

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

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

Criminal Proceeding No. 112 of 2014

1. Smt. Padmini Das, aged about 38 years,
W/o-Trilochan Das,
2. Laxmipriya Das, aged about 15 years,
D/o-Trilochan Das,
3. Jitu Das, aged about 10 years,
S/o-Trilochan Das,
The petitioner No.2 and 3 bring minors represented through their
mother guardian petitioner No.1.
All are of village-Padmakesharipur,
P.O.-Kalarahanga, P.S.-Mancheswar,
Bhubaneswar, Dist-Khurda.

... Petitioners

... Versus...

Sri Trilochan Das, aged about 42 years,
S/o-Late Nath Das,
Village-Padmakesharipur, P.O.-Kalarahanga,
P.S.-Mancheswar, Bhubaneswar,
Dist-Khurda.

... Opp. Party

Date of Argument : 14.01.2016

Date of Judgment : 20.01.2016

J U D G M E N T

1. The petitioner No.1 has filed a petition U/s. 125 of the Code of Criminal Procedure (in short, Cr.P.C.) claiming monthly maintenance of Rs. 10,000/- for self and for petitioner No.2 and 3 from the Opp. Party.

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

According to the petitioner No.1, her marriage with the Opp. Party was solemnized according to Hindu rites and Customs seventeen years ago and out of their wedlock petitioner No.2 and 3 were born. It is averred by the

petitioner No.1 that though her father had fulfilled all the demand of the Opp. Party and his family members yet, she was subjected to torture both physically and mentally due to non fulfillment of additional demand of dowry of Rs. 50,000/-. It is further averred by the petitioner No.1 that once the Opp. Party tried to kill her by putting vermilion on her mouth for which she became serious and admitted in KIMS Hospital. Since last two years the Opp. Party forcibly driven her along with her children from his house and since then Opp. Party has not providing any farthing to them for their maintenance. According to the petitioner No.1, she has no source of income whereas the Opp. Party is doing snake charming business besides, he is selling Gada, Deuria and local medicines from which he is earning Rs. 2,000/- per day. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain them, the petitioner No.1 is obliged to file the present petition claiming a monthly maintenance of Rs. 10,000/-for self and for petitioner No.2 and 3 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 petitioner No.1 is the legally married wife and petitioner No.2 and 3 are the legitimate children of the Opp. Party and the petitioner No.1 has sufficient cause to live separately from the Opp. Party?

(ii) Whether the Opp. Party having sufficient means has neglected or refused to maintain the petitioners?

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

5. The petitioner No.1 in order to prove her case she, herself, has been examined P.W. 1 but chose not to file any document on her behalf.

6. The petitioner No.1 in her affidavit evidence has stated that she married to the Opp. Party according to Hindu rites and Customs seventeen years back on 16.05.2010 and out of their wedlock petitioner No.2 and 3 were born. Her

aforesaid statement has 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 and 3 are their legitimate daughter and son respectively. She has also stated that after marriage being dissatisfied with the dowry articles she was subjected to torture both physically and mentally by the Opp. Party in her matrimonial house. It is further stated by her that once the Opp. Party tried to kill her by putting vermilion on her mouth for which she became serious and admitted in KIMS Hospital. Since last two years the Opp. Party forcibly drove her along with her children from his house. 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 who is responsible for petitioner No.1's living separately apart from the Opp. Party. The petitioner No.1 is a house wife and therefore, she has no independent source of income and as such, unable to maintain herself as well as petitioner No.2 and 3.

7. The next question for consideration is, whether the Opp. Party has sufficient means and he has willfully neglected and refused to maintain the petitioners. It is stated categorically by the petitioner No.1 that the Opp. Party is doing snake charming business besides, he is selling Gada, Deuria and local medicines from which he is earning Rs. 2,000/- per day whereas the petitioner No.1 is unable to maintain herself as well as the petitioner No.2 and 3. She has also stated that the Opp. Party has not provided a single farthing to them from the date of diving out from his house. This facts and circumstance is clearly suggestive 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 themselves. Law prevents vagrancy and destitution of married woman and children. Therefore, the Opp. Party is liable to provide maintenance to the petitioners.

8. The next question for consideration is what would be the quantum of maintenance. Thought P.W. 1 has stated above income of the Opp. Party yet, failed to file any document regarding the above stated income of the Opp. Party. Be that as it may, the Opp. Party is an able bodied person having

potential to earn his livelihood. Considering the present day of 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. 2,000/- to the petitioner No.1 and Rs. 1,000/- to the petitioner No.2 and Rs. 1,000/- to the petitioner No.3 be allowed as monthly maintenance. Hence, ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioners. The Opp. Party is directed to pay a monthly maintenance of Rs. 2,000/- to the petitioner No.1, Rs. 1,000/- to the petitioner No.2 and Rs. 1,000/- to the petitioner No.3 from the date of filing of application i.e. from 18.09.2014. The Opp. Party is further directed to clear up 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. Besides that the Opp. Party is directed to pay litigation expenses of Rs. 3,000/- to the petitioner No.1. Failure to carry out the order by the Opp. Party, the petitioner No.1 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 20th day of January, 2016.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Padmini Das

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

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