

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

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

Criminal Proceeding No. 42 of 2012

Smt. Samaptika Kar, aged about 32 years,
W/o-Ashis Kumar Mahapatra,
Vill.-Biraramchandrapur,
P.S.-Satyabadi, Dist-Puri,
At present-C/o- Rabindra Nath Kar
At-South Kunjakanta,
P.O/Dist-Dhenkanal-759001

... Petitioner

... Versus...

Ashis Kumar Mahapatra, aged about 32 years,
S/o- Niranjan Mahapatra,
Vill-Biraramchandrapur,
P.S.-Satyabadi, Dist-Puri,
At present working as Deputy Manager,
H.D.F.C. Bank, Ltd. Main Branch
Sriya Square, Bhubaneswar,
Dist-Khurda

... Opp. Party

Date of Argument : 08.08.2014

Date of Judgment: 19.08.2014

J U D G M E N T

This order arises out of a petition u/s. 125 of the Code of Criminal Procedure (in short, Cr.P.C.) filed by the petitioner Samaptika Kar claiming monthly maintenance of Rs. 22,000/- for herself and Rs. 15,000/- towards litigation expenses from the Opp. Party.

2. The admitted fact of the case are as follows:-

The petitioner is the legally married wife of Opp. Party and their marriage was solemnized at Baba Kapilnath Kalyan Mandap, Old Town, Bhubaneswar on 30.11.2008 and consummated the marriage in the house of

the Opp. Party at village Koranga.

3. The case of the petitioner is that at the time of marriage, her father had given Rs.2 Lakhs in shape of demand draft along with gold ornaments of 160 grams and valuables to the Opp. Party towards dowry. After marriage both of them resided for some day in the village of the respondent with her parents-in-law at Koranga and thereafter they came to Bhubaneswar and stayed at Maitri Vihar and then shifted to a rented house at LB-106, Phase-II, Laxmisagar, Bhubaneswar. Thereafter the Opp. Party against her will forcibly shifted to Plot No. 358/2963, Mahadev Nagar, Jharapada without her knowledge and however the petitioner traced the house and stayed there. She has averred that the Opp. Party on many occasions threatened the petitioner to leave the house. She has further averred that on 10.01.2012, the Opp. Party after assaulting her left the house and again on 05.02.2012 for the last time the Opp. Party met the petitioner at Mahadev Nagar and forced the petitioner to transfer the plot in his name. After that the Opp. Party never visited the said house. She has further averred that she remained there with much difficulties for some days with a hope that the Opp. Party will join with her but when the Opp. Party did not join with her and finding no alternative she went to her parental home and since then she has been residing with her parents. She has further averred that during her stay with the Opp. Party, the Opp. Party always assaulted her; even during her pregnancy, he gave kick blow to her stomach intentionally to miscarry the pregnancy and lastly, the Opp. Party forced the petitioner to terminate her pregnancy. She has further averred that the Opp. Party and his family members tortured her both physically and mentally for additional demand of dowry particularly for transfer the plot at Bhubaneswar stands in her to the name of the Opp. Party and also the building situated at Dhenkanal. She has further averred that due to prestige of the both family she did not disclose the fact to anybody but when it became unbearable she lodged an F.I.R. against the Opp. Party and his family members before Mahila Police Station on 21.02.2012 which was registered as Mahila P.S. Case No. 83 dated 21.02.2012 u/s. 498(A), 323, 294, 506, 324, 34

IPC read with Section-4 of D.P. Act. She has further averred that several attempts have been made from the side of the petitioner but in vain. She has further averred that she has no sufficient means to maintain herself. According to her, the Opp. Party is working as Deputy Manager, H.D.F.C. Bank Ltd. Main Branch Sriya Square, Bhubaneswar and is getting salary of Rs. 52,000/- per month and he is also getting other allowances including incentive which comes around Rs. 1,50,000/- per annum. Apart from that the Opp. Party earns Rs. 80,000/- per annum from agriculture. Besides, the Opp. Party has also invested huge money in share market, Mutual Fund and in shape of Fixed Deposit. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioner, who is his legally wedded wife, the petitioner is obliged to file the present petition claiming a monthly maintenance of Rs. 22,000/- for self and Rs. 15,000/- towards litigation expenses from the Opp. Party.

3. The Opp. Party entered contest the petition admitting his marriage with the petitioner. The Opp. Party has denied the allegations made by the petitioner against him. The case of the Opp. Party is that it is a dowry less marriage. His further case is that the father of the petitioner had given Rs. 2,00,000/- towards household articles and for his dress and so it is a gift amount. The Opp. Party has averred that the petitioner is an arrogant, proud and quarrel some lady and being dissatisfied with her, he has filed a divorce case bearing C.P.No.25/2012 and after that, the petitioner filed a criminal case against him and his family members. He has further stated that he has no sufficient income towards salary and his family members are dependent on his salary. He has further averred that her old parents are ailing and he is spending huge money towards their medicine. He also gives money to his elder brother towards educational expenses of his minor child.

4. From the aforesaid rival contentions of the parties the following points are formulated to resolve the controversy:-

- (1) Whether the petitioner has sufficient cause to live separately from the Opp. Party and the petitioner has no sufficient means to support

herself?

(2) Whether the Opp. Party having sufficient means willfully refused or neglected to maintain the petitioner?

(3) What would be the quantum of maintenance to be allowed to the petitioner for her maintenance per month?

5. The petitioner in order to buttress her case she, herself, has been examined as P.W. 1. The Opp. Party has not examined any witness on his behalf.

6. P.W. 1 in her evidence has stated that she was subjected to torture both physically and mentally by the Opp. Party due to non fulfillment of additional demand of dowry of a house situated at Dhenkanal and the plot situated at Bhubaneswar as she has no brother. She has further stated that the Opp. Party with ill intention left the rented house at Bhubaneswar and did not return there for which she left for her parental home in the month of February, 2012. During cross examination nothing has been brought out to shatter the stoical statement of P.W. 1 regarding torture due to none fulfillment of additional demand, nay, leaving P.W. 1 in a despair condition in the rented house. These two circumstances are sufficient indicators of curtly on the petitioner by the Opp. Party which compelled the petitioner to reside separately from the Opp. Party.

7. Now, the next question for consideration is whether the Opp. Party having sufficient mean refused or neglected to maintain the petitioner. Admittedly, the petitioner wife is a house wife and therefore, she has no independent source of income. The Opp. Party could have successfully thrown away the claim of the wife of petitioner had he been established that the wife is living in adulatory or if without any specific reason the wife refused to live with her husband or if they are living separately by mutual consent. The Opp. Party could not set up any of these grounds. On the other hand, the petitioner-wife could establish sufficient cause for her living separately from the Opp. Party. The Opp. Party is working as Manager, HDFC Bank, Bhubaneswar and is getting salary of Rs. 52,000/- per month. The Opp. Party

has not provided any farthing to the petitioner from the date of her living separately until she was allowed interim maintenance of Rs. 5,000/- by this court. Therefore, the Opp. Party having sufficient means has willfully neglected and refused to maintain his wife and therefore the petitioner wife is entitle to claim maintenance from the Opp. Party.

8. Now, the next question is about the quantum of maintenance. From the pay slip, it is established that the Opp. Party is getting Rs. 34,013.32p per month as net salary after statutory deductions and loan liabilities. It is also established that the Opp. Party is looking after his old ailing parents. Thus, taking into consideration all the facts and circumstances of the case, I feel it just and proper to allow a monthly maintenance of Rs. 7,000/- inclusive of the interim maintenance to the petitioner. 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. 7,000/- to the petitioner from the date of filing of application i.e. on 21.03.2012. Besides this Opp. Party is directed to pay litigation expenses of Rs. 7,000/- to the petitioner. It is made clear that the interim maintenance paid shall be adjusted towards monthly maintenance. The Opp. Party is further 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.

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Dictated, corrected by me and is pronounced on this the 19th day of August, 2014.

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List of witness on behalf of petitioner

P.W. 1 Smt. Samaptika Kar

List of witness on behalf of Opp. Party

None

List of exhibits on behalf petitioner

Nil

List of exhibits on behalf of Opp. Party

Nil.

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