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

CRIMINAL WRIT PETITION NO.304 OF 2016

Sunil s/o Balaji Sadawartee,
Aged about 46 yrs., Occ. Service,
R/o Peth Mangalwari, Umrer,
Tah. Umrer, Dist. Nagpur

..PETITIONER

VERSUS

1. Shri Dnyaneshwar Upasrao Hatwar,
Aged about 45 yrs. Occ. Private,
2. Sau. Sheela w/o Dnyaneshwar Hatwar,
Aged about 40 yrs., Occ. Housewife,

Both R/o Ward No.23,
Chinchghare Lay-out, Umrer,
Tah. Umrer, Dist. Nagpur

..RESPONDENTS

Mr A.M. Gedam, Advocate for petitioner;
Mr Mir Nagman, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 15th March, 2017

ORAL ORDER

By the present petition, the petitioner challenges the order dated 4th October, 2014, passed by Judicial Magistrate First Class, Umrer, thereby rejecting applications Exh.38 and 44, in Regular Criminal Case No.101 of 2010.

2. So far as application Exh.38 for re-calling of P.W. Nos.4, 10, 12 and 13 for re-examination is concerned, in my opinion, the learned Magistrate has rightly rejected the same, as the contention of the respondents is accepted that the said witnesses were summoned only for the purpose of

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filling in the lacunae.

3. So far as application Exh.44 is concerned, in my opinion, the same should have been allowed, which is for the purpose of re-calling P.W.5 for his re-examination, particularly in the backdrop of the document viz. the written statement which is sought to be proved in the present proceedings which was filed in Regular Civil Suit No.33 of 2012.

4. In view thereof, in my opinion, the present petition needs to be allowed only to the extent of application Exh.44. Thus, the following order :-

The order dated 4th October, 2014, passed by Judicial Magistrate First Class, Umrer, rejecting application Exh. 44, in Regular Criminal Case No.101 of 2010, is hereby quashed and set aside.

Application Exh.44 stands allowed.

The order dated 4th October, 2014, passed by Judicial Magistrate First Class, Umrer, rejecting application Exh.38 stands confirmed.

Criminal Writ Petition stands disposed of accordingly.

(N.W. SAMBRE, J.)

amj