

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

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

Criminal Proceeding No. 160 of 2011

1. Smt. Puspallata Nanda, aged about 33 years,
W/o-Sri Manoj Kumar Mohanty,
Permanent resident of C/o- Pradipta Nanda,
Plot No. D/1082, Sector-10, CDA, Cuttack.
Presently residing at C/o-Srikanta Charan Pati,
Qrs. No. MIG-II-16/8, BDA Colony, Phase-1,
At-Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Sri Kausik Mohanty, aged about 11 years,
S/o-Sri Manoj Kumar Mohanty,
Petitioner No.2 being minor represented through his mother
guardian, petitioner No.1.

... Petitioners

... Versus...

Sri Manoj Kumar Mohanty, aged about 40 years,
S/o-Late Gobinath Mohanty,
Village-Nuagaon, P.O.-Palakata, P.S.-Soroda, Dist-Ganjam
At present residing C/o- Anjali Sahoo,
D/o-Haribandu Sahoo,
At-Gajapati Nagar-14 Lane, Berhampur,
Ganjam.

... Opp. Party

Date of Argument : 03.03.2016

Date of Judgment : 04.03.2016

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 Rs. 12,000/- for petitioner No.2 from the Opp. Party.

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

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

solemnized according to Hindu rites and Customs in Cuttack Club on 24.11.1999 and out of their wedlock one male child namely Kausik Mohanty was born 09.01.2001. According to the petitioner No.1, they led a happy married life for one year and thereafter she was subjected to torture both physically and mentally by the Opp. Party due to non fulfillment of additional demand of dowry of Rs. 2,00,000/-, ten tolas of gold ornaments, wooden furniture and kitchen utensils and after receiving the same, the Opp. Party did not stop his previous activities on her. The Opp. Party also did not provide basic needs to her. The petitioner No.1 has averred that for the treatment of the petitioner No. 2, both of them resided together in a rented house i.e. MIG-15/20, BDA Colony, Chandrasekharpur, Bhubaneswar in the month of February, 2007. It is further averred by her that after much persuasion, the Opp. Party took the petitioner No.2 to National Institute of Mental Health and Neuro Sciences, Bangalore for his treatment and as the treatment was very costly, he did not take any further steps for treatment of his ailing son. It is alleged by the petitioner No.1 that she came to know that the Opp. Party is married to one Smt. Anjali Sahoo, daughter of Haribandu Sahoo of Gajapati Nagar, 4th Lane, Berhampur and when she intimated it to her in-laws family members, they did not pay any heed to it. Finding no alternative, she has filed an F.I.R. before Gopalpur Police Station vide P.S. Case No. 68 dated 28.06.2011 U/s. 498(A)/ 494/497 IPC against the Opp. Party and the said Anjali Sahoo and the said case is pending for disposal before S.D.J.M., Berhampur. According to the petitioner No.1, she has no source of income and unable to maintain herself as well as the petitioner No.2, who is an Autistic patient and speechless whereas the Opp. Party is a businessman having 25/% share in a liquor shop, E.P. holder of Belaguntha O.S. Shop at- Belaguntha in the district of Ganjam besides, the Opp. Party is the owner of a Cashew Processing Factory which is running in the name and style Maa Cashew Kernel Process at Sorada Nuagaon in the district of Ganjam. Apart from that the Opp. Party also takes

different tender works at Bhubaneswar. Besides, the above income, the Opp. Party has also immovable property. From the above sources, the Opp. Party is earning Rs. 1,00,000/- per month. 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 delineated herein before 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 in Cuttack Club on 24.11.1999 and out of their wedlock one male child namely Kausik Mohanty was born 09.01.2001. 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 son. She has also stated that she was subjected to torture both physically and mentally by the Opp. Party even after fulfilling of his demand. The Opp. Party also did not provide her basic needs. She has also stated that the Opp. Party is married to one Smt. Anjali Sahoo, daughter of Haribandhu Sahoo of Gajapati Nagar, 4th Lane, Berhampur and when she intimate it to her in-laws family members, they did not pay any heed to it. These facts and

circumstances are clearly suggestive and indicative of the facts that the petitioner No.1 has sufficient cause to live apart from the Opp. Party. It is equally established from the evidence of P.W. 1 that she has no independent income being house wife and as such, she is entitled to claim maintenance from the Opp. Party. Petitioner No.2 being minor, the Opp. Party being his father is legally bound to maintain him, irrespective of the fact that the petitioner No.2 who is an Autistic patient and speechless and is residing with his mother, petitioner No.1.

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 a businessman having 25/% share in a liquor shop, E.P. holder of Belaguntha O.S. Shop at- Belaguntha in the district of Ganjam besides, the Opp. Party is the owner of a Cashew processing Factory which is running in the name and style Maa Cashew Kernel Process at Sorada Nuagaon in the district of Ganjam. Apart from that the Opp. Party also takes different tender works at Bhubaneswar. Besides, the above income, the Opp. Party has immovable property. From the above sources, the Opp. Party is earning Rs. 1,00,000/- per month. She has also stated that the Opp. Party has not provided a single farthing to them for their maintenance. 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. The Opp. Party is earning Rs. 1,00,000/- per month. Since the aforesaid stated income of the Opp. Party has 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. 7,000/- to the petitioner No.1 and Rs. 8,000/- 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. 7,000/- to the petitioner No.1 and Rs. 8,000/- to the petitioner No.2 from the date of filing of application i.e. from 02.08.2011. 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. 8,000/- 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 4th day of March, 2016.

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Witnesses examined for the petitioner:

P.W.1 Smt. Puspalata Nanda

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

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