



IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.118 of 2026

Basanti Parida and another* *Petitioners

Ms. Saraswati Senapati, Advocate

-versus-

***Nathuram Parida and Opp. Parties*
*another***

**CORAM:
JUSTICE MRUGANKA SEKHAR SAHOO**

ORDER
01.07.2026
Hybrid Mode

Order No.
02.

1. The Petitioner No.1 in the present petition is the legally married wife and mother of Opp. Parties No.1&2 respectively and the Petitioner No.2 is the biological son and younger brother of the present Opp. Parties No.1 &2.

2. Heard learned counsel for the petitioners.

The learned counsel has been engaged by the High Court Legal Services Authority to argue the matter. She argues with lot of preparation, effort and vehemence to challenge the judgment dated 10.12.2025.

3. Having heard the learned counsel for the petitioners and considering the material on record, it has to be observed that the learned Judge, Family Court, Bhadrak has passed the order in the application filed by the petitioners under Section 125 of Cr.P.C. after considering all the materials on record and considering the relevant propositions of law.



4. Paragraphs-8 & 9 of the judgment under challenge in revision are reproduced herein:

*“8. This Court finds the present case to be peculiar in several respects. Petitioner no.2 has not stepped into the witness box to substantiate the pleadings made on his behalf. Not a single scrap of documentary evidence has been produced to show that petitioner no.2 is physically handicapped or that he is incapable of earning his livelihood. On the contrary, the materials on record reveal that petitioner no.2 is a young man aged about 22 years. In absence of any cogent proof, this Court finds it difficult to accept the bald assertion that petitioner no.2 is handicapped to such an extent that he is unable to maintain himself. It is further observed that petitioner no.1 has prayed for award of maintenance from her husband as well as from her son simultaneously. Likewise, petitioner no.2 has sought maintenance from his father and brother. Admittedly, all three children of petitioner no.1 and OP no.1 are majors, and as per the admission of petitioner no.1, her daughter is already married. This Court is constrained to consider how the marriage expenses of the daughter of petitioner no.1 were borne, as no explanation has been furnished in that regard, thereby creating doubt about the financial incapacity pleaded by the petitioners. The petitioners have also failed to establish the income and financial status of OP no.1. The disclosure affidavit of assets and liabilities filed on behalf of the petitioners has been prepared in a cryptic manner and does not conform to the format mandated in **Rajnish v. Neha** and others. The probative value of such an affidavit is therefore minimal. Petitioner no.1 has admitted in her deposition that the learned Court of JMFC, in a proceeding under the Protection of Women from*



Domestic Violence Act, has already directed OP no.1 to pay Rs. 2,000/- towards house rent. Her own admission further reveals that OP no.1 is not complying with the said order. However, no effort has been demonstrated by the petitioners to execute the said order through the appropriate legal mechanism. In these circumstances, both petitioner no.1 and petitioner no.2 have failed to prove that, despite having sufficient means, OP no.1 has willfully neglected or refused to maintain them. No supporting document has been filed to establish the earnings of either of the opposite parties. When an efficacious remedy, by way of execution of the DV order, is already available to the petitioners, the filing of a separate proceeding under Section 125 Cr.P.C. (S.144 BNSS) seeking the same relief appears to be misconceived and not the proper course of action. Accordingly, the petitioners have not succeeded in discharging the burden cast upon them under Section 125 Cr.P.C. (S.144 BNSS)

9. *In view of the foregoing discussions and the materials available on record, this Court is of the considered opinion that the petitioners have failed to establish, by acceptable evidence that the opposite party, despite having sufficient means, has willfully neglected or refused to maintain them. Petitioner no.2, being a major son aged about 22 years, has not proved any physical or mental incapacity disabling him from maintaining himself. Likewise, petitioner no.1 has not substantiated her claim that she is unable to maintain herself nor has she proved the actual income, means, or financial capacity of the opposite party as required under law.*

It is also evident that petitioner no.1 has already been granted monetary relief under the Domestic Violence Act, and the proper course for non-payment of the said relief is to seek execution of that order before the competent court. Filing a separate



proceeding seeking similar monetary relief, without first exhausting the available remedy, is not justified.

Accordingly, as the petitioners have failed to discharge the burden cast upon them under S.144 BNSS, the present petition stands dismissed. Hence, ordered.”

5. This Court finds no illegality or infirmity in the judgment dated 10.12.2025, passed by the learned Judge, Family Court, Bhadrak in Criminal Proceeding No. 81 of 2025.

The appeal is dismissed accordingly.

Gs

(Mruganka Sekhar Sahoo)
Judge