

(2025) 12 OHC CK 1863

In the Orissa High Court

Case No : Criminal Revision No. 211, 414 Of 2016

Nidaganti Laxmi Rajyam And Others

APPELLANT

Vs

Madan Mohan Patnaik And Others

RESPONDENT

Date of Decision : 03-12-2025

Acts Referred:

Protection Of Women From Domestic Violence Act, 2005 — Section 2(f), 12, 19, 19(1) (f), 22, 29
Evidence Act, 1872 — Section 114
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 119

Citation : (2025) 12 OHC CK 1863

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : A. Mishra, S.K. Rath

Final Decision : Disposed Of

Judgement

R.K. Pattanaik, J

1. Both the revisions are disposed of by the following common judgment since it involves the same parties.

2. CRLREV No.414 of 2016: Instant revision is filed by the petitioner (hereinafter referred to as 'the wife') assailing the to her by the opposite party (hence called as 'the husband') on the grounds inter alia that the same is inadequate and hence, liable to be interfered with and enhanced granting other reliefs, she is entitled to.

3. CRLREV No.211 of 2016: Present revision is at the behest of the husband assailing the decision in Criminal Appeal No.23 of 2014 of the learned court below in a proceeding initiated under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (henceforth referred to as 'the Act') and for having enhanced the maintenance to Rs.8000/-per month payable to the wife as against the order of the learned Nyayadhikari, Gram Nyayalaya-cum-J.M.F.C., Kolanara,

Rayagada of Rs.6,000/- and also on account of compensation of Rs.3 lac awarded against him on the grounds stated therein.

4. In fact, the wife moved an application under Section 12 of the Act seeking monetary relief and demanding orders under Sections 19 and 22 of the Act from the husband registered as M.C. No.36 of 2013 and it was disposed of by the learned J.M.F.C. by order dated 30th April, 2014 allowing monthly alimony of Rs.6,000/- payable to her on or before 10th day of every month with effect from the date of such order and further payment of Rs.3 lac towards compensation within the the aforesaid order, both the parties filed appeals under Section 29 of the Act and the learned court below disposed of the same on 18th February, 2016 dismissing Criminal Appeal No.23 of 2014 and allowing Criminal Appeal No.24 of 2014 preferred by the wife to the extent of enhancing monthly maintenance to Rs.8,000/-maintaining the order of compensation at Rs.3 lac. Being aggrieved by the impugned judgment dated 18th February, 2016 in the appeals, the parties filed the revisions with respective reliefs.

5. Heard Mr. Mishra, learned counsel for the wife and Mr. Rath, learned counsel for the husband.

6. According to the wife, she got married in 1975 with their son born in 1976 and soon thereafter, found her husband having extra-marital relationship, which was opposed but every effort from her side was in vain. It is pleaded on record that the husband instituted a suit in T.S. No.66 of 1986 in the Court of learned Subordinate Judge, Jeypore for a divorce decree, but it was dismissed on 26th November, 1991, against which, Civil Misc. Appeal No.3 of 1993 was filed and was dismissed on 30th September, 1996 and ultimately, confirmed in S.A. No.337 of 1996 by this Court disposed of on 25th August, 2008. According to the wife, she has not been looked after by her husband for long and neglected and their son was brought up like an orphan and that apart, the orders of the Courts to pay maintenance were never obeyed and at last, while working as a primary school teacher, retired from service in 2009. It is further pleaded that her husband retired as a Reader in Commerce from Bikramdev College, Jeypore in 2006. The pleading on record is that the learned J.M.F.C. allowed monthly alimony of Rs.6,000/- only though her husband was receiving Rs.57,000/- as monthly pension after 6th Pay revision. It is claimed that the husband had also received a lump sum amount of Rs.37,57,878/- as retirement benefits on different heads. It has been alleged that the husband did not provide regular maintenance to her, hence, was compelled to file the application under Section 12 of the Act. It is further alleged that the husband is receiving more pension than the amount claimed and therefore, the learned courts below fell into gross error in fixing maintenance @ Rs.6,000/- initially and later slightly enhanced to Rs.8,000/-with a meagre sum of Rs.3 lac allowed as compensation. The further plea is that such maintenance should have been directed to be payable from the date of application filed and not from the date of order i.e. 30th April, 2014, hence, the impugned decision in M.C. No.36 of 2013 and Criminal Appeal No.24

of 2014 is not legally tenable, hence, needs further revision in the interest of justice.

7. On the other hand, the husband pleaded that the wife is not entitled to maintenance or any compensation. It is pleaded that the wife separated from him about 37 years back and disturbance started in their conjugal life due to the latter's suspectful attitude. It is alleged that the wife always aspired for independent life and she was never inclined to stay with her in-laws and since she insisted separate living and then, joined as a school teacher in 1979, it was a miserable life for him. It is pleaded that his wife is not entitled to maintenance due to her above conduct and desertion and furthermore, the amount of Rs.8,000/- towards monthly alimony even if allowed is on the higher side and also compensation of Rs.3 lac, which is not at all justified, he being a retired employee and having other responsibilities and expenses to be borne on health and medication. Lastly, it is pleaded that even though there has been deduction of 10% of pension, which has been on the basis of an application of his wife, the said amount is being deducted every month from the year 2006 and the same would be around Rs.6 lac to Rs.7 lac and hence, under such circumstances, further allowing maintenance of Rs.8,000/- would be really burdensome including the compensation of Rs.3 lac.

8. In course of hearing, Mr. Mishra, learned counsel for the wife filed a memo and apprised the Court that the arrear maintenance @ Rs.8,000/- per month till 13th November, 2024 stands at Rs.10,27,467/-. It is stated that besides the payments of Rs.8,000/- and Rs.15,000/- on 18th March, 2016 and 19th October, 2016 received by the wife, the arrear remains at Rs.8,97,467/- and if calculated till June, 2025, it becomes Rs.9,58,000/-.

9. Undisputed facts are that the marriage between the parties was solemnized in 1975 and a son was born to them in 1976 and thereafter, they got separated. According to the husband, he and his wife reside separately from 1979, though, in between, stayed for few days till 1982. It is made to reveal from the record that the husband filed a divorce suit in 1986 and as earlier stated, it was dismissed on 26th November, 1996. It is further made to reveal that monthly maintenance was allowed in the suit and the same was also challenged and the said amount was revised thereafter. The decision in the suit was challenged in appeal and finally, the second appeal was dismissed in 2008 and a year after, the wife retired from service on 30th November, 2009. After such retirement, the application under Section 12 of the Act was filed in 2013 and therein, the learned J.M.F.C. allowed monthly maintenance of Rs.6,000/- stood modified in Criminal Appeal No.24 of 2014 and enhanced to Rs.8,000/- without disturbing the compensation of Rs.3 lac. On the one hand, the challenge is to the sum of monetary relief allowed against the husband even questioning the entitlement and on the other hand, the wife has raised objection to the quantum of alimony even though enhanced with a plea that the same is relatively less considering her social status.

10. Before the learned J.M.F.C., the parties adduced evidence, oral and documentary. Some bank receipts were marked as exhibits from the side of the wife besides medical receipts of money orders as Exts. A/1 to A/7 and also cash receipts as Ext. C/1, Ext.C.2 to Ext.C.5 besides medical reports i.e. Ext.D.1 to D.4 and likewise, some medical prescriptions marked as Ext. E/1 to E/3. From the evidence on record, it is revealed that the wife was a teacher of a primary school and the husband, a Reader retired many years back and are living separately since long. The parties are having age related medical issues as also revealed from the evidence. The question is, whether, the maintenance allowed is justified and if the amount fixed at Rs.8,000/- is reasonable? Such alimony is permissible when objected by the husband challenging the entitlement? The amount of compensation is also questioned by the wife considering the pension of her husband and good amount of retiral benefits received by him. The parties are elderly persons and at present, are in their 70s. The demand for maintenance is sought to be further enhanced besides the compensation fixed by the learned courts below, which is to be examined by this Court.

11. Mr. Rath, learned counsel for the husband would submit that the wife is not entitled to any such relief since separated long before. It is contended that even assuming for the sake of argument that alimony is permissible, in that case, the decision on maintenance and compensation has not been considered by both the learned courts below in accordance with the decision of the Apex Court in *Rajnish Vrs. Neha* and another AIR 2021 SC 569. It is also contended that in absence of any domestic relationship between the parties, no such order of maintenance should have been passed.

12. On the contrary, Mr. Mishra, learned counsel for the wife submits that the maintenance is permissible even when the parties lived separately. It is submitted that even a divorced wife is entitled to maintenance and such other reliefs under the Act and while stating so, he refers to a decision of the Apex Court in *Juveria Abdul Majid Patni Vrs. Atif Iqbal Mansoori* and another (2014) 10 SCC 736. It is further contended that the conduct of the parties even prior to commencement of the Act could be taken into account, while dealing with application under the said Act demanding monetary relief, etc. and in support of such contention, the decision in *V.D. Bhanot Vrs. Savita Bhanot* (2012) 1 SCR 867 is placed reliance on. Lastly, while demanding that the maintenance amount should be enhanced to Rs.25,000/- per month, Mr. Mishra, learned counsel for the wife cited a case law in *Kalyan Dey Chowdhury Vrs. Rita Dey Chowdhury Nee Nandy* (2017) 3 SCR 356. It is contended that the learned courts below did not consider the real life predicament of the wife and suffering she has undergone entire life and hence, the impugned decision is required to be modified with a monetary compensation of Rs.20 lac awarded to her besides payment of Rs.8 lac on the head of medical expenses under Section 22 of the Act and Rs.10,000/- per month towards residential order in terms of Section 19(1)(f) of the Act.

13. In the case at hand, there has been no divorce decree in favour of the

husband, hence, the decision of the Apex Court in *Juveria Abdul Majid Patni* (supra) is not relevant to be considered. There has been a plea advanced from the side of the wife as opposed to the claim of the other side for considering the monetary relief and such other reliefs, she is entitled to under the Act to be considered and appreciated with reference to the husband's conduct. It is admitted that the parties separated towards the end of 70s or in the early part of 80s and till such time, it may be said that both lived and led a conjugal life. To claim that there has been no domestic relationship ever between the two as contended by Mr. Rath, learned counsel for the husband is misconceived. In fact, the expression 'domestic relationship' is defined under Section 2(f) of the Act, which means, a relationship between two persons, who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. In the case of the parties herein, after their marriage, both stayed under one roof for some time, till their separation and therefore, even though, such separation is more than 30 to 35 years old, it has to be held that they had been in a domestic relationship having lived together in a shared household. If the wife joined in service few years after her marriage and had to live separately at the work place does not mean that both never had a domestic relationship in the context of the Act. In fact, in course of hearing, it has not been seriously argued with any such plea as to absence of domestic relationship between the parties. Considering the above facts and the reason behind the separation, it has to be concluded that till such time, both of them separated, they had been in a domestic relationship.

14. As far as the maintenance demanded by the wife is concerned, it has been allowed by the learned court below on the premise that she had a reasonable excuse to stay separate from the opposite party. The Court is not inclined to consider and elaborately discuss the evidence on record regarding the nature of relationship between the two and what led to their separation after marriage, a fact in issue, which has been duly taken cognizance of and reasonably appreciated by the learned courts below. The only issue that remains to be examined is over the claim of maintenance and compensation and whether, it needs further enhancement with any other entitlements in favour of wife as has been demanded.

15. According to Mr. Mishra, learned counsel for the wife, the opposite party should be directed to pay an amount Rs.25,000/- per month towards monthly maintenance. Furthermore, the demand on the head of compensation is claimed at Rs.20 lac. The aggrieved wife is also claiming Rs.8 lac on the head of medical expenses and Rs.10,000/- lac towards residential order under Section 19 of the Act. The learned Court below has considered the aspect of domestic violence and the plea of the aggrieved wife and the fact that the husband had instituted a suit demanding divorce on the ground of desertion. As earlier discussed, the suit for divorce was dismissed and ultimately confirmed in S.A. No.337 of 1996. In so far as evidence on record is concerned, Ext.12 is the information supplied by the

State Bank of India, Central Pension Processing Centre, Bhubaneswar and the same revealed that the husband received the basic pension of Rs.12,069/- with T.I as applicable from October, 2011. Besides an arrear of Rs.6,22,104/-, commuted value pension of Rs.5,61,075/- has been paid to him on 20th December, 2011 with the pension reduced by Rs.4,470/- till the end of 2026. A copy of the pension payment order appended to Ext.12 revealed that the pension of the opposite party to be Rs.12,069/- from 1st July, 2006 to 30th June, 2016 after deduction of 10% and such retention is as per G.O. No.21621 dated 17th May, 2007. Referring to the deduction at the rate of 10%, it is claimed by the wife that the pension of the opposite party would be Rs.44,700/-. On the other hand, the claim of the husband is that the pension is at Rs.10,000/- by the year 2013-14. Ext.13 is the information supplied by the Special Treasury, Jeypore indicating therein that the opposite party was paid Rs.28,540/- towards pension as on 19th March, 2011 and considering the same, the learned Court below held that the claim of monthly pension at Rs.44,000/- is unacceptable. It is a matter of record about the husband having received the retirement benefits towards arrear and commuted value of pension besides gratuity of Rs.5 lac. Considering the nature of evidence admitted, the husband received pension close to Rs.30,000/- by the year 2011. In fact, this Court had directed the husband to produce pension papers by order dated 25th July, 2025. Such a direction was in continuation of an earlier order dated 10th November, 2022, however, it has not been complied with. According to Mr. Mishra, learned counsel, for such non-compliance, an adverse inference is to be drawn in view of Section 114 of the Indian Evidence Act read with Section 119 BNNS. It is not in denial that the wife had a pension at Rs.9,000/- per month after retirement in 2009. It is also not in denial that the wife is entitled to a proper and decent living standard at par with her husband, which has even been admitted by him. It is claimed that the husband being a Reader with UGC scale, his revised pension would be more than what is disclosed and therefore, the said fact should have been taken judicial notice of while fixing the amount of maintenance payable to the wife. The Court is inclined to accept the contention of Mr. Mishra, learned counsel that an amount of Rs.8,000/- per month is not just and reasonable and it needs enhancement.

16. Referring to the decision in Kalyan Dey Chowdhury (supra), it is claimed that the maintenance should be fixed at 25% of the income of the husband. If the pension of the husband in the year 2011-12 was close to Rs.30,000/-, it must have received revision thereafter and considering the fact that the pension received would obviously be more than what it was in 2012, the Court is of the humble view that the maintenance payable to the wife should be assessed at Rs.10,000/- a month. The Court is inclined to fix the pension of the husband at Rs.40,000/- with the conclusion that it must have received revision. Such is the view of the Court after recording an adverse inference against the husband for having not complied the order dated 25th July, 2025. If 25% of the monthly pension is considered to be sum towards maintenance, it becomes Rs.10,000/- per month. Therefore, with the above discussion, in the considered view of the

Court, the maintenance amount should be further enhanced from Rs.8,000/- to Rs.10,000/- having assessed the monthly pension of the husband @ Rs.40,000/-.

17. As far as the arrear maintenance is concerned, according to the Court, the husband is liable and should be directed to pay the same and clear all the dues in lump sum in the peculiar facts and circumstances of the case especially when the parties are at their advanced stage of life. The memo filed from the side of the wife with a calculation sheet on arrear dues has gone unopposed. Since, it has not been challenged from the side of the husband, it stands at Rs.9,58,000/- till June, 2025 calculated @ Rs.8000/-. The Court is of the view that such payment recalculated @ Rs.10,0000/- should be cleared at one go or in two installments considering the fact that the same is pending clearance for long. The Court is inclined to accept the contention of Mr. Mishra, learned counsel that the payment of monthly maintenance should be on and from the date of the application filed under Section 12 of the Act. It is not that the wife abandoned any such relief of interim alimony, hence, it was not justified on the part of the learned courts below to direct the payment of maintenance from the date of the original order. In fact, such an application under Section 12 of the Act was filed by the wife in 2013 and was allowed just a year after by order dated 30th April, 2014 and therefore, there was no occasion as such or too little a time in between for seeking interim maintenance and therefore, any such alimony allowed in her favour is payable with effect from the date of application filed and not the order in M.C. No.36 of 2013.

18. As regards the residence order claimed at Rs.10,000/- a month, the Court is of the view that the parties have become old and living separately for quite a long time, hence, at this distant point of time, it would not be proper to direct any such payment on that account. Admittedly, the aggrieved wife is having medical condition and receiving treatment on and off and needs support. It is not revealed from the record whether their son is having any independent income since he had become major by the time the litigation started. In absence of any such material on record, it has to be assumed that the wife is all alone to look after herself and her son and therefore, the husband should be directed to pay an additional amount of Rs.3 lac to meet her medical and other expenses. That apart, the husband received the retiral benefits but never ever parted with or shared any amount out of the same with the wife. No doubt, both the parties are independent and having income but the wife retired as a school teacher with a meagre amount of pension less than Rs.10,000/- by the time of retirement, whereas, the pension of the husband is reasonably better. In the considered view of the Court if such additional payment is paid besides the compensation of Rs.3 lac, it would serve the purpose and meet the ends of justice considering the fact that the wife is living a life without any real support. Thus, considering the evidence on record and having a holistic approach to the case at hand and since considerable time has elapsed in the meantime and the parties are at their fag end of mortal life, it would be better if an amount of Rs.10,000/- is allowed towards maintenance with a direction to pay compensation of Rs.3 lac and an

additional sum for such amount to meet the medical expenses of the wife besides clearing the arrear dues at the enhanced rate in lump sum either at once or in two installments in a span of three months and to that extent, the impugned judgment in Criminal Appeal No.24 of 2014 is required to be modified. In other words, the Court is not inclined to accept the contention of the husband and hence, as a necessary corollary, the plea that the monthly maintenance and compensation not being payable deserves to be outrightly rejected and accordingly, it is ordered.

19. In the result, the revision petitions are disposed of. For the reasons discussed hereinabove, CRLREV No.414 of 2016 is allowed to the extent indicated, whereas, CRLREV No.211 of 2016 stands dismissed thereby fixing the alimony @ Rs.10,000/- per month with effect from the date of application filed under Section 12 of the Act besides Rs.3 lac each on the head of compensation and medical expenses, etc. over and above the arrear dues to be cleared with a payment in lump sum or in two installments at the best. It is further directed that the above direction shall be complied with at the earliest preferably within a period of three months from today.

20. In the circumstances, there is no order as to costs.