

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

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

Criminal Proceeding No. 11 of 2014

1. Anitaraj Kar, aged about 30 years,
W/o- Nihar Ranjan Panda,
D/o- Radhamohan Kar,
2. Jyotimayee Panda @ Amruta Panda, aged about 10 years,
D/o-Nihar Ranjan Panda,
Represented through his mother guardian petitioner No.1
Both are of residing at Qrs No. LIG-4/26, B.D.A. Colony,
Phase-I, P.S.-Chandrasekharapur, Bhubaneswar,
Dist-Khurda.

... Petitioners

... Versus...

Nihar Ranjan Panda, aged about 40 years,
S/o.-Benudhar Panda,
At-EB-809, Badagada Brit Colony,
P.S.-Badagada, Bhubaneswar,
Dist-Khurda.

... Opp. Party

Date of Argument : 03.01.2015

Date of Order : 12.01.2015

O R D E R

This is a petition under section 127 of the Cr.P.C. filed by the petitioner No.1 against the Opp. Party for enhancement of monthly maintenance from Rs. 4,000/- to Rs. 8,000/- for both the petitioners.

2. The case of the petitioners in a nut-shell is that, petitioners No.1 and 2 are the legally married wife and daughter of the Opp. Party. It is averred that as per order dated 15.01.2007 passed by J.M.F.C. Bhubaneswar in CrI. Misc. Case No. 100/2005, the learned J.M.F.C., Bhubaneswar has passed an order directing the Opp. Party to pay monthly maintenance of Rs. 1,000/- to each of the petitioner and after receiving the aforesaid amount from the Opp. Party and when they were unable to maintain themselves within the said amount of

maintenance, they have filed a petition U/s. 127 Cr.P.C. for alteration/enhancement the amount before this Court vide C.R.P. No. 1/2011 for alteration/enhancement of the maintenance amount and this Court by its 19.08.2011 has directed the Opp. Party to pay monthly maintenance of Rs. 2,000/- to each of the petitioner and accordingly, they are getting maintenance of Rs. 2,000/- and the said amount is not sufficient on their part to maintain their livelihood due to rise in price of essential commodities, house rent and study expenses of petitioner No.2. In the meanwhile the income of the Opp. Party has increased due to hike in the monthly salary as he is working as a Sr. Pharmacist in Kalinga Hospital, Chandrasekharpur, Bhubaneswar and is now getting salary of Rs. 12,000/- per month and he is also having extra income of Rs. 20,000/- per month from private practice. Apart from that the Opp. Party is having a dwelling (three storied building) house at Baranga Brit Colony and by letting out of the same he is getting Rs. 20,000/- per month. Besides that he is also getting Rs. 60,000/- per month agriculture. With these changing circumstances, she claimed revision of their monthly maintenance to Rs.4,000/- to Rs. 8,000/- to both the petitioners.

3. The Opp. Party filed his objection. It is the case of the Opp. Party that the conduct of the petitioner lacks of bonafide. She has not come with clean hands. The petitioner is not otherwise entitled to any enhancement of Rs. 8,000/- towards monthly maintenance. According to him, he is now working as Dy. Ch. Pharmacists in Kalinga Hospital Bhubaneswar and is getting Rs. 12,796/- per month and has denied all other income claimed by the petitioner. He has stated that on 23.06.2012 the petitioner has filed a petition U/s. 127 Cr.P.C. for enhancement of maintenance amount before this Court vide C.M.C. No. 11/12 with the self same allegations, wherein Hon'ble Court after perusing the submission of the parties and documents pleased to reject the petition on 12.02.2013. He has further stated that the amount claim is otherwise excessive, exorbitant and inflated and the petitioner has put the figures as per her whim and imagination without any material and there is no cogent bases in making this plaint and under this circumstances, this speculative claim advanced in the petition is without any basis but only to

harass him and this application claiming enhancement of maintenance amount is devoid of any merits and the same is liable to be rejected.

4. The petition was head on 03.01.2015 as parties submitted to dispose of the matter on the basis of the pleading of the parties and salary certificate of the Opp. Party without leading any evidence.

5. On the rival submissions of both the parties, the only point to be considered is that whether there is change of circumstance after previous maintenance was allowed to the petitioners?

6. Admittedly, the petitioners are the legally married wife and daughter of the Opp. Party. The petitioners had filed Crl. Misc. Case No. 100 of 2005 U/s. 125 Cr.P.C. claiming maintenance from the Opp. Party and the J.M.F.C., Bhubaneswar after hearing, granted maintenance of Rs. 1,000/- to each of the petitioner on 15.01.2007. Thereafter, the petitioners filed Crl. Misc. Case No. 1/2011 U/s. 127 Cr.P.C. for enhancement of earlier maintenance and this Court after hearing the enhanced the maintenance amount of the petitioners from Rs. 1,000/- to Rs. 2,000/- to each of the petitioner on 29.08.2011. Admittedly the Opp. Party was getting salary of Rs. 4,000/- and his salary has been hiked two times and similarly, in Crl. Misc. Case No. 1/2011, the quantum of earlier maintenance of the petitioner has been doubled on 29.08.2011. According to the petitioner No.1, the Opp. Party is getting Rs. 12,000/- per month and is earning Rs. 20,000/- from his private practice. Apart from that he is getting house rent of Rs. 20,000/- per month. Besides that he is getting Rs. 60,000/- per month towards agriculture. But the petitioner No.1 has not filed any document to vouch-safe it. Rather the Opp. Party in his W.S. has admitted that his net salary is Rs. 12,796/- and also filed his salary certificate for the month of June, 2014. On perusal of the same, it is evident that the gross salary of the Opp. Party is Rs. 14,642/- and after all statutory deduction, his net salary is Rs. 12, 796/- per month. The petitioners have not proved the other income of the Opp. Party. On 29.08.2011 in Crl. Misc. Case No. 1/2011 this Court after considering the then income of the Opp. Party doubled the maintenance amount of the petitioners. The petitioners have filed the maintenance case bearing No.

11/2012 U/s. 127 which was rejected by this Court on 12.02.2013. Now the petitioners have also filed this present petition on 06.02.2014 i.e after thirteen months after rejection of earlier order by this Court. In the meantime the salary of the Opp. Party has been revised to some extent and the prices of essential commodities have been gone up substantially. The petitioners have well proved that there are changes in circumstances. According to me, the circumstances have changed to alter the allowance of the petitioners granted about three years back. Keeping in view of the Opp. Party's income and also cost of living, price of essential commodities and expenses towards education of the child, since the minor child is in advance stage of prosecuting her study and when the earning of the Opp. Party-husband is marginally increased, it would be just and proper to enhance the amount of maintenance. Hence, it is ordered;

O R D E R

The petition of the petitioners is allowed on contest with cost. The Opp. Party-husband/father is directed to pay Rs. 3,000/- per month to each of the petitioner No.1 and 2 from the date of filing of this application i.e. from 06.02.2014 by adjusting the payment if any made by him during the period of enhancement of maintenance dues. He is further directed to pay the arrear maintenance dues within two months to the petitioners. The current maintenance amount shall be paid within the first week of each succeeding month. Any deviation in payment of maintenance dues, the petitioner No.1 is at liberty to realise the same through process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR

Dictated, corrected by me and is pronounced on this the 12th day of January, 2015.

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