

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

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

Criminal Proceeding No. 151 of 2015

1. Sabita Behera, aged about 27 years,  
W/o-Manoj Kumar Behera,
2. Urbashi Behera, aged about 1 year and 7 months,  
D/o-Manoj Kumar Behera,  
At/P.O.-Jatni, P.O.-Arugul,  
Dist-Khurda. Pin-752050,  
(Petitioner No.2 being the minor represented through her mother  
guardian petitioner No.1).

... Petitioners

... Versus...

Manoj Kumar Behera, aged about 44 years,  
S/o-Late Banamali Behera,  
At present Qrs. No. 97/7, Type-II,  
W.R.S. Colony, Near Puja Pandal, Raipur,  
Chhatisgarh, Pin-492008.

... Opp. Party

Date of Argument : 16.01.2016

Date of Judgment : 21.01.2016

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. 15,000/- for self and Rs. 5,000/- for petitioner No.2 and litigation expenses of Rs. 30,000/- from the Opp. Party.

2. The facts of the case of the petitioner No.1 are as follows:-

According to the petitioner No.1, her marriage with the Opp. Party was solemnized according to Hindu rites and Customs at Arugul on 08.07.2011 and out of their wedlock one female child namely Urbashi Behera, petitioner No.2 was born. It is averred by the petitioner that her father had fulfilled all the demand of the Opp. Party and his family members at the time of marriage but soon after the marriage she was subjected to torture both physically and

mentally due to non fulfillment of their additional demand of dowry. It is further averred by her that during her stay in her matrimonial home the Opp. Party did not provide her medical care. It is further averred by her that on 02.11.2012 the Opp. Party refused to share bed with her on the ground of non fulfillment of their additional dowry and when she asked about the same, she was subjected to torture both physically and mentally and when the torture became unbearable she was forced to leave her matrimonial home. Several attempts have been made from her side to settle the dispute but all were in vain. It is further averred by her that since 02.11.2012 the Opp. Party has not providing any farthing to them for their maintenance. According to the petitioner No.1, she has no source of income and unable to maintain herself as well as her minor daughter, petitioner No.2 whereas the Opp. Party is working as Technician in Wagon repair shop at Raipur and is getting Rs. 40,000/- per month, besides, he is earning Rs. 2,00,000/- from other sources. 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. 15,000/-for self and Rs. 5,000/- for petitioner No.2 and litigation expenses of Rs. 30,000/- 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 is the legitimate child 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 at Arugul on 08.07.2011 and out of their wedlock one female child namely Urbashi Behera,

petitioner No.2 was 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 is their legitimate daughter. She has also stated that soon after the 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 during her stay she was not provided with proper care during her illness. It is further stated by the petitioner No.1 that on 02.11.2012 the Opp. Party refused to share bed with her on the ground of non fulfillment of additional dowry and when she asked about the same, she was subjected to torture both physically and mentally and when the torture became unbearable she was forced to leave her matrimonial home. 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.

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 working as Technician in Wagon repair shop at Raipur and is getting Rs. 40,000/- per month, besides, he is earning Rs. 2,00,000/- from other sources whereas the petitioner No.1 is unable to maintain herself as well as the petitioner No.2. She has also stated that the Opp. Party has not provided a single farthing to her 02.11.2012. 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 child. 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. P.W. 1 has stated that she is a house wife and she has no independent source of income. The Opp. Party is working as Technician in

Wagon repair shop at Raipur and is getting Rs. 40,000/- per month, besides, he is earning Rs. 2,00,000/- from other sources. The aforesaid income stated by the petitioner No.1 having not been challenged, the same must be accepted as true. 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. 5,000/- to the petitioner No.1 and Rs. 2,000/- to the petitioner No.2 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. 5,000/- to the petitioner No.1 and Rs. 2,000/- to the petitioner No.2 from the date of filing of application i.e. from 18.08.2015. 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 1<sup>st</sup> week of the succeeding month. Besides that the Opp. Party is directed to pay litigation expenses of Rs. 5,000/- 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.

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Dictated, corrected by me and is pronounced on this the 21<sup>st</sup> day of January, 2016.

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Witnesses examined for the petitioner:

P.W.1      Sabita Behera

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

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