

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA AT  
BHUBANESWAR.**

Present:

**Dr. D.P. Choudhury,**  
Sessions Judge, Khurda  
at Bhubaneswar.

*Dated, Bhubaneswar the 20<sup>th</sup> Oct. '14.*

**Crl. Appeal No.45 of 2014.**  
**Crl. Appeal No.45(A) of 2014.**

[Arising out of the order dated 09.07.2013 passed by the learned S.D.J.M., Bhubaneswar in C.M.C. No.290 of 2012.

Laxmidhar Panda, aged about 37 years, S/o. Sri Brajabandhu Panda, At present : At - Orissa Engineering College, At - Jatani, P.O. - O.E.C. Campus, P.S. - Pipili, Dist. - Khurda.

... **Appellant.**  
(Opp. Party No.1 in C.M.C.)

***-V e r s u s-***

1. Sudhanjali Sahoo, aged about 36 years, W/o. Laxmidhar Panda, At present : At - H.I.G. - 392, Kalinga Vihar, K-5, Patrapada, P.S. - Tamando, Bhubaneswar, Dist. - Khurda.

... **Respondent.**  
(Petitioner in C.M.C.)

2. Brajabandhu Panda, aged about 60 years, S/o. Late Basudev Panda, At - Plot No.1386/2575, Bhimtang, Housing Board Colony, Phase-II, P.S. - Airfield,

Bhubaneswar, Dist. – Khurda.

... **Proforma Respondent.**  
(O.P. No.2 in C.M.C.)

3. Binayee @ Binodini Panda, aged about 55 years, W/o. Sri Brajabandhu Panda.
4. Jitendra Kumar Panda, aged about 30 years, S/o. Brajabandhu Panda.  
Both Nos.3 & 4 are At - Plot No.1386/2575, Bhimtang, Housing Board Colony, Phase-II, P.S. – Airfield, Bhubaneswar, Dist. – Khurda.
5. Milli Panda @ Praharaj, aged about ... years, D/o. Sri Brajabandhu Panda & W/o. Priyabrata Praharaj, At - Kadamba Sahi, P.O./P.S. – Ranpur, Dist. – Nayagarh - 752 026.

... **Proforma Respondents.**  
(O.P. Nos.3 to 5 in C.M.C.)

**Counsel :**

For Appellant	--	Shri B.B. Mishra & Associates.
For Res. No.1	--	Shri J. Mohanty & Associates.
For Res. Nos.2 to 5	--	Shri A. Mohapatra & Associates.

Date of argument : 29.09.2014.

Date of judgment : 20.10.2014.

**J U D G M E N T**

These two appeals are disposed of by this common judgment as they are preferred against the order dated 09.07.2013 passed by the learned SDJM, Bhubaneswar disposing of two applications in a single order in CMC No.290 of 2012.

2. It is submitted by learned counsel appearing for the appellant in CrI. Appeal No.45 of 2013 that respondent No.1 has filed C.M.C. No.290 of 2012 in the Court of the learned S.D.J.M., Bhubaneswar against the appellant, his father, mother, brother and married sister, who are arrayed therein as opposite parties, under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called "the Act"). It is further submitted by him that during course of hearing, list of the alleged dowry articles was served upon the appellant after examination of respondent No.1 in the lower Court, for which he filed a petition to allow the appellant to cross-examine P.W.1, who is none other than respondent No.1, on the supplied list of dowry articles; but unfortunately, the learned S.D.J.M., Bhubaneswar rejected the petition. It is also submitted by learned counsel for the appellant that the learned trial Court has committed error by not giving opportunity to the appellant to cross-examine on the vital material adduced against him by P.W.1 in her examination-in-chief. According to him, the said order passed by the learned S.D.J.M. is wrong, illegal and against natural justice and unless he is allowed to cross-examine on those points, he will be seriously prejudiced. Accordingly, he submitted to set aside the above order.

3. In Crl. Appeal No.45(A) of 2013, learned counsel appearing for the appellant submitted that in the above C.M.C., he filed another petition in the Court below to direct respondent No.1 to produce her pregnancy terminated documents for judicial scrutiny to find out the truth on the allegation of respondent No.1. Further, it is stated by learned counsel for the appellant that in case of disclosure of the names of doctor and hospital, the appellant would take step to summon the concerned doctor and hospital authority to prove the cause of termination of pregnancy of respondent No.1. As the said petition was also rejected by the learned trial Court, it is submitted by learned counsel for the appellant that the said order is illegal and thereby truth is not revealed. Thus, he submitted to set aside the said order.

4. Learned counsel appearing for respondent No.1 submitted that both the appeals are not maintainable under the Act, as those are interlocutory orders. Moreover, the learned S.D.J.M., Bhubaneswar has rightly rejected both the petitions since P.W.1 has been cross-examined by the appellant at length. He supported the order passed by the learned S.D.J.M., Bhubaneswar.

5. I went through the Lower Court Record and materials therein. Since maintainability of the appeals has been

urged vehemently, let me first dispose of whether the appeals are maintainable or not. In the case of ***Smt. Smita Singh Vs. Smt. Bishnu Priya Singh and four others*** [2013 (Supp.-I) OLR - 677], His Lordship has been pleased to observe in para-9 that :

“Apparently, the provision for appeal under Section 29 of the Act is not restricted to order passed under any specific provision of the Act. Right to appeal under Section 29 of the Act is also not confined only to those orders in respect of which copies are served in accordance with the provisions of Section 24 of the Act. xxx xxx  
xxx”.

With due respect to the said decision, I find that any order passed by the learned Magistrate is appealable under section 29 of the Act. So, the present appeals are maintainable.

6. On going through the petition in C.M.C. No.290 of 2012, it appears that list of dowry articles has been filed on the date of filing of the original petition in the trial Court on 11.12.2012. Moreover, para-5 of the petition shows that list of dowry articles is part and parcel of the petition. Not only this, but also in the written statement filed by the appellant in the trial Court, it has been averred in para-5 that the list, as prepared by respondent No.1, contains false descriptions because there was no demand from his side. Apart from this,

after her examination, P.W.1 has been cross-examined on 24.04.2013, 29.04.2013, 01.05.2013 & 04.05.2013. She has also been cross-examined on the list of dowry articles. Further, in para-36, she has been suggested that no such dowry articles have ever been given to the appellant at any point of time, to which she denied. Even if dowry articles are not given before examination of P.W.1, how there was cross-examination by the appellant to this witness on that score ? It is found that the allegation of learned counsel for the appellant is not proved on facts. Thus, I do not find any infirmity in the order of the learned trial Court in rejecting the petition. However, since learned counsel for the appellant wants to cross-examine further only on dowry articles, for the ends of justice, he is allowed to cross-examine P.W.1 only on such matter by giving five questions in writing to the learned trial Court, who will allow them subject to relevancy for being put to P.W.1 in cross-examination on a particular date to be fixed by the trial Court later. Hence, Crl. Appeal No.45 of 2013 is liable to be allowed.

7. So far as the allegation in Crl. Appeal No.45(A) of 2013 is concerned, on going through the petition it appears that respondent No.1 has taken a plea that being pressurised by the appellant, her pregnancy was terminated in the month of

May, 2011, whereas in the written statement this fact has been totally denied by the appellant. It is well known that the party who pleads has to prove the same categorically in evidence. If respondent No.1 has not filed any document of pregnancy, the onus, whether discharged or not, will be decided at the time of evaluation of evidence. Equally, the appellant can also produce the documents to disprove the fact if it is within his knowledge. So, the order of the learned Magistrate by not compelling respondent No.1 to produce the documents cannot be said to be improper or illegal. Hence, the contention of learned counsel for the appellant that the order of the trial Court in this regard is wrong or incorrect is not tenable. I find that the learned trial Court has rightly rejected this petition seeking direction to respondent No.1 to produce the documents of termination of her pregnancy. Therefore, Crl. Appeal No.45(A) of 2013 is not liable to succeed. Hence ordered :

### **O R D E R**

Crl. Appeal No.45 of 2013 is allowed and Crl. Appeal No.45(A) of 2013 is dismissed without cost. The order dated 09.07.2013 passed by the learned S.D.J.M., Bhubaneswar in C.M.C. No.290 of 2012 is modified to the extent indicated above.

**Sessions Judge, Khurda**

**at Bhubaneswar.**

20.10.2014.

Dictated, corrected by me and pronounced in the open Court  
this day the 20<sup>th</sup> October, 2014.

**Sessions Judge, Khurda**

**at Bhubaneswar.**

20.10.2014.