 1 is the Xerox copy of pay slip of the Opp. Party for the month of September, 2012, Ext. 2 is the Xerox copy of the Bank Draft and Ext. 3 to 3/ 6 are the bills of jewellery weighing 200 grams. The Opp. Party in order to negate the claim of the petitioner, he, himself, has been examined as O.P.W. 1, his father as O.P.W. 2 and one of his friend namely Arabinda Rath as O.P.W.3 and relied on some documents i.e. Exts. A,B, C and D are the canceled Internet train tickets, Ext. E and F are the salary slips of the Opp. Party for the month of August and September, 2012 and Ext. G is the Salary particulars of the Opp. Party for the month of January 2012 and January 2013., Ext. G/1 is the employee pay slip of the Opp. Party for the month of January, 2012 and Ext. G/2 is the employee pay slip of the Opp. Party for the month of January, 2013.

6. The petitioner while being examined as P.W. 1 has supported the facts enumerated in her petition. It is an admitted fact that the petitioner is the legally married wife of the Opp. Party. P.W.1 has stated that she led happy conjugal life with the Opp. Party for three days and thereafter on the 4th night the Opp. Party told her that he was requiring a beautiful bride of an affluent family and his marriage was performed against his will and he was in love with another girl and he expressed her desire to marry her and she should not expect love and affections from him. On the 5th day of her marriage, her

mother-in-law took away her gold ornaments from her on the plea of theft and the Opp. Party and his family members tortured on her both physically and mentally for non-fulfillment of additional demand of dowry and driven her out from her matrimonial home on 08.05.2011 and directed her while driving her out from the house to return to her matrimonial home with cash of Rs. 4,00,000/-, double door fridge, Mirco oven and washing machine and since then she has been residing with her parents and the Opp. Party is not providing a single farthing to her since the date of desertion. P.W. 2 corroborated the evidence of P.W. 1.

7. O.P.W. 1 in his evidence stated that it was an arranged marriage and prior to the marriage he has gone to the parent's house of the petitioner with his friend Arbinda and at that time the petitioner told him she had first class career and she had completed P.G. and MBA and they did not ask for her certificates. He married her without any dowry and after marriage he asked her to write leave application for him but she could not write the same and to his query, she disclosed that she had third class career and further she had told that she had not told the truth earlier. After 15 days of marriage, the father of the petitioner gave a draft of 5 lakhs in favour of Sky Automobile for purchase of car for to and fro journey of his daughter and he purchased a Swift VDI vehicle worth of Rs. 6,20,000/- and the balance amount was paid by him and he was the registered owner of the said vehicle. After seizure, police have released the said vehicle in favour of the father of the petitioner. He was shocked after hearing the miserable career of her wife and he got her admission to TIME Institution, Nayapalli to take coaching for preparation of Bank P.O. The petitioner used to take coaching in morning and return in evening. After marriage, they visited Puri, Konark, his native village and Kapilash. On 17.01.2012 the petitioner lodged an FIR against him and his family members without any basis. On 08.05.2011, the petitioner did not return home from her coaching centre and on query by his father her discovered her in her parental home and his father also went to her father's house and asked her why she went to her father's house and to his query, she replied that she had lied earlier and she was not able to face them and on

query by him over phone she stated him in the same vein and assured him in her father's house that she would come to him after completion of P.G. He has further stated that he had booked ticket for her to go to Siridi for change of mind but she did not go to Siridi and subsequently cancelled them. He also requested her to accompany him and his friend and his family to Simla but she refused. He has further stated that despite several attempts, to bring her back to her house, the petitioner avoided to come. He has further stated that his gross salary is around Rs. 60,000/- and take home salary is Rs. 20,000/- to 25,000/- per month and his monthly LIC premium is around Rs. 5,000/- and he has financing for his younger brother for his education and his parents are suffering from old age diseases for which he has been spending money. He has denied the demand of any dowry by him and his family members and also any torture to the petitioner due to additional demand of dowry either by him or his family members. O.P.W. 2 and 3 have also corroborated the evidence of O.P.W.1.

8. From the aforesaid evidence of the parties, it is forth coming that the petitioner is a house wife and she has no independent income and therefore, the petitioner being house wife and having no separate income as well as a Hindu lady who 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. The Opp. Party has failed to prove about any independent source of income of the petitioner.

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. Admittedly, the petitioner wife is a house wife and therefore, she has no independent source of income. On the other hand, the Opp. Party has admitted his service and it is also evident from Ext. E and F and G that the gross salary for the month of January 2012 is Rs. 60,995 and Rs. 92,055/- for the month of January, 2013 and the petitioner in his evidence at para No. 9 stated that his gross salary is around Rs. 60,000/- per month. As admitted by the Opp. Party he is not providing any farthing to the petitioner from the

date of her filing of the case. 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. Law prevents vagrancy and destitution of married woman. Therefore, the Opp. Party is liable to provide maintenance to the petitioners. It is also an admitted fact that the Opp. Party is at present paying Rs.10,000/- per month as an interim measure as per the direction of Hon'ble High Court.

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 working as a Asst. MRG (Elect) NALCO and it is further evident from Ext. G/2 that the gross salary of the Opp. Party for the month of January 2013 is Rs. 92,055/- and it is his foremost duty to maintain his wife who is living separately from him. On the other hand, the father of the Opp. Party is a retired government servant and is getting pension. O.P.W. No.2 in his evidence has stated that his wife is a working as a Staff Nurse. Therefore, from this admitted evidence of the O.P.W.2, it is forthcoming that they have got some independent source of income and therefore are not dependent upon the petitioner. The take home salary of the Opp. Party is Rs. 46,305 vide Ext. G series. 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. 10,000/- per month 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 contest in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs.10,000/-to the petitioner from the date of filing of application i.e. on 26.03.2012. The maintenance amount already paid to the petitioner shall be adjusted. 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. 6,000/- 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,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 22nd day of October, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Purnima Punyatoya
P.W.2 Abanikanta Rout

Witnesses examined for the Opp. Party:

O.P.W. 1 Swarup Prakash Mohanty
O.P.W.2 Surendra Kumar Mohanty
O.P.W.3 Arabinda Rath

List of documents by petitioner:

Ext. 1 Pay slip of the Opp. Party for the month of September, 2012
Ext. 2 Xerox copy of the Bank Draft
Ext. 3 to 3/ 6 Bills of jewellery weighing 200 grams

List of documents by Opp. Party:

Exts. A,B,C & D Canceled Internet train tickets
Ext. E & F Xerox copy of salary slips of the Opp. Party for the month of August and September, 2012
Ext. G Salary particulars of the Opp. Party for the month of January 2012 and January 2013
Ext. G/1 Employee pay slip of the Opp. Party for the month of January, 2012
Ext. G/2 Employee pay slip of the Opp. Party for the month of January, 2013

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