

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

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

Criminal Proceeding No. 107 of 2014

Smt. Baijayanti Senapati, aged about 54 years,
W/o-Jogi Senapati,
Village-Khanta, P.O.-Khanata, P.S.-Banpur,
Dist-Khurda.
At present residing C/o-Debendra Samanta,
Plot No. 12710/1, Jameswarpatana Sahi,
Old Town, P.S.-Lingraj, Bhubaneswar,
Dist-Khurda.

... Petitioner

...Versus...

Sri Jogi Senapati, aged about 60 years,
S/o-Late Agadhu Senapati,
Village/P.O.-Khanata, P.S.-Banapur,
Dist-Khurda.

... Opp. Party

Date of Argument : 28.01.2016

Date of Judgment : 01.02.2016

J U D G M E N T

The petitioner-wife, Smt. Baijayanti Senapati, has filed a petition U/s. 125 of the Code of Criminal procedure 1973 (in short, Cr.P.C) claiming monthly maintenance of Rs. 5,000/- and litigation expenses of Rs. 2,000/- from the Opp. Party-husband, Jogi Senapati.

2. Admitted facts of the parties are that their marriage was solemnized as per Hindu rites and Customs in Ananta Basudev Manidir, Dharmasala, Bhubaneswar on 24.06.2009 and both parties are living separately from each other.

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

According to the petitioner though at the time of marriage her father had fulfilled all the demand of the Opp. Party yet, she was subjected to torture both physically and mentally due to non fulfillment of his additional demand of dowry of Rs. 60,000/-. It is the case of the petitioner that while staying in the rented house, after fifteen days of marriage, when she asked the Opp. Party to make some necessary arrangement for attending the call of natures but the Opp. Party did not pay any attention to it, rather abused her in filthy languages by saying “you are a prostitute what have you more to hide?”. It is further averred by her that due to attending the call of natures outside in an unhygienic place, she suffered diseases for which she needed some immediate medical attention but the Opp. Party did not take her to any hospital and when her condition became worse, her family members took her to Bhubaneswar for her treatment and since then she has been residing with her brother at Bhubaneswar. According to her she is merely a house wife having no source of income to maintain herself and is depending upon her parents who is unable to maintain her whereas the Opp. Party has grocery shop at Balugaon from which he is getting Rs. 20,000/- per month besides, he is getting Rs. 1,00,000/- from his landed property. 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 by the petitioner claiming monthly maintenance of Rs. 5,000/- and litigation expenses of Rs. 2,000/- from the Opp. Party.

4. The Opp. Party has filed objection nixing all the allegations made against him by the petitioner. The specific case of the Opp. Party is that due to old habitual call of nature and other practices, the petitioner left his house. According to him he has no shop and also he has no agricultural land and therefore, he is not liable to pay any maintenance to the petitioner.

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

- (1) Whether petitioner is living separately from the Opp. Party with sufficient cause and unable to maintain herself?

(2) Whether the Opp. Party having sufficient means neglected or refused to maintain the petitioner?

(3) What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 and 2 are answered in her favour.

6. The petitioner No. 1 in order to buttress her case she, herself, has been examined as P.W. 1. The Opp. Party in order to negate the claim of the petitioner he, himself has been examined as O.P.W. 1. Both the parties chose not to file any documents on their behalf.

Point No. 1

7. Whether petitioner is living separately from the Opp. Party with sufficient cause and unable to maintain herself?

P.W. 1 has stated that after eight months of marriage, she was subjected to torture both physically and mentally by the Opp. Party due to non fulfillment of his additional demand of dowry of Rs. 60,000/-. She has further stated that while staying in the rented house, after fifteen days of marriage, when she asked the Opp. Party to make some necessary arrangement for attending the call of natures, the Opp. Party did not pay any attention to it, rather abused her in filthy languages by saying “you are a prostitute what have you more to hide?”. It is further stated by her that due to attending the call of natures outside in an unhygienic place, she suffered some diseases for which she needed some immediate medical attention but the Opp. Party did not take her to any hospital and when her condition became worse, her family members took her to Bhubaneswar for her treatment and since then she has been residing with her brother at Bhubaneswar. There has been no effective cross examination to demolish the aforesaid stoical statement of the P.W. 1, except a suggestion that he has not given medical treatment during her illness while staying in his village. O.P.W. 1 has stated that he could not make provision of latrine for the petitioner in his village. Perhaps for this reason the petitioner felt serious ill and there was constant nagging between the petitioner and the Opp. Party and when her health condition became worse, the petitioner was

compelled to leave her matrimonial house for her brother's house. Therefore, the petitioner has shown sufficient cause for leaving apart from the Opp. Party.

Point No.2

8. Whether the Opp. Party having sufficient means neglected and refused to maintain the petitioners?

The petitioner has stated that the Opp. Party has grocery shop at Balugaon from which he is getting Rs. 20,000/- per month besides, he is getting Rs. 1,00,000/- from his landed property. The petitioner while cross examining the Opp. Party, he has stated that he has landed properties but those are in possession of his son. Therefore, sine-dubio, it is concluded that the Opp. Party has sufficient means. From the evidence of the parties, it is well established that the Opp. Party has not paid a single farthing to the petitioner from the date of her leaving separately from the Opp. Party. Therefore, it is established that the Opp. Party has neglected and refused to maintain the petitioner as such the petitioner is entitled to claim maintenance from the Opp. Party.

Point No.3

9. What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 and 2 are answered in their favour?

Keeping in view of the aforesaid income, status of the parties and cost of living, it would be just and proper to allow Rs. 2,000/- to the petitioner and in fact, I did the same. Hence, it is 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. 2,000/- to the petitioner from the date of the application i.e. from 12.09.2014 and the amount paid earlier as interim maintenance shall be adjusted. The Opp. Party further directed to pay litigation expenses of Rs. 3,000/- to the petitioner. The Opp. Party is directed to clear up the arrear 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 1st day of February, 2016.

Judge, Family Court,
Bhubaneswar.

List of witness on behalf of petitioners

P.W.1 Smt. Baijayanti Senapati

List of witness on behalf of Opp. Party

O.P.W. 1 Sri Jogi Senapati

List of exhibits on behalf petitioners

Nil

List of exhibits on behalf of Opp. Party

Nil

Judge, Family Court,
Bhubaneswar.