

(2011) 12 PAT CK 0026
In the Patna High Court
Case No : CWJC No. 12722 of 2011

Shyam Prasad Bhattacharya

APPELLANT

Vs

Smt. Shushmita Bhattacharya Kumari Priya

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Hindu Marriage Act, 1955 — Section 24

Citation : (2012) 1 PLJR 349

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—I have heard the Learned Counsel, Mr. Atul Kumar Pandey on behalf of the petitioner and the Learned Counsel Mrs. Nivedita Nirwikar on behalf of the respondent. The husband has filed this application under Article 227 of the Constitution of India against that part of the order whereby the Principal Judge, Family Court, Patna directed the petitioner to pay Rs. 25,000/- each to his two daughters (total Rs. 50,000/-) who are living with the wife-respondent, in exercise of power u/s 24 of the Hindu Marriage Act.

2. The Learned Counsel for the petitioner submitted that the petitioner has retired from military service and has got no sufficient income and also that he is getting meager amount of pension. The Court has no jurisdiction to direct to pay maintenance to the daughters according to the Section 24 of the Hindu Marriage Act.

3. On the contrary, the Learned Counsel, Ms. Nivedita Nirwikar submitted that it is false to say that the petitioner has got no income. According to her, the petitioner has got bank balance more than 10,00,000/- and after retirement, he is doing private job and earning Rs. 30,000/- per month. If the daughters are not given the maintenance, i.e., their requirement in connection with their education one of whom is L.L.B. student and the other is engineering student, their life will

be ruined.

4. It appears that the present petitioner filed the divorce case. By the impugned order, the learned Court below granted only Rs. 3,000/- as maintenance to the wife and directed to pay Rs. 25,000/- + 25,000/- to both the daughters. So far the submission of the Learned Counsel that u/s 24 of the Hindu Marriage Act, the children cannot be granted maintenance is concerned, I do not agree with the Learned Counsel.

5. In 2005(4) P.L.J.R. 67 (Supreme Court), the Apex Court has granted maintenance to two children. It appears that in that case on the ground of low income, the maintenance granted to the two children was reduced by the High Court. The Apex Court enhanced the same. I, therefore, find no force in the submission of the Learned Counsel for the petitioner. Admittedly, both of them requires money for their education. The petitioner is not disputing this fact. His only contention is that he is dependent on pension only. Therefore, the petitioner is not disclosing his own monthly income. In such circumstances, the assertion of the respondent regarding petitioner's income cannot be disbelieved. From perusal of the impugned order, it appears that the learned Court below considered the submissions that has been made by the petitioner before this Court and then passed the impugned order. Therefore, in supervisory jurisdiction, this Court cannot interfere with the impugned order unless there is any jurisdictional error or that it has occasioned failure of justice. I, therefore, find no merit in this application and therefore, it is dismissed.