

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

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

Criminal Proceeding No. 123 of 2012

Smt. Rojalini Behera @ Tina, aged about 23 years,  
W/o- Sri Babuli Behera,  
Vill/P.O.-Panchubhuti,  
P.S./Via.-Jagannath Prasad, Dist-Ganjam,  
At present C/o-Purastam Nayak, Science Park Basti  
(Adjacent to Science Park Boundary Wall),  
P.O.-Nayapalli, P.S.-Saheednagar, Bhubaneswar,  
Dist-Khurda, Pin-751013

... Petitioner

... Versus...

Sri Babuli Behera, aged about 32 years,  
S/o-Jalandhara Behera,  
At/P.O.-Panchubhuti, P.S.-Jatannath Prasad,  
Dist-Ganjam, Pin-761121

... Opp. Party

Date of argument : 01.09.2014

Date of order : 11.09.2014

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. 5,000/- for herself from the Opp. Party.

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

The marriage of the petitioner with Opp. Party was solemnized in Bhubaneswar as per Hindu custom and rites on 20.04.2007. It is averred that at the time of marriage, the father of the petitioner had given cash of Rs. 50,000/- and a chain weighing 15 grams and a finger ring weighing 7 grams along with other household articles to the Opp. Party. Petitioner has averred that after 20 days of marriage, the Opp. Party left for his working place at

Surat and again returned after six months. The petitioner on hearing of the ill health condition of her mother went to her parental home and the mother of the petitioner was expired and after observing her funeral rites she came back to her matrimonial house and thereafter the Opp. Party went to his working place at Surat. Soon after the death of her mother and departure of the Opp. Party, the family members of the Opp. Party started torturing on her demanding additional demand of dowry of Rs. 50,000/- from her parental property since her parents have their share in it and forced her to bring the additional demand from her uncle by any means. The Opp. Party was unhappy on hearing her pregnancy gave her some medicines for which it was terminated. When the torture became unbearable she was called for his uncle and her uncle tried to settle the matter when his all attempts was in vain, she was brought the matter to the people of Kula and as per their advise a meeting convened on 10.08.2008 and it was reduced in writing and the gentries present there advised the Opp. Party and his parents not to torture further and if they will repeat such torture the matter will be taken to the notice of police. Thereafter the petitioner along with her husband went to Surat and stayed there for about one and half years and when she returned from there to her in-laws house again the Opp. Party and his family members started torturing her on the same ground and when the torture became unbearable she along with her uncle with the permission from her father-in-law returned back to her uncle's house at Bhubaneswar. While she was staying in her uncle's house at Bhubaneswar the Opp. Party came to her uncle's house and gave assurance to her and her uncle to live peacefully and on believing upon the request of the Opp. Party and in order to start a happy married life she returned her matrimonial house along with the Opp. Party but in the same day in night the Opp. Party and his family members again tortured her both mentally and physically. Therefore, she left the matrimonial home and took shelter of her uncle. She has further averred that the Opp. Party is skilled labourer and is getting Rs. 10,000/- per month at Surat. Apart from that he is earning Rs. 70,000/- per annum from agricultural source. His father is doing vegetable business and is earning Rs. 5,000/- per month and

as such the Opp. Party has no dependency. 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. 5,000/- for self and 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:-
  - (i) Whether the petitioner is the legally wedded wife of the Opp. Party?
  - (ii) Whether the petitioner has sufficient cause to live separately from the Opp. Party and the petitioner has no sufficient means to support herself ?
  - (iii) Whether the Opp. Party having sufficient means has neglected to refused or maintain the petitioner?
  - (iv) What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 to 3 are answered in her favour?
5. The petitioner in order to prove her case she, herself, has been examined P.W. 1.
6. The petitioner in her affidavit evidence stated that she married to the Opp. Party on 20.04.2007. 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 20.04.2007.
7. She has also stated that she was subjected to torture not only by the Opp. Party but also by her in-laws due to non fulfillment of additional dowry and the Opp. Party without rhyme or reason neglected her to maintain. Since the torture and cruelty became unbearable she left her matrimonial house and took shelter of her uncle. 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. The petitioner is house wife having no separate

income to support herself

8. 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 working in a Spinning Mill at Surat and is getting Rs. 10,000/- per month. Apart from that he is earning Rs. 70,000/- per annum from agricultural source. His father is doing vegetable business and is earning Rs. 5,000/- per month and as such the Opp. Party has no dependency whereas she is merely a housewife having no separate income and depending upon her parents. She has also stated that the Opp. Party has not provided a single farthing to the petitioner since the date of leaving her at her parental home. This facts and circumstance is clearly suggesting 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. Therefore, the Opp. Party is liable to provide maintenance to the petitioner.
9. 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.3,000/- 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;

#### ORDER

The petition is allowed ex-parte in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 3,000/- to the petitioner from the date of filing of application i.e. on 31.08.2012. The Opp. Party is further directed to clear the arrear maintenance within two months hereinafter. The Opp. Party is further directed to pay Rs. 2,000/- towards the cost of litigation expenses. He is also directed to pay the current monthly maintenance within the 1<sup>st</sup> 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.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 11<sup>th</sup> day of  
September, 2014.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Rojalini Behera

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.