

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

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

Criminal Proceeding No. 21 of 2011
U/s. 125 of Cr.P.C., 1973

AND

Criminal Proceeding No. 29 of 2015
U/s. 127 of Cr.P.C.

Smt. Tapasi Das Mohapatra, aged about 29 year,
W/o-Sri Nisith Pattnaik,
D/o-Dr. Panchagopal Das Mohapatra,
Plot No. 210/1320, Sarala Nagar,
P.S.-Laxmisagar, Bhubaneswar
Presently residing at Flat No. 005, Swastik Enclave,
Vivekananda Marg, Bhubaneswar-2,
Dist-Khurda.

... Petitioner

... Versus...

Sri Nisith Pattnaik, aged about 36 years
S/o-Dr. Biswanath Pattnaik,
Plot No. 210/1320, Sarala Nagar, P.S.-Laxmisagar,
Bhubaneswar-6, Dist.-Khurda

... Opp. Party

Date of Argument : 11.01.2016

Date of Judgment : 25/30.01.2016

J U D G M E N T

The petitioner-wife, Smt. Tapasi Das Mohapatra filed a petition U/s. 125 of the Code of Criminal procedure 1973 (in short, Cr.P.C) claiming monthly maintenance of Rs. 20,000/- for her from the Opp. Party-husband, Sri Nisith Pattnaik. The petitioner has also filed another petition for enhancement of the interim maintenance vide C.R.P. No. 29 of 2015.

2. Admitted facts of the case of the parties are that their marriage was solemnized according to Hindu rites and Customs in Royal Palace,

Tankapani Road, Bhubaneswar on 22.02.2010 and they have no issue out of their wedlock and both the parties have been living separately since 02.04.2010.

3. According to the petitioner, though her father had fulfilled all the demand of the petitioner and his family members at the time of marriage yet, she was subjected to torture both physically and mentally due to non fulfillment of additional demand of dowry of A.C., T.V., fridge, car and a flat at Bhubaneswar. It is further averred by the petitioner that due to repeated torture on her, she became seriously ill and during her illness, the Opp. Party and his family members did not take her care and when the torture became unbearable she was forced to leave her matrimonial home with her parents on 02.04.2010. Thereafter, the Opp. Party and his family members did not take any steps to take her back. Rather, they have threatened to kill her if she would return to their house without any car and flat and therefore, there is every possibility of her life risk in their house. The Opp. Party also openly told her that she is his third wife and as such it is not possible on her part to reside with the Opp. Party. Since the date of her leaving from her matrimonial home she has been residing in her parental home without any maintenance. According to the petitioner, she has no source of income to maintain herself whereas the Opp. Party is the Managing Director of a Company and is earning Rs. 1,20,000/- per month. Since the Opp. Party having sufficient means neglected and refused to maintain her, she has obliged to file the present petition for grand of monthly maintenance of Rs. 80,000/- from the Opp. Party.

4. The Opp. Party-husband has filed his objection nixing all the allegations made against him by the petitioner. It is the case of the Opp. Party that the petitioner in her FIR has stated that he is unemployed. In fact earlier he was working as Sr. Software Engineer in SYSCOMES since March, 2005 but lost his job in September, 2010 due to torture and false criminal case filed by the petitioner against him and his family members. The Opp. Party has averred that before finalization of marriage, the parents and other family members of

the petitioner has stated before his parents that the petitioner is working in ASBM College, Chandaka, Bhubaneswar and is getting Rs. 20,000/- per month. It is averred by the Opp. Party that the petitioner had voluntarily left his house. The specific case of the Opp. Party that from the very next day of the marriage i.e. 23.02.2010 the petitioner started misbehaving and ill-treating him as to why he had returned the cheque to her brother. It is averred by the Opp. Party that on 25.02.2010 i.e. in the fourth night of marriage, the petitioner refused for sexual intercourse with him and also abused and misbehaved him. The petitioner always insisted him to live separately from his other family members and when he did not agree for the same, the petitioner became revengeful and foisted false criminal case against him and his family members. Day by day the behaviour and activities of the petitioner became rude and unbearable towards him and his family members. Due to constant disturbance created by the petitioner, he suffered mental agony and suffered from hyper tension and unable to discharge his day to day duties for which his employer warned him and lastly he lost his job and presently he has no source of income and is depending upon his parents for his livelihood and as such, the petition filed by the petitioner is liable to be rejected.

5. From the aforesaid rival contentions of the parties, the following points are formulated for determination of the case:-

- (i) Whether the petitioner has voluntarily deserted the Opp. Party?
- (ii) Whether the petitioner is unable to maintain herself?
- (iii) Whether the Opp. Party having sufficient means neglected and refused to maintain the petitioner?
- (iv) What would be the quantum of maintenance to be allowed to the petitioners, if point No. 1 and 2 are answered in their favour?

6. The petitioner in order to prove her case she, herself, has been examined as P.W. 1 but chose not to file any document on her behalf. On the other hand, the Opp. Party in order to negate the claim of the petitioner,

he, himself, has been examined as O.P.W. 1 and placed reliance on four documents. They are:- Ext. A is the settlement, Ext. B is the termination letter, Ext. C and D are the correspondences made by his company to him regarding his service.

Point No. (i)

Whether the petitioner has voluntarily deserted the Opp. Party?

7. The petitioner while being examined as P.W. 1 has stated that due to mal-treatment of the Opp. Party and his family members for non fulfillment of their demand of dowry of A.C., T.V., Fridge and car she was forced to leave her matrimonial home on 02.04.2010. The Opp. Party while being examined as O.P.W. 1 denied the aforesaid allegations of the petitioner. According to him, on 02.04.2010, the petitioner left his house along with her uncle, aunt and her parents assuring to return after five days but she did not return. He has further stated that she left his company voluntarily alleging that he got married thrice and have got a son alive. The O.P.W. 1 has further stated that the marriage has not been consummated. The aforesaid statements of the Opp. Party have not been challenged by the petitioner during cross examination, even no suggestion has been given to the Opp. Party by the petitioner and therefore, the aforesaid statements of the Opp. Party must be accepted as true. Although the petitioner has stated that she was tortured for demand of dowry, yet, there is no corroborative evidence to that effect and hence, the same stands disproved. From the unchallenged testimony of O.P.W.1, the married failed due to non consummation of marriage leading to frustration followed by desertion by the petitioner. Therefore, the petitioner could not establish that she has sufficient cause to leave apart from the Opp. Party. Once, the petitioner could not prove that she has sufficient ground to leave apart from the Opp. Party, she is not entitled to claim any maintenance from the Opp. Party. Apart from that the petitioner who is the respondent in C.P. No. 283 of 2010 has been granted a monthly maintenance of Rs. 25,000/- and therefore, no further maintenance cannot be granted in the present case in view of Section 127 (2) of the Cr.P.C. Consequently, the other points need not be dilated.

8. Consequent upon dismissal of the present proceeding, the petition of the petitioner for enhancement of the interim maintenance which has been registered as C.R.P. No. 29 of 2015 automatically stands dismissed. Hence, it is ordered;

O R D E R

The petitions filed by the petitioner vide C.R.P. No. 21 of 2011 and C.R.P. No. 29 of 2015 stand dismissed on contest without any cost.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 30th day of January, 2016.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witness examined for the petitioner

P.W.1 Tapasi Das Mohapatra

Witness examined for the Opp. Party

O.P.W.1 Nisith Pattnaik

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Ext. A Settlement

Ext. B Termination letter

Ext. C and D Correspondences made by his company to him regarding his service

JUDGE, FAMILY COURT,
BHUBANESWAR.