

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

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

Civil Proceeding No. 263 of 2015

Nibedita Moharana, aged about 24 years,
W/o-Shree Dillip Kumar Moharana,
D/o-Shree Banshidhar Sahoo,
Vill.-Oukhama Patna,
P.O.-Saraka Patna, Dist-Dhenkanal,
At present C/o-Banshidhar Sahoo, Plot No. 3557/3560,
Hata Chhak, Palasuni, P.O.-Rasulgarh, P.S.-Mancheswar,
Bhubaneswar, Dist-Khurda.

... Petitioner

...Versus...

Dillip Kumar Moharana, aged about 27 years,
S/o-Shree Kulamani Moharana,
Oukhama Patna, P.O.-Sarakpatna, Dist-Dhenkanal.

... Opp. Party

Date of Argument : 28.10.2015

Date of Judgment: 05.11.2015

J U D G M E N T

The petitioner Nibedita Moharana filed a petition U/s. 125 of the Code of Criminal procedure 1973 (in short, Cr.P.C) claiming monthly maintenance of Rs. 20,000/- for her from the Opp. Party.

2. Admitted facts of the case of the parties are that their marriage was solemnized in Kailas Sadan of Basudev Marg, Bhubaneswar on 02.07.2007 and both parties have been residing separately.

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

According to the petitioner her father at the time of marriage had given cash of Rs. 1,10,000/-, gold and silver ornaments worth of Rs. 2,75,000/-

along with other household articles as per demand of the Opp. Party and his family members. It is the case of the petitioner, after five days of marriage, the Opp. Party and his family members demanded additional demand dowry of Rs. 50,000/- and non-fulfillment thereof she was subjected to torture both physically and mentally by the Opp. Party and his family members including her elder sister-in-law. The mother of the Opp. Party did not allow her to live with the Opp. Party from 14th day of marriage and also did not provide food to her. It is averred by the petitioner that in between 20 or 22 days of marriage, the Opp. Party and his family members after abusing and assaulting driven her out from their house in the night for which she spent the entire night on their veranda. Thereafter, the Opp. Party forcibly brought her with him and left her at Hanspal square, Bhubaneswar and while leaving he has threatened her unless she will bring their additional demand of dowry, he would not accept her. After getting information, her father took her to his house. After one month, her father-in-law came to her parental home and assured not to make further torture on her and brought her to their house. But they again did their previous activities on her. On 25.08.2007, despite the instruction of her parents-in-law she went to the room of her husband and narrated about the torture on her by his other family members before him. But the Opp. Party told her that even they will kill her, he would not help her. He has also threatened not to keep any relation with him. He has also instructed her to commit suicide by taking poison. Finding no other alternative, she took four numbers of sleeping pills at a time in front of the Opp. Party but the Opp. Party did not restricted her. On 26.08.2007 when got her sense, found herself in her parental home. Thereafter, she made several requests to the Opp. Party and his family members to take her back but all were in vain. It is further averred by her that she has filed a case in the Court of S.D.J.M., Dhenkanal vide G.R. Case No. 492 of 2008 U/s. 498(A) IPC and 4 D.P. Act against the Opp. Party and his family members. The Opp. Party has also filed a divorce case against her before Civil Judge, (S.D.) Bhubaneswar vide

C.S.(Mat) No. 494/2008. The petitioner further alleged that the Opp. Party contacted second marriage to Rupeli Aparajita Sahoo @ Tikili daughter of Sri Bibekananda Sahoo of village Badatangipatna under Itamati Police Station in the district of Nayagarh on 25.02.2011 and out of the second marriage he has been blessed with a son in the district Head Quarter Hospital, Dehankanal on 13.03.2012. According to the petitioner, the Opp. Party is running medicine shop in his native village, from which he is getting Rs. 60,000/- per month besides, he is getting Rs. 1,50,000/- per annum from his vast landed property. The petitioner is merely a house wife having no source of income to maintain herself and is depending upon her father who is unable to maintain her. Since the Opp. Party having sufficient means willfully neglected and refused to maintain the petitioner, who has no sufficient means, the present petition is filed claiming monthly maintenance of Rs. 20,000/- from the Opp. Party.

4. The Opp. Party entered contest the proceeding by filing written objection denying all the allegations made against him by the petitioner. He has averred that the petition is not maintainable. The specific case of the Opp. Party is that their marriage was voidable marriage as the petitioner had obtained his consent by suppressing the facts of her unsoundness of mind. The petitioner is also suffering from mental disorder to such an extent as she is unfit for marriage and the procreation of any children. Due to unsoundness, she is also in-capable of giving a valid consent at the time of marriage, he has filed Mat Case No. 494/2008 U/s. 12 (b) and (e) of Hindu Marriage Act, 1955 and therefore, under such circumstances she is not entitled to get any maintenance from him.

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

- (1) Whether petitioner has voluntarily deserted the Opp. Party?
- (2) Whether the petitioner is unable to maintain herself?
- (3) Whether the Opp. Party having sufficient means neglected and refused to maintain the petitioners?

(4) What would be the quantum of maintenance to be allowed to the petitioners, if point No. 1 and 2 are answered in their favour.

6. The petitioner in order to buttress her case she, herself, has been examined as P.W. 1, one Padma Charan Barik as P.W. 2, one Bansidhar Sahoo as P.W. 3 and placed reliance on seven documents. They are:- Ext. 1 and 1/a are the Drug Licenses of the Opp. Party obtained under R.T.I. Act, Ext. 2 is the certified copy of the ROR stands recorded in the name of Bhikari Moharana, the grandfather of the Opp. Party, Ext. 2/a is the certified copy of the ROR stands recorded in the name of Kulamani Moharana, Ext. 3 is the certified copy of the ROR stands recorded in the name of Madhu Moharana, Nilamani Moharana, Kulamani Moharana and Suryamani Moharana sons of Bhikari Moharana, Ext. 4 is the information about the second marriage by the Panchayat Itamati Grama Panchayat, Ext. 5 is the discharge certificate of the birth of a child through his second wife namely Tikili @ Aparajita, Ext. 6 is the Tally ERP certificate of the petitioner, Ext. 7 is the PGDCA certificate of the petitioner, Ext. 7/a is the mark sheet of the PGDCA certificate of the petitioner. The Opp. Party in order to negate the claim of the petitioner he, himself examined as O.P.W. 1 and relied on three documents. They are:- Ext. A is the Income Certificate issued by the Addl. Tahasildar, Dhenkanal in Misc. Case No. 772 of 2013, Ext. B is the another Income Certificate of Revenue Officer in Misc. Case No. 349 of 2015 dated 24.04.2015 and Ext. C is the medical treatment book of the petitioner for the period from 21.01.2003 to 31.10.2007.

7. In so far as the claim of the maintenance by the wife-petitioner is concerned, it contextualizes for judicial evaluation whether the petitioner has sufficient cause to live separately from the Opp. Party and that the Opp. Party has refused or neglected to maintain her. P.W. 1 has stated that during her stay in her matrimonial home, the Opp. Party and his family members demanded additional dowry of Rs. 50,000/- and non fulfillment thereof she was subjected to torture both physically and mentally. She has

further stated that after 20 or 22 days of marriage, the Opp. Party and his family members after abusing and assaulting driven her out from their house in the night for which she spent the entire night on their veranda. Thereafter, the Opp. Party forcibly brought her with him and left her at Hanspal square, Bhubaneswar and while leaving he has threatened her unless she will bring their additional demand of dowry, he would not accept her. After getting information, her father took her to his house. After one month, her father-in-law came to her parental home and assured not to make further torture on her and brought her to their house. But they again did their previous activities on her. On 25.08.2007, despite the instruction of her parents-in-law she went to the room of her husband and narrated the torture on her by her other family members before him. But the Opp. Party told her even they will kill her, he would not help her. He has also threatened not to keep any relation with him. He has also instructed her to commit suicide by taking poison. Finding no other alternative, she took four numbers of sleeping pills at a time in front of the Opp. Party but the Opp. Party did not restrict her. On 26.08.2007 when got her sense, found herself in her parental home. Thereafter, she made several requests to the Opp. Party and his family members to take her back but all were in vain. The Opp. Party in his examination in chief denied the allegation of torture made by him and his family members. His only defence is that concealing the unsoundness mind of the petitioner, she was given marriage to him for which he filed a proceeding under Section 12 of the Hindu Marriage Act to declare the marriage void. The aforesaid defence is jejune unless and until the Opp. Party got a decree to that effect. But one thing is clear that their marriage is subsisting till date and therefore, the petitioner is entitled to get maintenance from the Opp. Party. This also cannot be taken as a ground justifying in driving out the petitioner from the matrimonial home. She has further stated that during pendency of the case the Opp. Party has married for the second time to Rupeli Aparajita Sahoo @ Tikili daughter of Sri Bibekananda Sahoo of village Badatangipatna under Itamati Police Station

in the district of Nayagarh on 25.02.2011 and out of the second marriage he has been blessed with a son in the district Head Quarter Hospital, Dehankanal on 13.03.2012. When the Opp. Party has contacted second marriage and there was constant torture on the petitioner due to non fulfillment of additional demand of dowry, the petitioner has sufficient cause leave apart from the Opp. Party. The petitioner is a house wife having no independent income and therefore, she is unable to maintain herself.

8. The next question for consideration is about the income of the Opp. Party. P.W. 1 has stated that the Opp. Party is running a medicine shop in his native village, from which he is getting Rs. 60,000/- per month besides, he is getting Rs. 1,50,000/- per annum from his vast landed property. She has also exhibited some documents to vouch safe the above income of the Opp. Party. On the other hand, the Opp. Party denied the above income stated by the petitioner and filed two Income Certificates vide Ext. A and B reveal that the annual income of the Opp. Party is Rs. 25,000/- and Rs. 30,000/- respectively. The Drug Licenses of the Opp. Party filed by the petitioner vide Ext. 1 and 1/a would go to show that the Drug License of the Opp. Party is valid from 02.12.2009 to 01.12.2014. Though the Opp. Party has stated that he closed the medicine shop due to loss, is a pet notion because he has not submitted the closure of the accounts of his shop. Had his medicine shop has been closed, he would not have renewed his Drug Licenses. The petitioner has stated that the Opp. Party used to earn Rs. 60,000/- per month. She being the wife of the Opp. Party is the best person to depose about the actual income of the Opp. Party. Unless any contrary evidence is adduced nullifying the aforesaid statement of the P.W. 1, absolutely there is no reason to discard her aforesaid statement of P.W. 1. Besides, he has some ancestral landed property as it evident from Ext. 2, 2/a and 3. The Opp. Party has also admitted that he is a daily labourer and earns Rs. 300.00 per day. He has admitted he has not providing any farthing to the petitioner since the date of desertion. Thus, coalescing the aforesaid evidence, there is no gnawing doubt that the Opp. Party is a man

of means and despite that he neglected and refused to maintain the petitioner. Therefore, the petitioner is entitled to get maintenance from the Opp. Party. Thus, keeping in view of the aforesaid income, status of the parties and cost of living, it would be just and proper to allow Rs.5,000/- to the petitioner and in fact, I did the same. Hence ordered;

O R D E R

The petition is allowed on contest in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 5,000/- to the petitioner from the date of filing of application i.e. from 20.10.2008. The interim maintenance if paid earlier by the Opp. Party shall be adjusted. The Opp. Party further directed pay litigation cost of Rs. 5,000/- to the petitioner. The Opp. Party is directed to clear up the arrears maintenance within two months hereinafter. He is also directed to pay the 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.

Judge, Family Court,
Bhubaneswar.

Dictated, corrected by me and is pronounced on this the 5th day of November, 2015.

Judge, Family Court,
Bhubaneswar.

List of witness on behalf of petitioners

P.W. 1 Smt. Nibedita Moharana
P.W. 2 Padma Charan Barik
P.W. 3 Bansidhar Sahoo

List of witness on behalf of Opp. Party

O.P.W.1 Dillip Kumar Moharana

List of exhibits on behalf petitioners

Ext. 1 and 1/a Drug Licenses of the Opp. Party obtained under R.T.I. Act
Ext. 2 Certified copy of the ROR stands recorded in the name of

- Bhikari Moharana, the grandfather of the Opp. Party
- Ext. 2/A Certified copy of the ROR stands recorded in the name of
Kulamani Moharana
- Ext. 3 Certified copy of the ROR stands recorded in the name of
Madhu Moharana, Nilamani Moharana, Kulamani
Moharana and Suryamani Moharana sons of Bhikari
Moharana
- Ext. 4 Information about the second marriage by the Panchayat
Itamati Grama Panchayat
- Ext. 5 Discharge certificate of the birth of a child through his
second wife namely Tikili @ Aparajita
- Ext. 6 Tally ERP certificate of the petitioner
- Ext. 7 PGDCA certificate of the petitioner, Ext. 7/a is the mark
sheet of the PGDCA certificate of the petitioner.

List of exhibits on behalf of O.P.W. 1

- Ext. A Income Certificate issued by the Addl. Tahasildar,
Dhenkanal in Misc. Case No. 772 of 2013
- Ext. B Another Income Certificate of Revenue Officer in Misc. Case
No. 349 of 2015 dated 24.04.2015
- Ext. C Medical treatment book of the petitioner for the period from
21.01.2003 to 31.10.2007.

Judge, Family Court,
Bhubaneswar.