

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

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

Criminal Proceeding No. 143 of 2013

1. Jyoti Lenka, aged about 28 years,
W/o- Augustine Behera,
D/o-Bira Kishore Behera

2. Trupti Mayee Behera, aged about 7 years,
D/o-Augustine Behera,
Both are residing at Janata Nagar,
Saliasahi, P.S.-Nayapalli, Bhubaneswar,
Dist-Khurda.
Permanent resident of
At-Ramachani Sahi, Amala Club Lane,
Laxmi Talkies, Puri,
P.O./P.S.-Puri Town,
Dist-Puri.

... Petitioners

... Versus...

Augustine Behera, aged about 32 years,
S/o-Raman Behera,
resident of at-Rama Chandi Sahi,
Amala Club Lane, Laxmi Talkies, Puri,
P.O./P.S.-Puri Town,
Dist-Puri.

... Opp. Party

Date of argument : 07.08.2014

Date of order : 12.08.2014

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. 15,000/- for herself and Rs. 10,000/- for petitioner No.2 from the Opp. Party.

2. The fact of the case are as follows:-

The marriage of the petitioner No.1 with Opp. Party was solemnized in

Bhubaneswar as per Hindu custom and rites before Marriage Officer, Puri on 16.07.2004 and they are blessed with a female child (petitioner No.2) on 20.08.2005. After marriage they led a happy conjugal life upto the year 2006 and after that the Opp. Party gradually neglected the petitioners and started quarrelling without any cause taking liquor and many times assaulted the petitioner No.1 and did not provide any amount towards the family maintenance for which the petitioner No.1 faced much trouble due to monetary scarcity. In the month of December, 2010, the Opp. Party drove out the petitioner No.1 from his house and since then she has been residing with her parents. The Opp. Party since then has not been providing any farthing to them. The Opp. Party is working as a Manager in a whole seller (Carrier Bags and Suitcases) counter namely Ashok Store, Badadanda, Puri and is getting salary of Rs. 20,000/- per month besides, he has got a well constructed building which stands in the name of his father and out of that they are getting Rs. 20,000/- per month as house rent and apart from that the mother of the Opp. Party is getting pension of Rs. 10,000/- per month. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioners, who is his legally wedded wife and daughter, the petitioners are obliged to file the present petition claiming a monthly maintenance of Rs. 15,000/- and Rs. 10,000/- for themselves respectively.

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 No.1 is the legal married wife and petitioner No. 2 is the legitimate child of the Opp. Party?
- (2) Whether the petitioner No. 1 has sufficient cause to live separately from the Opp. Party?
- (3) Whether the Opp. Party having sufficient means has neglected or refused to maintain the petitioner?
- (4) What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 to 3 are answered in favour of the petitioner

No.1?

5. The petitioner No.1 in order to prove her case she, herself, has been examined P.W. 1.

6. The petitioner No.1 while being examined as P.W. 1 has stated in her affidavit evidence that she married to the Opp. Party on 16.07.2004 before Marriage, Officer, Puri and is blessed with petitioner No.2 on 20.08.2005. 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 daughter.

7. P.W. 1 has also stated that the petitioner No.1 was subjected to torture not only by the Opp. Party but also by her in-laws. She has also stated that she was driven from her matrimonial house with the minor daughter by the Opp. Party. 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's living separately apart from the Opp. Party.

8. 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 working as a Manager in a whole seller (Carrier Bags and Suitcases) counter namely Ashok Store, Badadanda, Puri and is getting salary of Rs. 20,000/- per month besides, that he has got a well constructed building in the name of his father and out of that he is getting Rs. 20,000/- per month as house rent and apart from that the mother of the Opp. Party is getting pension of Rs. 10,000/- per month whereas the petitioner No.1 is merely a housewife having no separate income and depending upon her parents. She has also stated that the Opp. Party has not provided a single farthing to the petitioners since the date of her leaving for 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 themselves. 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. 3,000/- per month to petitioner No. 1 and Rs. 1,000/- 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;

O R D E R

The petition is allowed ex-parte in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 3,000/- to the petitioner No. 1 and Rs. 1,000/- for petitioner No. 2 from the date of filing of application i.e. on 19.08.2013 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. Besides, he is also directed to pay Rs. 5,000/- towards cost of litigation expenses. Failure to carry out the order by the Opp. Party, the petitioners are at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 12th day of August, 2014.

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Jyoti Lenka

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

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