

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

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

Criminal Proceeding No. 178 of 2013

1. Smt. Urmila Patra, aged about 40 years,  
W/o-Ranjan Kumar Patra,
2. Biswanath Patra, aged about 14 years,  
S/o-Ranjan Kumar Patra,  
Petitioner No.2 being the minor represented through his mother  
guardian petitioner No.1  
Both are residing at Basantamala, P.O.-Badaladasana,  
P.S.-Balipatna, Dist-Khurda.

... Petitioners

... Versus...

Ranjan Kumar Patra, aged about 45 years,  
S/o-Dharanidhar Patra,  
Vill.-Pokapur, P.O./P.S./Dist-Jagatsinghpur.

... Opp. Party

Date of Argument : 09.12.2015

Date of Judgment : 10.12.2015

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. 5,000/- for self and Rs. 2,000/- 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 twenty two years ago and out of their wedlock one male child namely Biswanath Patra was born in the month of February, 2000. It is averred by the petitioner No.1 that during her stay in her matrimonial house, she was subject to torture both physically and mentally by the Opp. Party at regular intervals and was not provided proper food, medicines and clothing. In the month of April, 2013 she, her minor child and

the Opp. Party came to Basantamal to work in an agricultural firm and stayed there. During her stay there, the Opp. Party with the spell of liquor tortured her both physically and mentally. The Opp. Party has also not provided the bare necessity to them including the educational expenses of the minor son (petitioner No.2). In the month of September, 2013 the Opp. Party without intimating her fled away to his native village leaving them in Basantamal. On 20.10.2013 the Opp. Party came to her village and refused to maintain them. According to the petitioner No.1, she has no source of income whereas the Opp. Party is earning Rs. 10,000/- per month from his job besides, he has got two acres of landed property in his native village from which he has got sufficient income. 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. 5,000/-for self and Rs. 2,000/- for petitioner No.2 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 twenty two years ago and out of their wedlock one male child namely Biswanath Patra was born in the month of February, 2000. 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 out of their wedlock one male child

namely, Biswanth Patra, petitioner No.2 was born. She has also stated that she was subjected to torture both physically and mentally by the Opp. Party in her matrimonial house as well as during her stay in Basantamal. Additionally in the month of September, 2013 the Opp. Party without intimating her fled away to his native village leaving them in Basantamal. On 20.10.2013 the Opp. Party came to her village and refused to maintain them. 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 earning Rs. 10,000/- per month from his job besides, he has got two acres of landed property in his native village from which he has got sufficient income 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 since September, 2013. 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 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 earning Rs. 10,000/- per month from his job besides, he has got two acres of landed property in his native village from which he has got sufficient income. But the petitioner No.1 has failed to file any document regarding the ancestral property of the Opp. Party. It is established from the petition, nay, evidence of the petitioner No.1 that the Opp. Party is a labourer. Be that as it may, it steer clear that the Opp.

Party is a unskilled labourer. The income of an un-skilled labourer as per Govt. Notification is Rs. 200/- per day. The average working day in a month is calculated at 25 days. Thus, the income of the Opp. Party per month will come around Rs. 5,000/-. 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. 1,500/- to the petitioner No.1 and Rs. 1,000/- 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. 1,500/- to the petitioner No.1 and Rs. 1,000/- to the petitioner No.2 from the date of filing of application i.e. from 29.10.2013. 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. 2,000/- 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 10<sup>th</sup> day of December, 2015.

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Witnesses examined for the petitioner:

P.W.1      Urmila Patra

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

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