

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

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

Criminal Proceeding No. 09 of 2013

Minati Mishra, aged about 40 years,
W/o-Prabhat Kumar Mishra,
Resident of Vill. Charchikasahi, P.O./P.S.-Banki,
Dist-Cuttack, Odisha
At present residing at Plot No. 441/2840,
P.O./P.S.-Sisupal, Saktinagar, P.S.-Lingaraj,
Bhubaneswar-2, Dist- Khurda, Odisha.

... Petitioner

... Versus...

Pravat Kumar Mishra aged about 45 years,
S/o- Late Kashinath Mishra,
of Village-Charchikasahi, P.S.-Banki,
Dist-Cuttack.
At present working as driver under BDO, Baranga Block,
P.S.-Barang, Dist-Cuttack.

... Opp. Party

Date of Argument : 16.07.2013

Date of Judgment: 21.07.2014

J U D G M E N T

This order arises out of a petition u/s. 125 of the Code of Criminal procedure 1973 (in short, Cr.P.C) filed by the petitioner Minati Mishra claiming monthly maintenance of Rs. 10,000/- for self from the Opp. Party.

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

The petitioner is the legal married wife of Opp. Party. Their marriage was solemnized at the residence of the petitioner at village Krushnapalli, under Banki Police Station in the district of Cuttack in the month of July, 1991. After the marriage, they lived together as husband and have enjoyed two years happy matrimonial life and out of their wedlock they were

blessed with a daughter namely Pinali. After birth of the child the Opp. Party and his family members tortured the petitioner both mentally and physically and demanded a scooter as additional. The petitioner has averred that at the time of marriage, her brother had given cash of Rs. 10,000/- along with gold ornaments. The Opp. Party and his family members assaulted when the petitioner refused to fulfill their additional demand of a scooter. The Opp. Party and his family members drove her out from his house keeping the only daughter Pinali. In the year 1994 the petitioner came to know that the Opp. Party again remarried to one Sachala Miahra, D/o-Balaram Mishra of Athagarh for which she lodged an F.I.R. before the IIC, Talabasta Outpost and that was registered as Banki P.S. Case No. 5 dated 13.01.1999 u/s. 498(A), 494, IPC and 4 D.P. Act and that was adjudged before the SDJM, Banki. She has further averred that several attempts have been made by the petitioner's brother, relatives and well wishers for their reunion but the Opp. Party and his family members misbehaved the brother of the petitioner and refused to accept the petitioner unless they fulfill their additional demand of dowry. Since then the petitioner has been residing with her brother who is working as cook in a Hotel in Bhubaneswar. She has further averred that she has no independent source of income and her brother has also no sufficient means to maintain her. The Opp. Party is working as a driver under the B.D.O., Baranga Block and is getting Rs. 20,000/- per month. Apart from that he is getting Rs. 1,00,000/- from agriculture per annum. 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. 10,000/- for self from the Opp. Party.

3. The Opp. Party entered contest the petition admitting his marriage with the petitioner. The case of the respondent is that it is dowry less marriage. His further case is that after six months of marriage the petitioner voluntarily left his house and in spite of several attempts by him the petitioner refused to join his company and in the month of May, 1993

on all of a sudden the petitioner came to his house and remained for three days with the female child of eight days and thereafter again voluntarily left his house and deserted him. He further stated that the petitioner did not lodge any complaint till 1999 against him. He further denied the allegations made by the petitioner of any torture by him and his family members. The Opp. Party has averred that after knowing his marriage with Sachala Mishra, the petitioner lodged FIR before the OIC, Talabasta Out Post but she has failed to prove her case before the trial Court, in which, he has been acquitted by the learned S.D.J.M., Banki. He has further stated that four children were born out of his wedlock with Sachala Mishra and he is burdensome to maintain his family members. He has averred that his gross-salary is Rs.14,242/- and his home take salary is Rs.10,709/-. He has denied that he has no income from agricultural source.

4. Since the Opp. Party has admitted that the petitioner is his legally wedded wife, now the following points are formulated to resolve the controversy:-

- (1) Whether petitioner without sufficient reason refuses to live with the Opp. Party?
- (2) Whether she has sufficient means or unable to maintain herself?
- (3) Whether the Opp. Party having sufficient means has neglected or refused to maintain the petitioner?
- (4) What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 and 2 are answered in her favour.

5. The petitioner 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 and relied on some documents i.e. Ext. A is the certified copy of the deposition made by the petitioner in G.R. Case No. 8/1999, Ext. B is the Xerox copy of his salary certificate and Ext. C is the Identity Cards of his second wife, son and daughters.

6. Point No. (1):- Whether the petitioner without sufficient reason to refuses live with the Opp. Party?

P.W. 1, the petitioner has stated that the Opp. Party and his family members tortured her as her brother could not fulfill the additional demand of a scooter. She has further stated that the Opp. Party and his mother drove her out from house after assaulting due to non fulfillment of additional demand of dowry in the year 1993 and since then she has residing with her brother and in the meantime the Opp. Party married another lady namely Sachala. The Opp. Party while being examined as O.P.W.1 has been stated that the petitioner herself deserted him. The only frailty moled out from their evidences is that neither party has taken any step to return to each other company. A married woman never desires to leave her matrimonial home unless she is subjected to torture. The Opp. Party himself has admitted, that he had married another lady namely Sachala through whom he is blessed with three daughters and a son out of whom one has attained majority. As per the evidences of P.W. 1 and O.P.W. 1, their marriage was solemnized in the year 1991. Now the Opp. Party has a major child through his second wife. That means that within few years after the first marriage, the Opp. Party has accepted a second lady. Thus, it is quite natural but obvious for the first wife to feel uncomfortable to reside with the Opp. Party in same house. Therefore, the petitioner has sufficient cause to refuse to live with the Opp. Party. Accordingly this point is answered in favour of the petitioner.

7. Point No. 2:- Whether the petitioner is unable to maintain herself?

The petitioner has stated that she is a housewife depending upon the income of her brother who works in a hotel at Sishupalgarh. The Opp. Party has not refuted this statement of the petitioner Therefore, it is concluded that the petitioner is unable to maintain herself. Accordingly this point is answered in favour of the petitioner.

8. Point No. 3:- Whether the Opp. Party having sufficient means has neglected or refused to maintain the petitioner?

The Opp. Party has stated that his gross salary is Rs. 14,242/- and take home salary is Rs. 10,709/-. Ext. B is the salary certificate issued by

Addl. Block Development Officer-cum- Accounts officer, Baranga. This Ext. B vouch-safes the statement of O.P.W. 1. The Opp. Party has not provided a single farthing to the petitioner from the date of her living separately from him till date. Therefore, the Opp. Party having sufficient means neglected and refused to maintain the petitioner. Accordingly this point is answered in favour of the petitioner.

9. Point No. 4:-What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 and 2 are answered in her favour?

Now the next question for consideration is what would be the quantum of maintenance. It is evident from the evidence of the petitioner as well as the evidence of P.W. 1 that five children are residing with Opp. Party besides his second wife. Therefore, keeping in view of number of dependants and the income of Opp. Party, I feel it just and proper to direct the Opp. Party to pay monthly maintenance of Rs. 1,500/- 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. 1,500/- from the date of filing of application i.e. on 18.01.2013. 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.

In the peculiar fact and circumstances no order as to costs.

JUDGE, FAMILY COURT,
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Dictated, corrected by me and is pronounced on this the 21th day of July, 2014.

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List of witness on behalf of petitioners

1. Minati Mishra

List of witness on behalf of Opp. Party

1. Sri Pravat Kumar Mishra

List of exhibits on behalf petitioners

Nil

List of exhibits on behalf of O.P.W

Ext. A- Certified copy of the deposition made by the petitioner in G.R.
Case No. 8/1999

Ext. B- Xerox copy of the Salary certificate.

Ext. C- Xerox copy of the wife, son and daughter.

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