

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL REVISION No.1133 of 2018**

Arising Out of PS. Case No.- Year-0 Thana- District- Araria

1. Sarita Jha W/o Praveen Jha, Resident of Village-Dholbajja, P.S-Forbesganj, Dist.-Araria
2. Arpit Jha Minor Son of Praveen Jha represented through their mother Sarita Jha Resident of Village-Dholbajja, P.S-Forbesganj, Dist.-Araria
3. Ajeet Jha Minor Son of Praveen Jha, represented through their mother Sarita Jha, All residents of Vill.- Dholbajja, P.S.- Forbesganj, District- Araria.

... .. Petitioners

Versus

Praveen Jha S/o Rajendra Jha, R/o Vill.- Dholbajja, P.S.- Forbesganj, District-Araria.

... .. Respondent

Appearance :

For the Petitioners : Mr.Sanjay Kumar Sharma, Advocate
For the O.P. : Mr.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

6 02-09-2022 Heard learned counsel for the petitioners. No one appears on behalf of the sole opposite party.

Learned counsel for the petitioners submits that while refusing to direct payment of maintenance to the applicant-wife the learned Principal Judge, Family Court, Araria could not appreciate that the petitioner has filed a complaint case against her husband alleging demand of dowry and harassment to her. It is submitted that in her deposition also the petitioner has stated in paragraph '11' that she has been assaulted and tortured by her husband who has deprived of her *stridhan* and ousted her from matrimonial house.



This Court has perused the impugned judgment and the deposition of the witnesses which are available on the record. The applicant-wife has deposed that there was a demand of motorcycle from her husband which her father was unable to fulfill. She had been neglected and had been thrown out from the matrimonial house with her two minor children. She has filed a complaint case bearing No. 1111C/2016. In her application also she has stated these facts. Her father who deposed as applicant's witness no. 3 supported the case of the applicant. He also alleged about the demand of dowry and that his son-in-law had ousted his wife and minor children because of non-fulfillment of the demand of dowry.

The learned Principal Judge, Family Court, Araria has in a completely vague manner recorded that in his deposition the uncle of the husband (O.P. P.W.1) has stated in his cross-examination that the applicant-wife does not desire to go to her Sasural. To this Court, it appears that the learned Principal Judge has proceeded to take a view on this issue solely on the basis of the deposition of the opposite party witness ignoring the case of the applicant-wife.

The learned court below could not appreciate that a proceeding under Section 125 Cr.P.C. is a summary proceeding



and at this stage, the court is not required to conduct long drawn trial.

This Court is, thus, of the considered opinion that the finding recorded by the learned court below that the applicant-wife has refused to live with her husband even as her husband undertakes before the court for keeping her and her children with full dignity and honour cannot sustain because the learned court itself takes note of the stand of the applicant-wife that she had lost her trust upon her husband. In a case of this nature where there are allegations of demand of dowry and commission of overt act causing assault upon the wife, if the wife has lost trust upon her husband, without going into a much detail discussion on this issue, the learned Family Court was required to take a view but that has not been done.

To this Court, it appears that the applicant-wife cannot be deprived of maintenance in the case of this nature.

This Court, therefore, sets-aside the impugned judgment in so far as it relates to the case of the applicant-wife. The dismissal of the petition in respect of applicant-wife is hereby set-aside.

The learned Principal Judge, Family Court, Araria shall proceed to consider the income of the parties keeping in



view the judgment of the Hon'ble Supreme Court in the case of **Rajnesh v. Neha & Ors.** reported in **(2021) 2 SCC 324** and shall pass an appropriate order in accordance with law within a period of three months from the date of communication of this order.

In the meantime, if the petitioner is not paying the monthly maintenance allowance to his two children in terms of the judgment of the learned Principal Judge, Family Court, Araria, he shall pay the same with all arrears and a cost of Rs. 25,000/- within a period of two months from today, failing which the same will be realized by following the established procedure of law by the learned court below as expeditiously as possible.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

