



IN THE HIGH COURT OF ORISSA, CUTTACK

RPFAM No.263 of 2024

*(An application under Sec-19 (4) of Family Courts Act
and with Sec-397 of the Code of Criminal Procedure)*

CNR No.ODHC010678262024

Sujata Rath @ Tripathy *Petitioner*

-Versus-

Anuja Tripathy *Opposite Party*

Advocate for the parties

***For Petitioner : Mr. Ashok Das,
Advocate***

***For Opposite Party : Ms. Sudhamayee Das,
Advocate***

.....

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing and Judgment: 21.09.2026

S.K. MISHRA, J.

1. The present revision petition has been preferred by the Petitioner-wife challenging the judgment dated 13.08.2024, passed in Cr.P. No.84 of 2023 by the learned Judge, Family Court, Jajpur, vide which her application for maintenance under Section 125 Cr.P.C stood rejected.



2. On being noticed, since the Opposite Party-husband has appeared, on consent of the learned Counsel for the parties, the matter is taken up for hearing and disposal at the stage of admission.

3. Heard learned counsel for the parties.

4. Learned Counsel for the Petitioner submits, his Client preferred Cr.P. No.84 of 2023 under Section 125 Cr.P.C. seeking maintenance in her favour from the Opposite Party-husband. Though the learned Court below recorded the evidence of the parties, but, passed the impugned order dismissing the said application on contest basically on the ground that the Opposite Party-husband preferred C.P. No.36 of 2023 for restitution of conjugal rights with the Petitioner. Since, the Petitioner was directed to live with the Opposite Party-husband along with her children; she and her children are not entitled to maintenance from the Opposite Party-husband.

4.1. Learned Counsel for the Petitioner further submits, Cr.P. No.84 of 2023 and C.P. No.36 of 2023 were pending before the same Court, i.e., learned Judge, Family Court, Jajpur. C.P. No.36 of 2023 was disposed of on 12.08.2024,



whereas Cr.P. No.84 of 2023 was dismissed on the very next day, i.e., on 13.08.2024. Since both the said proceedings are independent proceedings, the learned Court below should not have relied upon its findings in C.P. No.36 of 2023, to deny maintenance to the Petitioner-wife, as well as her children.

4.2. He further submits, because of torture and assault, the Petitioner-wife preferred DV Misc. Case No.2 of 2023 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and also filed application for maintenance before the learned S.D.J.M., Jajpur. Though there was sufficient cause to remain separately and it was pleaded and proved in Cr.P. No.84 of 2023, the learned Court below failed to take note of the evidence on record, while passing the impugned judgment. Accordingly, he submits, the impugned judgment be set aside and the matter be remitted back for re-adjudication of Cr.P. No.84 of 2023 in accordance with law.

5. Per contra, learned counsel for the Opposite Party-husband submits, the learned Court below was justified to pass the impugned order, in view of the observations made therein. There being no infirmity in the said order, the present revision be dismissed.



6. As is revealed from the record, C.P. No.36 of 2023 was preferred by the Opposite Party-husband under Section 9 of the Hindu Marriage Act, 1955, before the learned Judge, Family Court, Jajpur for restitution of conjugal rights, whereas, the present Petitioner-wife preferred Cr.P. No.84 of 2023 under Section 125 of Cr.P.C. for maintenance before the self-same Court, i.e., learned Judge, Family Court, Jajpur. Cr.P. No.84 of 2023 was filed on 11.04.2023, whereas C.P. No.36 of 2023 was preferred by the Opposite Party-husband on 30.01.2023. The learned Court below simultaneously proceeded in both the said matters.

7. The learned Court below disposed of the Section 9 application (C.P. No.36 of 2023) just one day before passing of the impugned judgment in Cr.P. No.84 of 2023, i.e., on 12.08.2024, directing the present Petitioner to join the society of the Opposite Party-husband with her children within three months from the said order to resume the conjugal life with the Opposite Party-husband. On the very next date, i.e., on 13.08.2024, vide the impugned judgment, denied to grant maintenance basically on the ground that the said Court has directed the Petitioner to join the society of the Opposite



Party-husband along with her children within three months from the date of order in C.P. No.36 of 2022 . Paragraph No.11 of the said judgment, being relevant, is reproduced below:

*“11. Besides, the most significant point is that this court directed the petitioner to join the society of the OP along with her children within three months from the date of order in the CP No.36 of 2022 filed by the OP for restitution of his conjugal rights with the petitioner. **Since, the petitioner is directed to live with the OP along with her children, she and her children are not entitled to maintenance from him.**”*

(Emphasis supplied)

8. That apart, the learned Court below also failed to take note of the fact on record that for domestic violence, the Petitioner preferred DV Misc. Case No.2 of 2023 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and also filed application for maintenance before the learned S.D.J.M., Jajpur and was getting monthly maintenance of Rs.4,500/-, being so modified by the learned District & Sessions Judge, Jajpur in Criminal Appeal No.26 of 2023 though initially a direction was given by the learned



S.D.J.M to pay maintenance of Rs.7,000/- per month. Further, MATA No.338 of 2024 is pending before this Court challenging the said decree passed by the learned Court below for restitution of conjugal rights in C.P. No.36 of 2023.

9. In the circumstances, the impugned order dated 13.08.2024 passed by the learned Judge, Family Court, Jajpur in Cr.P. No.84 of 2023 is set aside. The matter is remitted back to the learned Judge, Family Court, Jajpur to re-decide the maintenance, to be awarded in favour of the Petitioner.

10. It is made clear that while re-adjudicating the issue of maintenance, the learned Court below shall also take note of the fact regarding maintenance awarded in favour of the Petitioner-wife in D.V. Misc. Case No.2 of 2023, in view of the judgment of Supreme Court in **Rajnish Vs. Neha and others**, reported in (2021) 2 SCC 324.

11. Since the Cr.P. is of the year 2023, the parties shall be allowed to adduce additional evidence to substantiate their respective stand before the Court below, if they so intend. The learned Court below shall do well to re-adjudicate the matter at the earliest, preferably by end of January, 2026.



12. Accordingly, the writ petition stands disposed of.
No order as to costs.

Urgent certified copy of this judgment be granted
on proper application as per rules.

.....
S.K. MISHRA, J.

Orissa High Court, Cuttack.
Dated, 21st September, 2026/Kanhu

Signature Not Verified

Digitally Signed
Signed by: KANHU BEHERA
Designation: JUNIOR STENOGRAPHER
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 22-Sep-2026 18:46:01