(2001) 1 ACR 252

Allahabad High Court

Case No: Criminal Revision No. 660 of 1998

Smt. Aisha		APPELLANT
	Vs	
Sri Mohd. Salim and Another		RESPONDENT

Date of Decision: April 3, 2000

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 125#Family Courts Act, 1984 â€" Section 19(4)

Citation: (2001) 1 ACR 252

Hon'ble Judges: B.K. Rathi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

B.K. Rathi, J.
This is a revision u/s 19(4) of the Family Courts Act against the order dated 10.2.1998 passed by Judge, Family Court,

Jhansi, rejecting the application of the applicant u/s 125, Cr.P.C. for maintenance against opposite party No. 1. The application has been rejected

mainly on the ground that the opposite party is ready to keep the applicant and there is no sufficient ground for the applicant to claim separate

residence and maintenance.

2. I have heard Sri M. Islam, learned Counsel for the applicant, Sri Ram Gupta, learned Counsel for the opposite party No. 1 and the learned

A.G.A. and perused the record.

3. The perusal of the judgment of the learned Judge shows that he has considered the evidence in very detail and passed a very detailed judgment.

However, he has only scrutinised the statements of the witnesses and the conduct of the applicant in which she refused to go with the opposite

party in the reconciliation proceedings. However, after considering the arguments, I am of the view that two important circumstances of the case

were totally ignored by the trial Judge.

4. The first circumstance is that a lady married a man because she wants to live with him and ordinarily lives with her husband. If she refuses to live

and give some explanation, the husband should give cogent explanation as to why she does not want to live with him. It appears that there is no

cogent reason given by the opposite party. In any case whether the reason given by the opposite party is cogent or not for refusing the applicant to

life with him has not been considered by the trial court.

5. The next important circumstance is that the applicant gave birth to a child on 9.10.1994. It is alleged in paragraph No. 27 of the written

statement that on 7.11.1994, the applicant in the night went away from house of the opposite party leaving the child and taking all the ornaments

and clothes. At that time the child was hardly of one month. The question is that ""could a lady leave her baby of one month without any reason.

The obvious reply is that no lady can leave her child of one month without compelling circumstances or in utter frustration. The trial Judge has not

considered the circumstances in which the applicant left the house of her husband leaving her baby of about one month.

6. The trial Judge has not therefore, appreciated the circumstances properly. The judgment of the trial court is fit to be set aside. The revision is

accordingly allowed and the impugned order of the trial court is set aside and the matter is sent back to the trial court for re-decision of the matter

in the light of the observations made above after providing fresh opportunity to the parties to produce evidence. The matter is very old and

therefore, it shall be disposed of expeditiously and the parties are directed to appear before the trial court on 23.4.2000.