

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

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

Criminal Proceeding No. 155 of 2012

1. Mamina Nisha @ Bibi, aged about 25 years,
W/o- Abdul Jabar Khan,
Vill. Damodarpur,
P.O./P.S.- Cuttack Sadar,
Dist-Cuttack,
At present Vill.-Jadupur,
P.S.-Khandagiri,
Bhubaneswar, Dist-Khurda.
2. Jabir Khan, aged about 5 years,
D/o-Abdul Jabar Khan,
Vill. Damodarpur,
P.O./P.S.- Cuttack Sadar,
Dist-Cuttack,
At present Vill.-Jadupur,
P.S.-Khandagiri,
Bhubaneswar, Dist-Khurda.

Petitioner No. 2 being minor, represented through
its mother guardian petitioner No.1.

... Petitioner

... Versus...

Abdul Jabar Khan, aged about 28 years,
S/o-Late Sarif Khan,
Vill.-Damadarpur,
P.O./P.S.-Cuttack Sadar,
Dist-Cuttack.

... Opp. Party

Date of argument : 14.08.2014

Date of order : 25.08.2014

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 No.1 claiming monthly maintenance of Rs. 5,000/- for self and Rs. 5,000/- for her minor son from the Opp. Party.

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

The marriage of the petitioner No.1 with Opp. Party was solemnized in Bhubaneswar as per Muslim custom and rites on 08.05.2006. They were blessed with a male child (petitioner No.2) out of their wedlock. She has averred that at the time of marriage, her parents had given Rs. 55,000/- along with house articles as per the 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 demanded more dowry of Rs. 1,00,000/- and non fulfillment thereof subjected to the petitioner No.1 with physical torture and forced to leave her matrimonial home along with petitioner No. 2 and When the torture is unbearable she lodged a complaint against the Opp. Party and his family members at Mahila P.S. Vide Mahila P.S. Case No. 353/12 U/s. 498 (A), 323,506/34 IPC and 4 of the D.P. Act and since then she has been residing with her parents. The Opp. Party since then has not been providing any farthing to them and she is unable to maintain herself and the educational expenses of petitioner No.2 who is reading in LKG Astar English Medium School, Dumuduma. The Opp. Party is working as a Sofa-set carpenter and also he is the owner of a shop and earning Rs. 25,000/- from the said source. Apart from that he is earning Rs. 50,000/- per month from landed property. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioners, who are his legally wedded wife and son, the petitioner No.1 is obliged to file the present petition claiming a monthly maintenance of Rs.5,000/- for petitioner No.1 and Rs. 5,000/- for petitioner No. 2 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 is the legal married wife and petitioner No. 2 is

the legitimate son of the Opp. Party?

(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 in order to prove her case she, herself, has been examined P.W. 1.
6. The petitioner No.1 in her affidavit evidence stated that she married to the Opp. Party on 08.05.2006 and is blessed with petitioner No.2 through the Opp. Party. 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 son.
7. She has also stated that she was subjected to torture not only by the Opp. Party but also by her in-laws for which she was forced to leave her matrimonial house with the minor son. 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 petitioner No.1's living separately apart from the Opp. Party. Law prevents vagrancy and destitution of neglected wife and child.
8. The next question for consideration is, whether the Opp. Party has sufficient means and he has willfully neglected or refused to maintain the petitioners. It is stated categorically by the petitioner No.1 that the Opp. Party is working as a Sofa-set carpenter and also he is the owner of a shop and earning Rs. 25,000/- from the said source. Apart from that he is earning Rs. 50,000/- per month from landed property. The above evidence of the petitioner remains unchallenged and there is no reason to disbelieve the statement of the petitioner. She has also stated that the Opp. Party's has not provided a single farthing to them since the date of her leaving to 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 petitioners, who have no sufficient means to support herself. Therefore, the Opp. Party is liable to provide maintenance to the petitioners.

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. 5,000/- per month to petitioner No. 1 and Rs. 3,000/- to petitioner No. 2 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. 5,000/- to the petitioner No. 1 and Rs.3,000/- for petitioner No. 2 from the date of filing of application i.e. on 10.12.2012 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.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 25th day of August, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Maimun Nisha @ Bibi

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil
List of documents by Opp. Party:
Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.