

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.7 of 2024

(In the matter of an application Under Section-19 of Family Courts Act, 1984)

Nabaghana Sahoo **Petitioner**

-versus-

Smruti Prava Sahoo & Another **Opposite Parties**

For Petitioner : Mr. A. Mishra, Advocate

**For Opposite : Mr. A. Swain, Advocate
Parties**

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:11.02.2025(ORAL)

G. Satapathy, J.

1. This Revision is directed against the impugned judgment dated 22.07.2023 passed by learned Judge Family Court, Khurda in Criminal Petition No.431 of 2017 directing the Petitioner-husband to pay a sum of Rs.10,000/- per month each to OP1-wife and OP2-son w.e.f. 01.12.2017 in an application U/S. 125 of CrPC.



2. In the course of hearing, Mr. Ashutosh Mishra, learned counsel for the Petitioner without disputing the facts and relationship between the parties submits that admittedly the monthly salary of the Petitioner is Rs.42,000/-, but he is directed to pay Rs. 41,000/- per month in three different proceedings; firstly, Rs.20,000/- per month in a proceeding U/S.12 of the PWDV Act, secondly, Rs.1,000/- in a proceeding U/S.24 of the Hindu Marriage Act, 1955 and thirdly, Rs.20,000/- in this proceeding U/S. 125 of the CrPC. It is further submitted by Mr. Mishra that admittedly neither of the parties has filed the disclosure affidavit in terms of the decision rendered by the Apex Court in ***Rajnish Vrs. Neha and another; (2021) 2 SCC 324*** which is the mandatory requirement for deciding application for maintenance under different provisions of law and although the Petitioner-husband has not filed such disclosure affidavit, but it is the mandatory requirement of the law as held in ***Rajnish(supra)***.



Further, Mr. Mishra submits that since the salary of the Petitioner-husband in the year 2017 was admittedly Rs.10,300/, how he can be directed to pay Rs.20,000/- per month w.e.f 01.12.2017, but the learned trial Court has committed error in this aspect while passing the impugned order. On the above submissions, Mr.Mishra prays to allow the revision by setting aside the impugned judgment.

2.1. On the contrary, Mr. Abhinash Swain, learned counsel for the OPs by taking this Court through the observation of the learned trial Court made at paragraph-12 submits that although the parties have not filed disclosure affidavit, but the learned trial Court has taken relevant materials on record to pass the impugned judgment.

3. After having considered the rival submissions upon going through the materials placed on record, it appears that neither of the parties has filed the disclosure affidavit as mandated in

Rajnesh(supra), but facts remain that the Apex



Court in ***Rajnesh(supra)*** has issued a slew of directions in the form of guidelines making it mandatory for the Petitioner-Applicant to file disclosure affidavit at the time of bringing a proceeding for maintenance which is forthcoming from the following observation made by the Apex Court in paragraphs-72.2 and 72.3 which reads as under:-

"72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the affidavit of Disclosure of Assets;

72.3. (c) The Respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the Respondent. If the Respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the Respondent, if the conduct is found to be willful and contumacious in delaying the proceedings (Kaushalya v. Mukesh Jain, MANU/ SCOR/ 21339/ 2019: (2020) 17 SCC 822). On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for



maintenance on the basis of the affidavit filed by the applicant and the pleadings on record."

In the above premises, viewing what should be the consequence for non-filing of disclosure affidavits which is mandatory in nature after the decision in ***Rajnesh(supra)***, this Court considers it useful to refer to the decision in ***Aditi Vrs. Jitesh Sharma; (2023) SCC Online SC 1451***, wherein the Apex Court at paragraphs-14 & 15 has held thus:-

*"14. Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing **that affidavits were filed by both the parties in terms of judgment of this Court in Rajnesh's case (supra)**, which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers **for awareness and implementation**. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of*



maintenance are available under the Special Marriage Act, 1954, Section 125 Code of Criminal Procedure, the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate.

15. As in the case in hand, the impugned order passed by the High Court is cryptic and is bereft of reasons. In our opinion, the same deserves to be set aside and the matter is liable to be remitted to the High Court for consideration afresh. Ordered accordingly. As the Respondent remained unrepresented, the High Court may issue notice for his appearance on the date so fixed by it."

4. It is also not in dispute that the judgment in ***Rajnesh(supra)*** was delivered on 4.11.2020 and the guidelines therein have been circulated to all the Courts in India for compliance, but it has not been followed in this case while passing the impugned judgment. When the principle culled out in a decision is directed to be followed mandatorily, the Court concerned is under obligation to follow such



guidelines, but in this case, the learned trial Court having not followed the provisions of the guidelines issued in ***Rajnesh(supra)***, the matter is required to be remitted back for fresh disposal in accordance with law by complying the guidelines of the ***Rajnesh(supra)***.

5. In the result, the revision stands allowed and the impugned judgment dated 22.07.2023 passed by learned Judge Family Court, Khurda in Criminal Petition No.431 of 2017 is hereby set aside. Ergo, the matter is remitted back for fresh disposal in accordance with law.

It is, however, made clear that the learned trial Court while adjudicating the matter afresh may receive the disclosure affidavits from the parties and provide opportunity to lead evidence on the very aspect of the disclosure affidavits by taking into consideration the mandatory guidelines of the Apex Court in ***Rajnesh(supra)***.



Since the maintenance proceeding is pending between the parties from the year 2017, the learned trial Court is hereby requested to dispose of the aforesaid proceeding after remand as expeditiously as possible preferably within a period of two months from the date of receipt of copy of this order.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 11th February, 2025/Priyajit*

Signature Not Verified

Digitally Signed
Signed by: PRIYAJIT SAHOO
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 12-Feb-2025 18:01:38

