

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

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

Criminal Proceeding No. 57 of 2012

Gayatri Kumari Mishra, aged about 23 years,
W/o-Sapan Kumar Panda
D/o- Rabindra Nath Mishra,
Vill-Bamphitali Sahi near Raghunathpur Bazar,
P.O.-Raghunathpur,
Dist-Jagatsinghpur
At present residing at Plot no. 196,
Ananda Bhaban, P.O.-Rasulgarh,
P.S.-Mancheswar, Bhubaneswar-10,
Dist-Khurda, Odisha.

... Petitioner

... Versus...

Sapan Kumar Panda, aged about 32 years,
S/o- Sarbeswar Panda,
Vill.-Bamphitali Sahi near Raghunathpur Bazar,
P.O.-Raghunathpur, Dist-Jagatsinghpur
At present working in Indian Army rank No. 2498963-W,
Head Quarter Company Unit-23, Punjab Regiment C/A-56 APO,
Punjab.

... Opp. Party

Date of Argument : 08.08.2014

Date of Judgment: 21.08.2014

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 Gayatri Mishra claiming monthly maintenance of Rs. 15,000/- for herself and Rs. 10,000/- 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 in Rudreswar Mahadev Temple at Rathunathpur on 24.06.2011 and consummated the marriage in the house of the Opp. Party at Bamphitali Sahi of Raghunathpur for seven days only.

3. The facts of the petitioner's case in nut shell is that, her marriage with the Opp. Party was solemnized on 24.06.2011 as per Hindu rites and customs at Rudreswar Mahadev Temple of Rahunathpur in presence of friends, relatives and well wishers and the reception was held on 27.06.2011. Petitioner has averred that at the time of marriage, her father had given cash of Rs.2,30,000/- towards dowry and gold and silver ornaments along with other household articles amounting to Rs.2,00,000/- to the Opp. Party. After solemnization of marriage they led their conjugal life for about seven days at the matrimonial home. It is alleged inter alia that on the date of reception i.e. on 27.06.2011 the Opp. Party in a drunken state of mind abused the petitioner in filthy languages in presence of the in-laws and family members of the petitioner. It is further averred that on 03.07.2011, when the Opp. Party went to his service place in Punjab, at that time he told to the petitioner to bring an Indica Car from her parents for hiring purpose and when the petitioner refused such proposal, the Opp. Party became annoyed and assaulted her by fist blows to her chest and also quarreled with her. It is further averred that on 06.07.2011, the mother-in-law of the petitioner told her to bring all the gold ornaments on the plea of visiting temple and her mother-in-law took all the gold ornaments from her and did not return the same to her. The petitioner alleged that, her mother-in-law instructed her to clean their cattle shed/pan and tortured her both mentally and physically by demanding more dowry. When the torture and cruelty on the part of the petitioner became unbearable, she informed all the facts to her parents and her father had come to her matrimonial home and on 13.07.2011 brought the

petitioner to his house and since then she has been residing with her parents at Paradeep till January, 2012. At present, for searching a job, the petitioner is residing at Bhubaneswar. She has averred that she has no independent source of income and is unable to maintain herself. Her father who is a low paid employee is also unable to look after her. The petitioner has further averred that the Opp. Party is an employee of Indian Army and is getting Rs.25,000/- per month towards salary. Apart from that the Opp. Party is also earns Rs.1,00,000/- per annum from agricultural source. The Opp. Party without any reasonable cause tortured the petitioner both mentally and physically and having sufficient source of income, he is neglecting to maintain the petitioner.

3. The Opp. Party has contested the proceeding by filing written show cause. In his show cause, the Opp. Party has admitted his marriage with the petitioner and denied the allegations made against him regarding torture and cruelty. He has denied to have received any cash and other valuable articles towards dowry from the parents of the petitioner. By admitting his service, he has stated that his net salary is Rs.9000/- per month. He has denied having any income from agricultural source. It is contended by the Opp. Party that he is spending Rs.3000/- towards medicine of his mother per month and he is spending Rs.3000/- per month towards livelihood of his parents. The Opp. Party has further averred that, the petitioner is working in a company and is getting Rs.9000/- per month towards salary.

4. From the rival contentions of both the parties, the following issues are settled for adjudication:

- (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. In order to substantiate the stand, the petitioner has examined herself as P.W.1 and in order to counter the claim of the petitioner, the Opp. Party himself has been examined as O.P.W.1.

6. Both the parties have admitted their marriage which was solemnized on 24.6.2011 as per Hindu rites and customs. Petitioner has stated that after seven days of the marriage, the Opp. Party went to his service place with assurance that he will take the petitioner to his service place and thereafter he did not return. After that her in-laws were torturing her mentally and physically for additional dowry of an Indica Car. P.W.1 has further stated that, at the time of marriage, her father had given cash of Rs.2,25,000/- in shape of cheques and cash to the Opp. Party besides gold ornaments and other household articles. Soon after reception of marriage, the Opp. Party ill-treated her under spell of liquor. P.W.1 has further stated that she was sustaining burn injury due to negligent work of her in-laws and since the torture and cruelty on her part became unbearable, she left her father's house and thereafter came to Bhubaneswar for searching a job. P.W.1 has further stated that she has no independent source of income and monthly income of her husband is Rs.25,000/- to Rs.30,000/- and having sufficient means of income, he is neglecting to maintain her.

7. O.P.W.1 has stated that after marriage on 03.07.2011 he went to his service place and on 12.07.2011 father of the petitioner took her to his house on the plea for medical checkup of her mother and since then, the petitioner did not return to her marital home and during her stay in her paternal house, the petitioner over telephone always insisted him to give money to her. He has stated that several attempts have been made from his side to bring back the petitioner, but the petitioner and her family members did not cooperate.

8. From the evidence of both the parties, it came to light that, the parties

have consummated their marital life for a short period. It is also an admitted fact that at present both the parties are living separately since 12.07.2011. P.W.1 has stated that since the torture and cruelty on her part became unbearable, she left the marital home. No married lady would prefer to stay separately from her husband unless she has been tortured by her in-laws. No where O.P.W.1 has stated that he is giving any financial assistance to the petitioner. Therefore, it is forthcoming that the Opp. Party and his family members tortured the petitioner and finding no other alternative, she left her marital home. Hence, the petitioner is entitled to get maintenance from the Opp. Party.

8. The Opp. Party in his evidence has stated that he is getting net salary of Rs.16,000/- per month and he spent Rs.7,00,000/- to Rs.8,00,000/- towards treatment of her mother who died in the meantime. In support of his claim, he has filed Xerox copies of medical prescription/receipts and documents for treatment of his parents. O.P.W.1 has stated that the petitioner is getting Rs.9,000/- per month towards her salary from a private company. But he has failed to prove such income of the petitioner by filing a single scrap of document. In cross-examination, O.P.W.1 has also admitted that his father is a pensioner and is getting Rs.4500/- per month towards his pension. So, from the above evidence of O.P.W.1 it is established that the Opp. Party has no dependency. Law prevents vagrancy and destitution of neglected wife. Since the petitioner is the legally married wife of the Opp. Party and the Opp. Party is neglecting to maintain her, in my considered view an amount of Rs. 5,000/-per month towards the maintenance of the petitioner will serve the fruitful purpose. Hence, ordered:

ORDER

The petition is allowed on contest in favour of the petitioner. The Opp. Party is directed to pay a monthly maintenance of Rs. 5,000/- to the petitioner from the date of filing of application i.e. on 27.04.2012. Besides this Opp.

Party is directed to pay litigation expenses of Rs. 5,000/- to the petitioner. 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 21st day of August, 2014.

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BHUBANESWAR.

List of witness on behalf of petitioner

P.W. 1 Gayatri Kumari Mishra

List of witness on behalf of Opp. Party

O.P.W. 1 Sapan Kumar Panda

List of exhibits on behalf petitioner

Nil

List of exhibits on behalf of Opp. Party

Nil

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BHUBANESWAR.