

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO.85 of 2014

(An application U/S.19(4) of the Family Courts Act, 1984).

Tarun Kumar Gadabad* ... *Petitioner

-versus-

***Subhalaxmi Lenka and* ... *Opposite Parties*
another**

For Petitioner* : *Ms. S. Mohanty, Advocate

***For Opposite Parties* : *Mr. S. Ghosh,*
Advocate(OP No.1)**

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:05.03.2025(ORAL)

G. Satapathy, J.

1. This present revision by the petitioner-husband is directed against the impugned judgment dated 14.07.2014 passed by learned Judge, Family Court, Khurda passed in Criminal Petition No.219/2012 directing the petitioner-husband to pay a sum of Rs.5,000/- per month to OP No.1-wife and Rs.3,000/- per month to OP No.2-son towards their maintenance



w.e.f. the date of filing of the application under Section 125 CrPC.

2. In the course of hearing, Ms. Sumitra Mohanty, learned counsel for the petitioner submits that although the petitioner-husband is ready and willing to take back the OP-wife, but the OP-wife is reluctant to come to join the company of the husband and in fact, there is no allegation of cruelty against the petitioner-husband, but the learned trial Court, without taking note of the fact that the wife has refused to stay with the husband without any sufficient cause, has passed the impugned order directing the husband to pay the maintenance and, therefore, such order being untenable in the eye of law is required to be set aside. Further, Ms. Sumitra Mohanty submits that although the petitioner is required to pay the maintenance prospectively, but the learned trial Court has erroneously awarded and passed order directing the petitioner-husband to pay the maintenance w.e.f the date of filing of the application. On the aforesaid



submission, Ms. Sumitra Mohanty, prays to set aside the impugned order.

2.1 On the other hand, Mr. Sukumar Ghosh, learned counsel for the OP, however, submits that although the application for divorce filed by the petitioner-husband was not allowed by the learned trial Court and the same was confirmed by this Court as well as the Apex Court, but the petitioner-husband has preferred this revision only to harass the OP and all the contentions of the petitioner-husband has been taken care of in the proceeding before the learned trial Court for grant of divorce as well as the same was rightly appreciated and confirmed by this Court as well as by the Apex Court and in the circumstances, the present revision merits no consideration and is accordingly liable to be dismissed. Mr. Ghosh, accordingly prays to dismiss the revision.

3. After having considered the rival submissions upon perusal of the record, since there is no dispute about the relationship between the parties and the fact that the divorce application of the petitioner-husband



has been refused by the learned trial Court which finding was confirmed by this Court in MATA No.79 of 2012 which was further confirmed in Special Leave to Appeal (C) No.8270 of 2020 by the Apex Court and, therefore, this Court does not find any difficulty to hold that the petitioner and OP No-1 are husband and wife and there is dissention between the parties, but fact remains that once a relationship of marriage is found to be admitted and not dissolved by any competent Court of law, the husband being an abled body person and working in a Government employment is statutorily required to maintain his wife and children, even there is a dissention between the parties.

4. However, since learned counsel for the petitioner has advanced that the petitioner-husband is ready and willing to take back the wife and child, but the wife is reluctant to come and thereby the husband is not entitled to maintain the wife, this Court considers it useful to refer to the very recent decision of the Apex Court in ***Rina Kumari @ Rina Devi @***



Reena vrs. Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another; 2025 SCC Online SC 72,

wherein the Apex Court in paragraph-29 of the impugned judgment has held as under;

*"29. Thus, the preponderance of judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 CrPC and the **mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification under Section 125(4) CrPC.** It would depend on the facts of the individual case and it would have to be decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree. There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances obtaining in each particular case. **In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification under Section 125(4) CrPC.**"*



5. It is, therefore, very clear that when the wife has reason to stay separately, she can maintain an application for maintenance, even though a decree of restitution of conjugal right has been passed by a competent Court, but in this case, admittedly there is no proceeding between the parties for restitution of conjugal right and on the other hand, the learned trial Court after referring to the evidence on record has rightly considered that since the wife is unable to maintain herself, she is entitled to maintenance. Further, advertent to the issue of maintenance to the children, this Court also considers it apt to refer to the most celebrated decision in ***Rajnish Vrs. Neha and another; (2021) 2 SCC 324***, wherein the Apex Court while laying down guidelines for litigating spouses to get maintenance has made certain observation in paragraph-91 & 92 for the requirement of maintenance of the children born out of the wedlock of the parties. The relevant paragraphs-91 & 92 of the said decision are extracted as under:

"91. The living expenses of the child would include expenses for food, clothing,



residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/ coaching classes, and not an overly extravagant amount which may be claimed.

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties."

6. In view of the aforesaid facts and after going through the evidence on record and making a careful discussion in the matter, this Court does not find any error apparent on the impugned judgment and thereby, the same needs to be affirmed by this Court. However, this Court while considering the plea of the husband that he is required to pay the maintenance amount prospectively with the date of filing of this revision application, this Court find it relevant to refer to the decision in **Rajnesh (supra)**, wherein the Apex Court in the discussion and directions at Part-B (IV) has held as under:-

"Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of



*application or from the date of the order in S.125(2) Cr.PC., it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Cr.P.C. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. **It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application**".*

Applying the aforesaid principle, the maintenance to the wife and son in this case should be payable w.e.f the date of application filed by them U/S. 125 of CrPC.

7. In the result, the revision by the petitioner-husband being unmerited stands dismissed on contest, but in the circumstance, there is no order as to costs.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 5th day of March, 2025/Jina

Signature Not Verified

Digitally Signed
Signed by: JINA DIGAL
Reason: Authentic
Location: High Court of Orissa
Date: 06-Mar-2025 17:47:55

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