

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

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

Criminal Proceeding No. 180 of 2015

1. Smt. Bilasini Dhala, aged about 25 years,
W/o-Sri Samir Dhala,
D/o-Dhurbacharan Sahoo,
2. Dinesh Dhala, aged about 6 years
D/o-Sri Samir Dhala,
Petitioner No.2 being the minor represented through her mother
guardian petitioner No.1.
Both the petitioners are permanent resident At/P.O.-Baushabati,
Ward No. 4, P.S.-Fategada, Dist-Nayagarh, Odisha, PIN-752063
At present residing C/o-Maheswar Das,
At-Bhoi Sahi, Mancheswar, P.O./P.S.-Mancheswar,
Bhubaneswar, Dist-Khurda, PIN-751010.

..... Petitioner

....Versus.....

Sri Samir Dhala, aged about 32 years,
S/o- Sri Sudarshan Dhala,
Resident At/P.O.-Baunshabati, Ward No. 4,
P.S.-Fategarh, Dist.-Nayagarh, Odisha, PIN-752063.

... Opp. Party

Date of Argument : 21.04.2016

Date of Judgment : 21.04.2016

J U D G M E N T

1. The petitioner No.1-wife has filed a petition U/s. 125 of the Code of Criminal Procedure (in short, Cr.P.C.) claiming monthly maintenance of Rs. 8,000/- for self and 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 in her parental home on 15.02.2007 and out of their wedlock two children namely Dinesh Dhala, petitioner No.2 and Manisha Priyadarshini were born on 07.05.2009 and 21.09.2010 respectively. The marriage was a serendipity. The der-Tag started in their life when the Opp. Party and his family members demanded additional demand of dowry of Rs. 50,000/- and when the petitioner No.1 showed her inability to fulfill the same she was subjected to torture both physically and mentally. It is further averred by her that at the time of delivery of the second child namely Manisha Priyadarsini her father had incurred all the medical expenses. It is the further case of the petitioner No.1 that on 02.02.2014 the Opp. Party brought her along with the children to work in Hi-Tech Hospital and both of them worked there. After five months i.e. on 05.07.2014 the Opp. Party along with her daughter Manisha Priyadarshini fled away and after few days it came to her knowledge that the Opp. Party married to another lady namely Tikina Rout. Since 05.07.2014 she and her minor son i.e. petitioner No.2 have been residing with her brother's rented house at Mancheswar, Bhubaneswar. It is further averred by the petitioner No.1 that since 05.07.2014 the Opp. Party has not been providing a single farthing to her for their maintenance. According to the petitioner No.1 she is merely a house wife and is depending upon the mercy of her brother for her livelihood who is unable to maintain her as well as the minor son whereas the Opp. Party is an unskilled labourer (tractor loading and unloading work) and earns Rs. 15,000/- per month besides, he is getting Rs. 5,000/- from his landed property. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioners, who are his legally wedded wife and son, petitioner No.1 is obliged to file the present petition claiming a monthly maintenance of Rs. 8,000/- for self and 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 son 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 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 in her affidavit evidence has stated that she married to the Opp. Party in her parental home on 15.02.2007 and out of their wedlock two children namely Dinesh Dhala, petitioner No.2 and Manisha Priyadarshini were born 07.05.2009 and 21.09.2010 respectively. Her aforesaid statement has not been challenged. Thus, it can safely be concluded that the petitioner No.1 is the legally wedded wife and petitioner No.2 is the legitimate son of the Opp. Party. She has also stated that she was subjected to torture both physically and mentally by the Opp. Party and his family members due to her non fulfillment of additional demand of dowry of Rs. 50,000/-. It is further stated by her that in the mean time the Opp. Party married to another lady namely Tikina Rout with whom he has been residing. 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, she is unable to maintain herself.

7. The next question for consideration is whether the Opp. Party has sufficient means and he has willfully neglected and refused to maintain the petitioner. It is stated categorically by the petitioner that the Opp. Party is an unskilled labourer (tractor loading and unloading work) working under a contractor and earns Rs. 15,000/- per month besides, he is getting Rs. 5,000/- from his landed property. She has also stated that the Opp. Party has not provided a single farthing to her since 05.07.2014. 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. From the pleading, nay evidence of the P.W. 1, it is established that the Opp. Party is an unskilled labourer. As per Govt. notification the daily wages of an unskilled labourer is Rs. 200/-. 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. 2,000/- to the petitioner No.1 and Rs. 1,000/- to the petitioner No.2 be allowed as monthly maintenance. Hence, it is ordered;

ORDER

The petition is allowed ex-parte in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 2,000/- to the petitioner No.1 and Rs. 1,000/- to the petitioner No.2 from the date of filing of application i.e. from 13.10.2015. 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 1st week of the succeeding

month. Besides that the Opp. Party is directed to pay litigation expenses of Rs. 2,000/- to the petitioners. Failure to carry out the order by the Opp. Party, the petitioner 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 21st day of April, 2016.

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Bilasini Dhala

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

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