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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.418 OF 2003

Shaikh Akhila Rashid,
Age: 40 years, Occ: Household,
R/o. 22 Almas Park, Bhingar,
A/p. Dist. Ahmednagar. ..APPLICANT

VERSUS

Shaikh Rashid Umrao,
Age: 46 years, Occ: Service,
R/o. Behind Delhinaka,
A/P. Sangamner, Dist.Ahmednagar. ..RESPONDENT

Mr Gulam Mustafa, Advocate h/f Mr Zia-ul-Mustafa,
Advocate for applicant;
Mr S.K. Shinde, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 26th SEPTEMBER, 2016

ORAL JUDGMENT :

Heard learned respective Counsel.

2. Learned Judicial Magistrate, First Class,
(Court No.4) Ahmednagar, in the back ground of
marriage of the parties to the proceedings on 26th
September, 1999 and in view of the application

(2)

under Section 125 of the Code of Criminal Procedure, awarded maintenance of Rs.500/- per month from the date of application i.e. 23rd January, 2001, which was upset in Criminal Revision No. 52 of 2002 by learned 2nd Additional Sessions Judge, Ahmednagar. Learned Sessions Judge, Ahmednagar, while upsetting the findings, has appreciated the evidence of present applicant and observed that present applicant in her cross examination has admitted that she insisted the opponent to come and stay at Ahmednagar, for which she has filed application for maintenance.

3. With the assistance of respective learned Counsel, I have read the evidence, particularly cross examination of the complainant from the original record and proceedings which is at Exhibit-12. In her cross examination, particularly in paragraph-3 from the end, she has categorically stated that she has made up her mind that she will not stay with the children of non applicant. *Prima facie* observations made by learned Sessions

(3)

Judge are based on misreading of evidence of the complainant.

4. There is one aspect of the matter which needs to be considered is, the evidence as is recorded by the Court below is some what illegible, which perhaps prompted learned Sessions Court to form such an opinion.

5. As it is noticed that the evidence of present applicant was misread by Sessions Court, it will be appropriate, in my opinion, to allow the criminal revision application. The order dated 5th November, 2003 passed by 2nd Additional Sessions Judge, Ahmednagar in Criminal Revision No. 52 of 2002 is hereby quashed and set aside. The matter stood restored to the file of learned 2nd Additional Sessions Judge, Ahmednagar. The parties hereto agree that they shall appear before the learned 2nd Additional Sessions Judge, Ahmednagar on 14th October, 2016. Learned 2nd Additional Sessions Judge, Ahmednagar, in view of pendency of

(4)

the present proceedings for quite long time i.e. more than ten years, it will be appropriate to learned Sessions Judge to decide the revision within a period of six weeks thereafter. Record and Proceedings be sent back forthwith to the concerned Court.

6. The applicant herein shall submit the typed copies of the deposition of the applicant as was recorded by learned trial Court.

7. With the above observations, criminal Revision Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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