

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

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

Criminal Proceeding No. 222 of 2011

Smt. Sanjukta Das @ Kandi, aged about 25 years,
W/o-Pramod Kumar Kandi,
D/o-Artabandhu Das,
At-Narada, P.S.-Turintira,
P.S.-Balipatna, Dist-Khurda.

... Petitioner

...Versus...

Sri Pramod Kumar Kandi, aged about 27 years,
S/o-Pitabash Kandi,
At-Barsailo, P.S.-Govindapur,
Dist-Cuttack.

... Opp. Party

Date of Argument : 10.11.2015

Date of Judgment : 20.11.2015

J U D G M E N T

The petitioner-wife, Sanjukta Das, has filed a petition U/s. 125 of the Code of Criminal procedure 1973 (in short, Cr.P.C) claiming monthly maintenance of Rs. 3,000/- from the Opp. Party-husband, Pramod Kumar Kandi.

2. Admitted facts of the parties are that their marriage was solemnized as per Hindu rites and Customs on 13.05.2007 and both parties are living separately from each other.

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

According to the petitioner at the time of marriage her father had given cash of Rs. 70,000/-, gold ornaments of 10 tolas and silver ornaments along with other household articles as per the demand of the Opp. Party and his family members. According to the petitioner they led a happy matrimonial life for eight months. Thereafter, the Opp. Party and his family

members demanded additional dowry of Rs. 20,000/- and a colour T.V. and when she showed her inability to fulfill the same she was subjected to torture both physically and mentally and was not provided with proper food and clothing. The Opp. Party with the spell liquor assaulted her for several times. When the torture became unbearable she left her matrimonial house and taken shelter in her parental home since last three years. According to her she is merely a house wife having no source of income to maintain herself and is depending upon her parents who is unable to maintain her whereas the Opp. Party is doing vegetable business in Rasulgarh market out of which he earns Rs. 20,000/- per month. Apart from that he has landed property in his native village. Since the Opp. Party having sufficient means willfully neglected and refused to maintain the petitioner, who has no sufficient means, the present petition is filed by the petitioner claiming monthly maintenance of Rs. 3,000/- from the Opp. Party.

4. The Opp. Party has filed objection nixing all the allegations made against him by the petitioner. He has averred that the petition is not maintainable in the eye of law and there is no cause of action. The specific case of the Opp. Party is that the petitioner insisted him not to maintain his old parents and living separately from them. She has also demanded if he will live with his parents then she would not stay with him and when he refused her demand she had left his house and stayed in her parental home. According to him, he is a daily labour and earns Rs. 3000/- per month which is variable. He is also maintaining his old parents and other dependants out of the above income and therefore, she is not liable to pay any maintenance to the petitioner.

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

- (1) Whether petitioner is living separately from the Opp. Party without sufficient cause and unable to maintain herself?
- (2) Whether the Opp. Party having sufficient means neglected or refused to maintain the petitioner?
- (3) What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 and 2 are answered in her favour.

6. The petitioner No. 1 in order to buttress her case she, herself, has been examined as P.W. 1. The Opp. Party in order to negate the claim of the petitioner he, himself has been examined as O.P.W. 1. Both the parties chose not to file any documents on their behalf.

Point No. 1

7. Whether petitioner is living separately from the Opp. Party without sufficient cause and unable to maintain herself and the child?

P.W. 1 has stated that after eight months of marriage, she was subjected to torture both physically and mentally by the Opp. Party and his family members due to their additional demand of dowry of Rs. 20,000/- and a colour T.V. She has further stated that the Opp. Party has also assaulted her with the spell of liquor and when the torture became unbearable she was forced to leave her matrimonial house. There has been no effective cross examination to demolish the aforesaid stoical statement of the P.W. 1, except a suggestion that the petitioner has voluntarily deserted the Opp. Party as he is a daily labourer. Further it reveals from the evidence of O.P.W. 1 that he married to one Anita Das daughter of Kashinath Rout. He has also admitted that he aborted the pregnancy of the petitioner. Perhaps for this ill-treatment of the Opp. Party, the petitioner was compelled to leave his house. She is justified in refusing to live with her husband.

Point No.2

8. Whether the Opp. Party having sufficient means neglected and refused to maintain the petitioners?

The petitioner has stated that the Opp. Party is doing vegetable business in Rasulgarh market out of which he earns Rs. 20,000/- per month. Apart from that he has landed property in his native village. The petitioner while cross examining the Opp. Party, the Opp. Party has stated that he has half gunth land in his village and also he has two pindis in the Hata and also a house in Saheed Nagar Telugu Basti. Therefore, sine-dubio, it is concluded that the Opp. Party has sufficient means. From the evidence of the parties, it is well established that the Opp. Party has not paid a single farthing to the petitioner from the date of her leaving separately from the

Opp. Party. Therefore, it is established that the Opp. Party has neglected and refused to maintain the petitioner as such the petitioner is entitled to claim maintenance from the Opp. Party.

Point No.3

9. What would be the quantum of maintenance to be allowed to the petitioners, if point No. 1 and 2 are answered in their favour?

Keeping in view of the aforesaid income, status of the parties and cost of living, it would be just and proper to allow Rs. 2,000/- to the petitioner and in fact, I did the same. Hence ordered;

O R D E R

The petition is allowed on contest in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 2,000/- to the petitioner from the date of the application i.e. from 21.10.2011 and the amount paid earlier as interim maintenance shall be adjusted. The Opp. Party further directed to pay litigation expenses of Rs. 3,000/- to the petitioner. The Opp. Party is directed to clear up the arrear maintenance within two months hereinafter. He is also directed to pay the monthly maintenance within the 1st week of the succeeding month. Failure to carry out the order by the Opp. Party, the petitioner is at liberty to levy execution through due process of law.

Judge, Family Court,
Bhubaneswar.

Dictated, corrected by me and is pronounced on this the 20th day of November, 2015.

Judge, Family Court,
Bhubaneswar.

List of witness on behalf of petitioners

P.W.1 Smt. Sanjukta Das @ Kandi

List of witness on behalf of Opp. Party

O.P.W. 1 Sri Pramod Kumar Kandi

List of exhibits on behalf petitioners

Nil

List of exhibits on behalf of Opp. Party

Nil

Judge, Family Court,
Bhubaneswar.