

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 178 of 2018

Arising Out of Maintenance Case No.- 54 Year-2014 Thana- District- Araria

Md. Musha, Son of Late Mazid, Resident of Village- Rampur, P.S.-
Farbishganj, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Bibi Maisrum, Wife of Md. Musha, Daughter of Md. Samsul.
3. Md. Shahnawaz, Son of Md. Musha, Opposite party no.3 is minor as such he is represented in this case through opposite party no. 2 who is their own mother Natural Guardian and next friends. At present OP No. 2 alongwith her minor Children are residing at Village- Dumaria, P.S.- Farbishganj, District- Araria.
4. The Superintendent of Police, Araria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Gopal Kumar Jha, Advocate
For the State	:	Mr. Md. Arif, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 26-09-2019

Heard learned counsel for the petitioner and learned
APP for the State.

2. Pursuant to order dated 03.09.2019, the opposite
party no. 2 along with opposite party no. 3 are present in Court
having been escorted by two lady constables deputed by the
Superintendent of Police, Araria for the purpose.

3. The Court has heard learned counsel at length and has
also interacted with the parties.



4. The petitioner has moved the Court under Section 19(4) of the Family Courts Act, 1984, against the order dated 01.11.2017 passed by the Principal Judge, Family Court, Araria in Maintenance Case No. 54 of 2014/Trial No. 62 of 2014, by which he has been directed to pay Rs. 4,000/- to the opposite party no. 2 i.e., the wife and Rs. 1,000/- i.e., opposite party no. 3, who is the son, the total amount being Rs. 5,000/-. However, Rs. 1,000/- per month to opposite party no. 3 has to be paid till the date he attains majority.

5. Learned counsel for the petitioner submitted that he is a poor labourer and is not in a position to pay the amount.

6. On the other hand, the opposite party no. 2, through learned APP has submitted that since the last two years, there have been arrears as the petitioner has only paid Rs. 12,000/- till date. It was further submitted that the petitioner does contract work of transporting goods and earns a handsome amount and the amount of Rs. 5,000/- fixed by the Court is not only reasonable but in fact requires to be enhanced.

7. Learned counsel for the petitioner submitted that he is ready to keep the opposite parties no. 2 and 3 with him. On this, the opposite party no. 2 had strong reservation saying that the petitioner has a wife from before and suppressing such fact, he



had married her and secondly that he has not provided with any support to her and, thus, in the house also, she would not only be under constant threat but her son would also not be safe.

8. Having regard to the aforesaid, in view of what has been submitted before the Court and taking into account the ground reality, inasmuch as, when a person earning daily wages can earn sufficiently so as to be able to make payment of Rs. 5,000/-, which is a very reasonable amount for maintenance of the wife and the son, who requires education as well as good nutrition at this young age, no infirmity can be found in the order impugned.

9. It is time that the petitioner started working, if he does work, to ensure that he earns sufficiently so as to maintain the opposite parties no. 2 and 3, who admittedly are his wife and son, once, knowing fully well he has married and also going in for a child, it is not at his discretion not to work so as to create a defense before the Court that he is unable to pay any maintenance. The petitioner appears to be in good health and capable of earning sufficient amount out of which Rs. 5,000/-, in the opinion of the Court, is easily payable.

10. For reasons aforesaid, the Court does not find any ground to interfere in the order impugned.



11. Accordingly, the application stands dismissed.

12. It shall be open to the opposite party no. 2 to move before the Court below for execution of the order for payment and ensuring that the petitioner pays to her the arrears as well as the current dues, as per the order impugned.

13. The lady constables, who were present in Court, shall escort the opposite parties no. 2 and 3 safely to their home from where they have been brought.

14. The opposite party no. 2 has been paid Rs. 1,000/- by the petitioner in terms of the order dated 03.09.2019, by way of expenses for appearing before the Court today.

15. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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