

(2025) 04 OHC CK 1387
In the Orissa High Court
Case No : RPFAM No.378 Of 2024

Tiki Panda And Another

APPELLANT

Vs

Babul Kumar Panda Vs

RESPONDENT

Date of Decision : 15-04-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 125
Family Courts Act, 1984 — Section 19(4)

Citation : (2025) 04 OHC CK 1387

Hon'ble Judges : G. Satapathy, J

Bench : Single Bench

Advocate : A.K. Nath, B.P. Dhal

Final Decision : Allowed

Judgement

G. Satapathy, J

1. This revision is directed the impugned order dated 30.09.2024 passed by the learned Judge, Family Court, Dhenkanal in Cr.P No.16 of 2021 directing the OP-husband to pay a sum of Rs.3,000/- (Rupees Three Thousand) per month to the petitioner No.2-cum-daughter towards her maintenance in an application U/ S.125 of the CrPC.

2. The admitted fact in this case is that the learned trial Court had earlier on 07.09.2022 passed an order directing the OP-husband to pay a sum of Rs.5,000/- (Rupees Five Thousand) per month to the petitioner No.1-cum-wife and Rs.3,000/- (Rupees Three Thousand) per month to the petitioner No.2-cum-daughter towards their maintenance w.e.f. the date of filing of this application in an application U/S.125 of the CrPC, which was assailed in RPFAM No.250 of 2022, but this Court while adjudicating the matter upon hearing the parties had passed order in RPFAM No.250 of 2022 setting aside the above order of the learned trial Court by remitting the matter back to the learned Judge, Family Court, Dhenkanal to decide afresh by giving opportunity of hearing to the parties

to adduce evidence with regard to income of the parties, however, the learned trial Court although provided opportunity to the parties to lead evidence towards their income, but it adjudicated all the issues on merit again, which was not the spirit of the order.

3. For clarity, this Court considers it appropriate to extract the relevant part of the order as noted by this Court in RPFAM No.250 of 2022:-

"3. Mr. Dhal, learned counsel for the Petitioner submits that relationship between the parties is not in dispute. At the time of marriage, the Petitioner was serving in a private firm in Gujarat and was earning Rs.20-22 thousand, but due to an accident, he had to leave the job. At present, he is earning his livelihood by running a tiffin shop in village Kumusi under Parjang. He is hardly earning about Rs.5 to 7 thousand per month from the said shop, but learned Judge, Family Court making a guess work and taking the notional income of the Petitioner to be Rs.25,000/- per month, directed him to pay the maintenance, as aforesaid. Notional income of the Petitioner could not have been assessed at Rs.25,000/-, as his income should have been assessed as an unskilled labour. The income of Opposite Party No.1 was also not taken into consideration. He, therefore, submits that the maintenance directed to be paid by the Petitioner should be reduced.

4. Learned counsel for Opposite Parties submits that no material has been placed by the Petitioner with regard to his income. The burden is on him to prove his income, but he failed to discharge the same. Affidavit of assets and liabilities was also not submitted by either of the parties. Thus, learned Judge, Family Court has not committed any error in making a guess work and directing the Petitioner to pay the maintenance as stated above.

7. In that view of the matter, the impugned order is set aside and the matter is remitted to learned Judge, Family Court, Dhenkanal to adjudicate the matter afresh giving opportunity of hearing to the parties to adduce evidence with regard to income of the parties. In the meantime, the Petitioner shall go on paying Rs.3,000/- (rupees three thousand only) per month to the Opposite Parties as maintenance, which would be without prejudice to case of either of the parties. Learned Judge, Family Court should take care in naming the parties while discussing the matter."

4. From a careful appraisal of the aforesaid order, it goes without saying that this Court has remitted the matter back for a limited purpose of deciding the quantum of maintenance by providing opportunity to the parties to lead evidence with regard to their income, but admittedly the learned trial Court in the impugned judgment has taken all the issues again to decide the matter on merit afresh, but fact remains that some of the issues are not in dispute such as relationship between the parties and the entitlement of the parties to the maintenance, however, the quantum of maintenance was in dispute between the parties in the earlier round of litigation.

5. Be that as it may, since the learned trial Court has provided opportunity to the

parties to lead evidence on the issue of their income/earnings, this Court considers it appropriate to determine the quantum of maintenance in this revision. It is, however, found from the impugned judgment that the learned Judge, Family Court in the last part of the paragraph-12 of the impugned judgment has estimated the income of the OP-husband at Rs.12,000/- (Rupees Twelve Thousand) per month, which the OP-husband could not validly dispute inasmuch as the OP-husband was found by the learned trial Court assisting his father in running a grocery shop and also earning his livelihood from the said grocery shop. It is obvious that in absence of evidence, the Court has to adopt some guess work and a person working in his father's grocery shop in a village like the petitioner, it would not be improper to take his income at Rs.12,000/- (Rupees Twelve Thousand) per month. At the same time, it is also not in dispute that the OP-husband is having old parents, but the admitted evidence is that the father of the OP-husband runs a grocery shop and, therefore, the mother of the OP-husband would be dependent on both her son and husband on their earning from the grocery shop. In this situation, when the relationship between the parties are not in dispute and the fact that the petitioner-wife is also entitled to maintenance because such finding of the learned trial Court has earlier never been assailed by the husband, this Court considers that the wife also deserves some maintenance. Accordingly, the quantum of maintenance is quantified @ Rs.3,000/-(Rupees Three Thousand) per month to the petitioner No.1-cum-wife and Rs.2,000/- (Rupees Two Thousand) per month to the petitioner No.2-cum-daughter w.e.f. the date of filing of this application. It is, however, made clear that the arrear maintenance which would be calculated from the date of filing of the application should be paid to the petitioners accordingly in six(6) equal monthly installments to be fixed by the learned trial Court and the arrear maintenance of the child shall be deposited in an interest bearing account till she attains majority and the current maintenance be paid to her in cash through the mother guardian.

6. In the result, the RPFAM succeeds and the impugned order dated 30.09.2024 passed by the learned Judge, Family Court, Dhenkanal in Cr.P No.16 of 2021 is, accordingly, set-aside and modified to the extent indicated above, but in the circumstances, no order as to costs.

.....