

(2019) 11 PAT CK 0062

In the Patna High Court

Case No : Criminal Revision No. 310 Of 2018

Nisar Ahmed @ Nesar Ahmed

APPELLANT

Vs

Shabnam Khatoon And Ors

RESPONDENT

Date of Decision : 04-11-2019

Acts Referred:

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

Citation : (2019) 11 PAT CK 0062

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Rashid Rais, Jharkhandi Upadhyay, Rajesh Kumar Singh, Sanjay Kumar Jha

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the opposite parties.

2. The petitioner has moved the Court under Section 19 (4) of the Family Courts Act, 1984 against the order dated 23.09.2015 passed by the Principal Judge, Family Court, Madhubani in M.R. Case No. 184 of 2012 by which the application filed under Section 125 of the Code of Criminal Procedure, 1973 by the opposite parties has been allowed and the petitioner has been directed to pay Rs. 2,500/- per month maintenance to the opposite party no. 1, who is the wife, and Rs. 1,000/- to the opposite parties no. 2 to 4, who are his children, the total being Rs. 3,500/-.

3. Learned counsel for the petitioner submitted that it is the opposite party no. 1, who is not willing to live in the matrimonial home though is ever ready to keep her and the children with him. It was further submitted that the opposite party no. 1 wants the petitioner to leave his parents who are old. Learned counsel submitted that the petitioner is a worker in a tailoring shop. It was submitted that regarding income there is no evidence produced before the Court below. It

was submitted that there is no landed property in his name. Shifting track he submitted that the father of the opposite party no. 1 is creating obstacles.

4. Learned counsel for the opposite parties submitted that it is the petitioner who is to blame for the situation. It was submitted that the wife with three children cannot be expected to leave the matrimonial home for no bona fide reason, as all doors are shut for her, having liability of three children. It was further submitted that the ground taken that the petitioner is ready to keep the opposite parties and that the opposite party no. 1 wanted him to leave the parents is totally unfounded for the reason that such plea could have been taken by the wife during the early period of marriage, but having three children in the matrimonial home, suddenly such a situation cannot be accepted to be true when the wife is already down with so much of liability and totally dependent on the husband. Learned counsel submitted that the total amount of Rs. 3,500/- is most reasonable as even if the person earns daily wages and, that too, not for the whole month, still paying Rs. 3,500/- is very much possible and, thus, the petitioner has no genuine ground to assail the order. It was submitted that in fact the Court below was required to fix higher rate of monthly maintenance even by the standard of the petitioner earning only daily wages. It was further submitted that till date the petitioner has not paid a single rupee to the opposite parties leading to a situation where they are facing hardship as even their basic existence is under threat.

5. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.

6. The contentions of learned counsel for the petitioner do not stand the test of reason and probability. As has rightly been submitted by learned counsel for the opposite parties, no woman after giving birth to three children would take a stand and force the husband to leave the matrimonial home. Further, as has rightly been submitted by learned counsel for the opposite parties, even if it is accepted for the sake of argument that the petitioner may not earn any substantive amount, going by the accepted and reasonable criteria of what the petitioner would earn, even if he works as a daily wage, that too, not for the whole month, an amount of Rs. 3,500/- per month is definitely not only reasonable but in fact less than what the petitioner is capable and is required to pay the opposite parties.

7. On this issue, the Court called upon learned counsel for the petitioner to assist as to why the quantum be not enhanced.

8. Learned counsel for the petitioner submitted that he is a poor labourer and cannot afford the amount.

9. On this issue, the Court, having given its anxious thought, at the cost of repetition, would reiterate that even for a daily wage earner, who does not get employment for the whole month, Rs. 3,500/- is a most reasonable and in fact a

low amount.

10. Accordingly, the Court finds that the opposite parties are entitled to higher amount of monthly maintenance.

11. For reasons aforesaid, the application stands disposed off by modifying the impugned order to the extent that the petitioner shall pay monthly maintenance of Rs. 2,500/- to the opposite party no. 1, who is the wife, and Rs. 500/- each to the three minor children, the total being Rs. 4,000/- per month. The same shall be payable from November, 2019. Till October, 2019, the amount payable shall be at the rate of Rs. 3,500/-, in terms of the order impugned. The Court below is directed to ensure that the payment, along with arrears, is made to the opposite parties, for which all necessary steps available in law, shall be taken against the petitioner, if he does not pay the amount in terms of the order impugned as well as the present order.