

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

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

Criminal Proceeding No. 88 of 2010

1. Smt. Kamini Swain, aged about 38 years,
W/o-Rajkishore Dutta,
At- Begunia Basta Patna
P.S.-Kakatpur,
Dist-Puri,
Presently residing at Chillipokhari,
Tankapani Road, P.S.-Badagada, Bhubaneswar,
Dist-Khurda.

Petitioner No.1

2. Sabita Swain, aged about 4 years
D/o-Rajkishore Dutta,
Represented by her mother guardian petitioner No.1

Petitioner No.-2

... Versus...

Sri Rajkishore Dutta, aged about 55 years,
At-Sagargaon, Via- Sunakhela,
P.S.-Ranpur, Dist-Nayagarh,
Presently working- Prince Tailor, Rabi Talkies,
Lewis Road, P.S.-Lingaraj, Bhubaneswar Dist-Khurda.

... Opp. Party

Date of Argument : 16.08.2013

Date of Judgment : 03.09.2014

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 No.1 Kamini Swain for self and for the petitioner No.2, Sabita Swain being mother guardian

claiming monthly maintenance of Rs. 3,000/- for both the petitioners from the Opp. Party.

2. It is the case of the petitioner No.1 that she married to the Opp. Party on 9.7.2003 according to Hindu rites and customs and after their marriage they led conjugal life for about some days. It is averred inter alia that at the time of their staying at Chilipokhari Basti, Bhubaneswar the petitioner No.1 was pregnant for nine months and the Opp. Party took her to her father's house and left her there. After birth of the daughter, the Opp. Party did not bring the petitioner No.1 to his house. It is further averred that after much persuasion of the parents of the petitioner No.1, the Opp. Party took her to his house and kept her for 20 days and during said time, the Opp. Party tortured her both mentally and physically and again left the petitioner No.1 to her father's house when their daughter was ill. Since the torture and cruelty on the part of the petitioner No.1 became unbearable, she has filed a criminal case against the Opp. Party and his family members on torture and dowry demand. She has further averred that she has no independent source of income and she is unable to give education to the minor daughter without any income. Therefore, she has filed this proceeding claiming maintenance from the Opp. Party.

3. The Opp. Party in his written objection has admitted their marriage. He has denied the allegation made by the petitioner No.1 against him. He has further averred that the petitioner No.1 without any rhyme or reason deserted him since last four to five years and she has no intention to lead any conjugal life with him. He has further averred that the petitioner No.1 has filed a complaint case vide ICC Case No.3149/2006 against the Opp. Party by making false, baseless, fabricated allegation. According to him, he has no source of income and he is unable to maintain the petitioners. He has further stated that the

petitioner No.1 is earning more than Rs.2000/- per month by doing household work.

4. To prove her case, the petitioner No.1 has examined herself as P.W.1 and one of her relative namely Bira Swain as P.W.2. Similarly, the Opp. Party has examined himself as O.P.W.1.

5. From the aforesaid rival contentions of the parties 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 petitioners?

(iii) What would be the quantum of maintenance to be allowed to the petitioners for their maintenance per month?

7. 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 No.1 is the legally married wife of the Opp. Party and petitioner No.2 is born out of their wedlock. P.W.1 has stated that she led happy conjugal life with the Opp. Party for about four months and thereafter when she was pregnant, the Opp. Party took her to her father's house and left her there and she gave birth petitioner No.2 at her father's house and after birth of the child, the Opp. Party assaulted her on several occasions and did not give them proper food and drove out the petitioner No.1 from her marital home. The Opp. Party denied in his evidence but it steer clear that no married lady would prefer to remain away from her husband, unless she is tortured in her matrimonial home. Thus it is clearly established that the Opp. Party has made vague allegation against the petitioner. Therefore the petitioner has sufficient cause to live separately from the Opp. Party. She has further stated that she has no independent source of income and the Opp. Party is a Tailor master and

his monthly income is about Rs.10,000/-. P.W.2 has stated that the Opp. Party assaulted the petitioners and he is not maintaining them.

8. O.P.W.1 has stated that the petitioner No.1 intentionally and voluntarily deserted him. He has further stated that he is a lame of 50% permanent disabled person. He proved Ext. A, the certificate issued by competent authority regarding his disability. He has further stated that he has no source of income whereas the petitioner No.1 is earning Rs.6000/- per month working in the field of her own parents.

9. Now, the next question for consideration is whether the Opp. Party having sufficient mean refused or neglected to maintain the petitioners. Admittedly, the petitioner No. 1 wife is a house wife and therefore, she has no independent source of income to maintain herself and her child. The Opp. Party could have successfully thrown away the claim of the wife of petitioner had he been established that the wife is living in adulatory or if without any specific reason the wife refused to live with her husband or if they are living separately by mutual consent. The Opp. Party could not set up any of these grounds. It is an admitted fact that the petitioners are now residing separately from the Opp. Party. On the other hand, the petitioner-wife could establish sufficient cause for her living separately from the Opp. Party. It is also an admitted fact that the Opp. Party is not providing any maintenance to them. No where the Opp. Party has stated that he is looking after the care of the petitioners. Law prevents vagrancy and destitution of neglected wife and child.

10. Now, the next question is about the quantum of maintenance. The Opp. Party has stated that the petitioner No.1 has got some income, but he failed to prove the same through cogent and convincing evidence. Being the legally married wife and child, the Opp. Party is duty bound to maintain the petitioners with utmost care. From the evidence of P.W.1, it is forthcoming that the Opp. Party has got independent source of income and without any rhyme or reason, he is neglecting to maintain them.

Therefore, the petitioners are entitled to get maintenance from the Opp. Party. Thus, taking into consideration all the facts and circumstances of the case, I feel it just and proper to allow a monthly maintenance of Rs. 800/- to the petitioner No.1 and Rs. 300/- to petitioner No.2. Hence ordered; Hence, it is ordered:

O R D E R

The petition is allowed in part in favour of the petitioners. The Opp. Party is directed to pay a monthly maintenance of Rs. 800/- and Rs. 300/- to petitioner No. 2 from the date of filing of the application i.e. 29.09.2009. The Opp. Party is further directed to clear 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.

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Dictated, corrected by me and is pronounced on this the 3rd day of September, 2014.

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Witnesses examined for the petitioner:

P.W.1 Kamini Swain

P.W.2 Bira Swain

Witnesses examined for the respondent:

O.P.W.1 Rajkishore Dutta

List of documents by petitioner:

Nil

List of documents by respondent:

Ext. A Physical handicraft certificate

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