

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

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

Criminal Proceeding No. 64 of 2012

Smt. Sasmita Behera, aged about 33 years,
W/o- K. Ravi Prasad of Madhusudan Nagar,
P.O./P.S.- Jatni, Dist.Khurda, at present residing
C/o- Simanchal Behera, At-Chintamani nagar,
P.O./P.S.-Jatni, Dist.Khurda, Odisha.

... Petitioner

... Versus...

K. Ravi Prasad, aged about 32 years,
S/o- K. Jogi Nayak of Madhusudan Nagar,
P.O./P.S.- Jatni, Dist. Khurda, at present working
as Ticket Collector in the office of the station
manager, East Coast Railway, Khurda Road,
P.O.-Jatni, Dist.Khurda

... Opp. Party

Date of argument : 04.09.2013

Date of judgment : 18.09.2014

J U D G M E N T

1. This order arises out of a petition U/s-125 Cr.P.C. filed by the petitioner claiming monthly maintenance of Rs.15,000/- as well as litigation of Rs.10,000/- against the Opp. Party.
2. The undisputed facts of the case are that the petitioner and the Opp. Party, both co resident of Jatni though of different culture and community developed intimacy with each other which culminated in a marriage between the two on 30.09.2010, in substantial compliance with the provisions of the Special Marriage Act, 1954 (in short, the Act of 1954).
3. The case of the petitioner is that after solemnization of marriage, the Opp. Party took her to his house at Madhusudan Nagar, Jatni

where their marriage was consummated. One month after marriage, the Opp. Party left the petitioner at her parental house with an assurance to bring her back after arrangement of a quarter. The Opp. Party did not take the petitioner back as promised. On the other hand avoided her on some pretext or other. The petitioner finding no other alternative went to the house of the Opp. Party on 3.2.2011 seeing whom the Opp. Party and his family members became surprised and insisted her to leave their house but the petitioner remained in the house being the legally married wife of the Opp. Party. She was tortured by the Opp. Party and his mother. The father of the petitioner lodged FIR against the Opp. Party and accordingly concerned police officer took action against the Opp. Party. On 20.04.2012 the Opp. Party being instigated by his mother and elder sister forcefully left the petitioner in her parental house on the pretext to bring 8 lakhs dowry. The Opp. Party has intentionally deserted the petitioner. The Opp. Party being a Ticket Collector in East Cost Railway getting monthly salary of Rs.20,000/-. But he has intentionally neglected to maintain the petitioner. Hence, the petitioner prays Rs. 15,000/- towards maintenance with litigation cost of Rs. 10,000/-.

4. The Opp. Party challenging the case of the petitioner submits that the registered marriage so also the registered marriage certificate bearing No.63 of 2010 is outcome of fraud, coercion, influence, barred by jurisdiction, procedural irregularities and non-compliance of settled principles of law. He averred that the petitioner cunningly developed friendship with him and subsequently started one side love affair with him. The petitioner belongs to Oriya community and Hindu religion whereas; the Opp. Party belongs to Telugu-Christian community. The petitioner cunningly without informing her parents came to the Opp. Party along with one Khageswar Samantaray with some papers and documents regarding registration of marriage which was already filed up. The petitioner coerced the Opp. Party to sign those documents and papers but the Opp. Party refused to do so on the pretext petitioner

happens to be elder than him and there is difference of culture. The petitioner coerced and influenced the Opp. Party to sign those papers while saying she is 3 years younger than him and further threatened to commit suicide and blame the Opp. Party by derogating her dignity and respect. The Opp. Party being pressurized while signed those papers came to know that the petitioner has put wrong residential addresses i.e. Tamando, Khandagiri, Bhubaneswar though both the parties were residing in Jatni, Khurda. The petitioner cunningly avoided the Opp. Party saying she will make correction of the addresses. The Opp. Party further averred that marriage between the parties has not been solemnized prescribed under settled principles of law. By committing fraud marriage has been registered and at no point of time marriage has been consummated. Hence, the Opp. Party has filed C.P. No.291 of 2010 before this Hon'ble Court to declare the impugned marriage registration certificate as null and void, as such the petitioner is not entitled to get maintenance.

5. From the aforesaid rival pleads of the parties, the following points are formulated for determination of the case:-

- (1) Whether petitioner is the legal married wife of the Opp. Party ?
- (2) Whether the petitioner has sufficient cause to live separately from the Opp. Party?
- (3) Whether the petitioner has no sufficient means to support herself and the Opp. Party having sufficient means willfully neglected or refused to maintain the petitioner?
- (4) What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 to 3 are answered in her favour?

6. The petitioner in order to prove her case, she herself has been examined P.W. 1, one D. Premanandan as P.W.2 and one Rajkishore Das as P.W. 3. She has also relied on some documents i.e. Ext. 1 is the certified copy of the Marriage Certificate, Ext. 1/1 is the signature of the Opp. Party, Ext. 1/2 is the signature of the Opp. Party and Ext. 2 is the Original Marriage Certificate. In order to negate the claim of the

petitioner, Opp. Party examined himself as O.P.W. 1 and one Khageswar Samantray as O.P.W. 2. He has relied on Ext. A is the Quarter Allotment letter, Ext. B is the training order of the Opp. Party vide Sl. No. 23 and Ext. C is the Posting letter of the Opp. Party vide Sl. No. 47

7. Point No.1- Whether petitioner is the legal married wife of the Opp. Party ?

P.W. 1 the petitioner in her affidavit evidence has stated that there was love affairs between her and the Opp. Party which culminated in a marriage between the two on 30.09.2010 in substantial compliance with the provisions of the Special Marriage Act and after marriage, the Opp. Party took her to his residence at Madhusudhan Nagar, Jatni where the marriage was consummated. P.Ws. 2 and 3 have supported the evidence of P.W.1. P.Ws. 2 and 3 are witnesses to the registered marriage and they have described in nitty-gritty about the manner of solemnization of marriage before the Marriage Officer. These two witnesses are independent and impartial witnesses who are neither related to the petitioner nor a foe of the Opp. Party and therefore they have no interest to grind their axe against the Opp. Party. The evidence of these witnesses further compounded when one of the witness of the Opp. Party namely O.P.W. 2 has affirmed fact of the marriage between the parties that the petitioner and the Opp. Party were married before Marriage Officer in the year 2010 in his presence, as he was present at the time of solemnization of marriage before the Marriage Officer. He has further stated that the petitioner lodged an FIR before Jatni Police alleging torture due to dowry while they were residing together as husband and wife. He has denied to the suggestion of the Opp. Party that the petitioner obtained the marriage certificate bribing the Marriage Officer. From the aforesaid tenor of the consistent evidence of the witnesses of the petitioner and one of the witness of the Opp. Party, the allegation of the Opp. Party that the alleged marriage was fraudulent marriage and

the marriage has not been consummated is nothing but a blatant lie. Coalescing the aforesaid evidence, sign-dubio it is concluded that there was a valid marriage between the petitioner and the Opp. Party.

8. Argument was advanced by the Opp. Party relying on AIR 1989 NOC 94 (CAL.) Sadhan Kumar Ray Vrs. Smt. Saswati Ray (Banerjee), AIR 1996 Cal. 246 Smt. Gitika Bagchi Vrs. Subhabrotra Bagchi, 1994 SCC (4) 363, JT 1994 (3) 529 Supreme Court of India, Jolly Das Vrs. Tapan Ranjan Das, Sri Maharana Vrs. Basudev Moharana and 1986 (II) OLR-410 Bhaskar Sahu Vrs. Anama Swara and others challenging the validity of the marriage on the point of territorial jurisdiction, solemnized of marriage in contravention of Section 5; wife concealing the fact before Marriage officer; that she is younger three years than her husband; admission of pleadings and etc. In a collateral proceeding for maintenance court cannot hold marriage void and denying wife's claim. Marriage has to be held as subsisting unless annulled by competent court and wife is entitled to maintenance. (If it needs assistance may be taken from Deboki Panjhiyra Vrs. Sashi Bhusan Narayan Azad and another reported in AIR 2013 Supreme Court 346. Accordingly, this argument of the Opp. Party being sophistry stands rejected. Accordingly point No. 1 is answered in favour of the petitioner.

9. Pint No.2- Whether the petitioner has sufficient cause to live separately from the Opp. Party?

P.W. 1 has stated that the mother of the Opp. Party demand cash of Rs. 8,00,000/- from her towards dowry. She has further stated that quarrel ensued between herself and her mother-in-law over the said dowry demand and thereafter the Opp. Party brought her and left her in her father's house at Chintamani Nagar, Jatni. On 03.02.2011 she went to the house of the Opp. Party and stayed one year as husband and wife there. The Opp. Party and his mother physically and mentally tortured her for non fulfillment of dowry of Rs. 8,00,000/-. The father and gentries from her side tried to convince the Opp. Party

and her mother and after their departure, the Opp. Party confined her in a room and physically assaulted her for which an FIR was lodged in Jatni P.S. and on 18.06.2012, the Opp. Party left the petitioner at her father's house and directed her not to return her matrimonial home without taking 8 lakhs and since then she has been residing with her father. Her aforesaid evidence has not been demolished by the Opp. Party. On other hand, the Opp. Party denied his marriage with the petitioner. Denial of marriage by the Opp. Party with the petitioner amounts to cruelty. Additionally, there was sufficient evidence regarding torture due to non fulfillment of demand of dowry. It is not the petitioner herself who left her matrimonial home voluntarily but it is the Opp. Party who left the petitioner at her parental home with a threatening note not to return to matrimonial home without bringing 8 lakhs as dowry. Therefore, the petitioner has sufficient cause to live separately from the Opp. Party. Accordingly this point is also answered in favour of the petitioner.

10. Point No.3- Whether the petitioner has no sufficient means to support herself and the Opp. Party sufficient means willfully neglected or refused to maintain the petitioner?

Admittedly, the petitioner is a house wife having no independent source of income. The Opp. Party is a Train Ticket Collector. The Appointment Letter of the Opp. Party marked Ext. B vide Sl. No. 23 referring to the Opp. Party speaks that he is in pay band of PB-I, GP-1800/KPHR and this relates to the year 2009. Therefore, the claim of the petitioner that the gross salary of the Opp. Party is more than Rs. 20,000/- appears logically. Apart from that the Opp. Party has not disputed the said fact. There is no evidence on record that the Opp. Party has provided any maintenance to the petitioner from the date the Opp. Party deserted her. Therefore, the Opp. Party having sufficient means has willfully refused and neglected to maintain the petitioner who has no sufficient means to support herself and therefore, the Opp. Party is liable to provide maintenance to the petitioner. Accordingly,

this point is also answered in favour of the petitioner.

11. Point No. 4- What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 to 3 are answered in her favour?

12. The petitioner claimed Rs. 15,000/- per month towards her maintenance. Having regard to the income of the Opp. Party, it is discernable that the petitioner has had a better standard of living. Thus, in my considered opinion, a sum of Rs. 8,000/- would be just and proper to maintain standard of living which is neither luxurious nor penurious but is consistent with the status of the family. Hence ordered;

ORDER

The petition is allowed on contest in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 8,000/- from the date of filing of application i.e. on 16.05.2012. Besides this Opp. Party is directed to pay litigation expenses of Rs. 5,000/- to the petitioner. 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 petitioner is at liberty to levy execution through due process of law.

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Dictated, corrected by me and is pronounced on this the 18th day of September, 2014.

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Witnesses examined for the petitioner:

P.W.1 Sasmita Behera

P.W.2 D. Premandan

P.W.3 Rajkishore Das

Witnesses examined for the respondent:

O.P.W.1 K. Ravi Prasad

O.P.W.2 Khageswar Samantray

List of documents by petitioner:

Ext. 1 Certified copy of the Marriage Certificate

Ext. 1/1 Signature of the Opp. Party

Ext. 1/2 Signature of the petitioner

Ext. 2 Original Marriage Certificate

List of documents by respondent:

Ext. A Quarter Allotment letter

Ext. B Training order of the Opp. Party vide Sl. No. 23

Ext. C Posting order of the Opp. Party vide Sl. No. 47

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