

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

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

Criminal Proceeding No. 89 of 2013

1. Laxmi Priya Khatua, aged about 30 years,  
W/o-Deepak Khatua,  
D/o-Somanath Behera,  
At-Nakhaura Patna, P.O.-Gopinathpur,  
P.S.-Lingaraj, Bhubaneswar, Dist-Khurda,  
Odisha.
2. Priyadarshini Khatua, aged 3 years & 7 months,  
D/o- Deepak Khatua & Laxmi Priya Khatua,  
represented through its mother guardian  
petitioner No.1.

... Petitioners

... Versus...

Deepak Khatua, aged about 35 years,  
S/o- Ramakanta Khatua,  
At/P.O.-Subhadrapur, P.S.-Cuttack Sadar,  
Dist-Cuttack.

... Opp. Party

Date of argument : 16.10.2014

Date of order : 17.10.2014

ORDER

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 petitioner claiming monthly maintenance of Rs. 15,000/- to petitioner No. 1 and Rs. 5,000/- to petitioner No.2, the minor daughter and litigation expenses of Rs. 10,000/- 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 the residence of the petitioner as per Hindu custom and rites on

20.06.2008 and out of their wedlock petitioner No.2 namely Priyadarshini Khatua was born on 08.05.2009. According to the petitioner at the time of marriage, her father had given cash of Rs. 50,000/-, gold necklace of four bharis and five gold rings along with 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 and his family members after birth of petitioner No.2 demanded additional dowry of motor cycle and when the petitioner No.1 refused the same, the Opp. Party and his family members tortured her both physically and mentally and also did not provide food to her for days together for which she was forced to leave her matrimonial home and took shelter in her parent's house and since then she has been residing with her parents. 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 working as Carpenter and is earning Rs. 10,000/- per month. 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. 15,000/- and Rs. 5,000/- respectively and Rs. 10,000/- towards litigation expenses 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 No.1 is the legally married wife and petitioner No.2 is the legitimate daughter of the Opp. Party and the petitioner No.1 has sufficient cause to live separately from the Opp. Party with her daughter?
- (2) Whether the Opp. Party having sufficient means has neglected or refused to maintain the petitioners?
- (3) 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.

6. The petitioner No.1 in her affidavit evidence has stated that she married to the Opp. Party on 20.06.2008 and out of their wedlock she is blessed with a female child i.e. petitioner No.2. Her aforesaid statements have not been challenged. Thus, it can safely be concluded that the petitioner No.1 is the legally wedded wife of the Opp. Party and petitioner No.2 is their legitimate child. She has also stated that the petitioner No.1 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 motor cycle and when the torture became unbearable she was forced to leave her matrimonial home and started residing in her parental home with her legitimate daughter. 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 working as a Carpenter and is earning Rs. 10,000/- per month 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 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 a

Carpenter. Although this part of her evidence gone unchallenged yet, the petitioner failed to lead any conclusive evidence. Be that as it may, the wage of a skilled labour per day as per Govt. Notification is Rs. 180/- w.e.f. from 06.10.2012. Taking these factors into consideration and present day cost of living, it would be just and proper to allow a monthly maintenance of Rs. 1,500/- to the petitioner No. 1 and Rs. 1,000/- to petitioner No. 2 and in fact, I did the same. Hence ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioners. The Opp. Party is directed to pay a monthly maintenance of Rs. 1,500/- to the petitioner No. 1 and Rs. 1,000/- to petitioner No. 2 from the date of filing of application i.e. on 25.05.2013. 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 1<sup>st</sup> week of the succeeding month. Besides, he is also directed to pay Rs. 3,000/- towards cost of litigation expenses. Failure to carry out the order by the Opp. Party, the petitioners are at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 17<sup>th</sup> day of October, 2014.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1        Laxmi Priya Khatua

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

JUDGE, FAMILY COURT,  
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