

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

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

Criminal Proceeding No. 26 of 2015

1. Smt. Smruti Lekha Behera, aged about 34 years,
W/o- Sri Soumya Prakash Dalua,
D/o-Sri Maguni Behera,
At-HIG-K-6/36, Kalina Bihar, P.S.-Khandagiri,
Dist-Khurda.
2. Anwasha Dalua,
D/o-Sri Soumya Prakash Dalua,
At-HIG-K-6/36, Kalina Bihar, P.S.-Khandagiri,
Dist-Khurda.

Petitioner No.2 being minor represented through her
mother guardian petitioner No.1

... Petitioners

... Versus...

1. Sri Soumya Prakash Dalua, aged about 40 years,
S/o-Sri Bijaya Kumar Dalua,
2. Sri Bijaya Kumar Dalua, aged about 65 years,
S/o-Late Bisikeshan Dalua
3. Smt. Sushila Dalua, aged about 61 years,
W/o-Sri Bijaya Kumar Dalua
All are resident at HIG-2/61, Satyasai Residency,
P.S.-Khandagiri, Bhubaneswar,
Dist-Khurda.

... Opp. Parties

Date of Argument : 13.08.2015

Date of Judgment: 17.08.2015

J U D G M E N T

The petitioner No.1 Smt. Smruti Lekha Behera filed a petition U/s. 125 of the Code of Criminal procedure 1973 (in short, Cr.P.C) for self and for her minor daughter namely Anwasha Dalua (petitioner No.2) being the mother guardian claiming a monthly maintenance of Rs. 25,000/- for self and Rs. 15,000/- for petitioner No.2 from the Opp. Parties. It is pertinent of mention here that the Opp. Party No.1

is the husband of the petitioner No.1 and Opp. Party No.2 and 3 are the parents-in-law of the petitioner No.1. And the petitioner No.1 was granted monthly maintenance of Rs. 12,000/- and petitioner No.2 at Rs. 500/- per month U/s. 18 of Hindu Adoption and Maintenance Act, 1956 vide order dated 08.08.2012 passed in C.P. No. 271 of 2010 and Extn. Case No. 24 of 2012 is pending for realization of the amount.

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

The marriage of the petitioner No.1 with the Opp. Party was solemnized as per Hindu rites and customs in Bhubaneswar on 18.02.2005 and out of their wedlock a female child (petitioner No.2) was born on 17.10.2006. It is the case of the petitioner No.1 that at the time of marriage, her father had given cash of Rs. 2,50,000/-. According to the petitioner No.1 after marriage the Opp. Party and his family members told her that they were expecting Rs. 20,00,000/- along with a car towards dowry. It is alleged by the petitioner No.1 that the Opp. Party No.1 and his family members threatened her to bring additional demand of dowry of Rs. 10,00,000/- and a four wheeler car from her parents or else they will not permit her to go to her parental home or to keep any relation with her family members. When she showed her inability to fulfill the same, she was subjected to torture both physically and mentally by the Opp. Party No.1 and his family members. They have also threatened her to kill by burning in fire in order to marry the Opp. Party No.1 somewhere else with sufficient dowry. It is further alleged by her that out of anger her mother-in-law (Opp. Party No.3) threw hot water on her person. It is further alleged by the petitioner No.1 that during her pregnancy her in-laws did not provide her nutritious food to her. During delivery her father had borne all the medical expenses and after delivery of the female child (petitioner No.2) on 17.10.2006, the Opp. Party No.1 and his family members told her father to deposit a sum of Rs. 10,00,000/- in the name of minor daughter for her marriage and her other expenses. It is further alleged by the petitioner No.1 that when

Opp. Party No.1 was at Bangalore, he purchased articles by worth of Rs. 3,50,000/- by using a fraud credit card for which the concerned bank asked him to pay the said amount immediately failing which criminal proceeding would be initiated against him, which compelled her father to deposit a sum of Rs. 1,20,000/- in the account of ICICI Bank of the Opp. Party No.1 and also given a cash of Rs. 30,000/-. She has also borrowed Rs. 1,50,000/- from her family friends and given the same to the Opp. Party No.1 with a hope to change in his character but all were in vain. It is further alleged by the petitioner No.1 that the Opp. Party No.1 is characterless and fraud person. He had fixed a hidden camera in the bathroom to take the photograph of her younger sister, when she had come to attend her examination and stayed in her house and when she and her sister protested it, the Opp. Party No.1 threatened to kill them if they will disclose it before anybody. The petitioner No.1 further alleged that on 19.02.2010 the Opp. Parties made an attempt to kill her and in order to save her life she had left her matrimonial house by wearing her night dress leaving all the gold ornaments and other household articles. Since 21.02.2010 she and her minor daughter have been residing in her parental home without any maintenance. She has also filed an FIR alleging dowry torture against the Opp. Parties in the Mahila Police Station vide Mahila P.S. Case No. 29 dated 18.03.2010. According to the petitioner No.1, she has no source of income whereas the Opp. Parties have two storied building bearing No. HIG-2/61 at Satyasai Enclave, Bhubaneswar besides they have many landed properties in their native place at Kamaladiha, Narsinghpur in the district of Cuttack. Apart from that they have also two plots of land at Bhubaneswar near Gita Engineering College measuring an area of 60 ft X 40 ft worth of Rs. 15,00,000/-. Since the Opp. Parties having sufficient means will-fully neglected and refused to maintain the petitioners, who is his legally wedded wife and daughter, the petitioner No.1 is obliged to file the present petition claiming a monthly

maintenance of Rs. 25,000/- for self and Rs. 15,000/- for petitioner No.2 from the Opp. Parties.

3. The Opp. Parties did not enter contest the petition and therefore, they are set ex-parte.

4. The following points are formulated to resolve the controversy:-

(i) Whether petitioner No.1 is the legally married wife and the petitioner No.2 is the legitimate child of the Opp. Party No.1 and the petitioner No.1 has sufficient cause to live separately from the Opp. Parties?

(ii) Whether the petitioners are entitled to claim maintenance from Opp. Party No.2 and 3 (parents-in-law) when the Opp. Party No.1 is alive?

(iii) Whether the Opp. Party No.1 having sufficient means has neglected or refused to maintain the petitioners?

(iv) What would be the quantum of maintenance to be allowed to the petitioners, 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.

Point No.1

Whether petitioner No.1 is the legally married wife and the petitioner No.2 is the legitimate child of the Opp. Parties and the petitioner No.1 has sufficient cause to live separately from the Opp. Parties?

6. The petitioner No.1 in her affidavit evidence has stated that she married to the Opp. Party No.1 as per Hindu rites and customs in Bhubaneswar on 18.02.2005 and out of their wedlock a female child (petitioner No.2) was born on 17.10.2006. 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 daughter of the Opp. Party No.1. She has also stated that she was subjected to torture both physically and mentally by the Opp.

Party No.1 and his family members due to additional demand of Rs. 10,00,000/- along with four wheeler car. She has further averred that on 19.02.2010 when the Opp. Parties had attempted to kill her but she gave entreaty by leaving her matrimonial home for her parental home. She has further averred that her mother-in-law (Opp. Party No.3) out of anger threw hot water on her person. From her aforesaid unchallenged testimony, it is established that due to torture of the Opp. Parties, the petitioners were compelled to leave the house of the Opp. Parties. Therefore, it can safely be said that the petitioner No.1 has not left the company of the Opp. Party No.1 voluntarily. It is the Opp. Parties who are responsible for petitioner No.1's living separately apart from the Opp. Party No.1. 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 her minor daughter (petitioner No.2).

Point No.2

Whether the petitioners are entitled to claim maintenance from Opp. Party No.2 and 3 (parents-in-law) when the Opp. Party No.1 is alive?

7. The petitioner No.1 claims maintenance U/s. 125 Cr.P.C. for self and her minor daughter (petitioner No.2) from her husband (Opp. Party No.1) and parents-in-law (Opp. Party No.2 and 3) when the Opp. Party No.1 who is her husband is alive. The question of claiming maintenance by a daughter-in-law whose husband is alive, from her parents-in-law does not arise at all. This because, the person who are entitled to claim maintenance are enumerated exhaustively in Section 125 Cr.P.C. and no Court can add anything to the Section. Therefore, the claim of the petitioners are entitled to claim maintenance against Opp. Party No.1 but not against Opp. Party No.2 and 3. Speaking differently, Opp. Party No.2 and 3 are not liable to pay any maintenance to the petitioners when Opp. Party No.1 is alive.

Point No. 3

Whether the Opp. Party No.1 having sufficient means has neglected or refused to maintain the petitioners?

8. The next question for consideration is, whether the Opp. Party No.1 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. Parties have two storied building bearing No. HIG-2/61 at Satyasai Enclave, Bhubaneswar besides they have many landed properties in their native place at Kamaladiha, Narsinghpur in the district of Cuttack. Apart from that they have also two plots of land at Bhubaneswar near Gita Engineering College measuring an area of 60 ft X 40 ft worth of Rs. 15,00,000/. She has also stated that the Opp. Party No.1 has not provided a single farthing to her since the date of leaving from her matrimonial home. This facts and circumstance is clearly suggestive of the facts that the Opp. Party No.1 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 wife and daughter. Therefore, the Opp. Party No.1 is liable to provide maintenance to the petitioners.

Point No.4

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

9. The next question for consideration is 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 petitioner No.1 has stated that the Opp. Parties have two storied building bearing No. HIG-2/61 at Satyasai Enclave, Bhubaneswar besides they have many landed properties in their native place at Kamaladiha, Narsinghpur in the district of Cuttack. Apart from that they have also two plots of land at Bhubaneswar near Gita Engineering College measuring an area of 60 ft X 40 ft worth of Rs. 15,00,000/-. This part of her evidence gone unchallenged and therefore, there is no reason to disbelieve the said evidence of the petitioner No.1. 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. 15,000/- to the petitioner No.1 and Rs. 8000/- 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 petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 15,000/- to the petitioner No.1 and Rs. 5,000/- to the petitioner No.2 from the date of filing of application i.e. from 04.02.2015. The maintenance allowed in C.P. No. 271 of 2010 shall be adjusted against the aforesaid amount. 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. 10,000/- to the petitioners. Failure to carry out the order by the Opp. Party, the petitioners are at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 17th day of August, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Smruti Lekha Behera

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.