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

CRIMINAL REVISION APPLICATION NO.265 OF 2023

- 1) Shaheen Parveen Mohammad Shakeel,
Aged about – 30 years,
Occupation : Household,
- 2) Mohammad Hussain Mohd Shakeel,
Aged about – 12 years,
- 3) Mohammad Danish Mohammad Shakeel,
Aged about – 10 years,
- 4) Mohammad Abujaan Mohd Shakeel,
Aged about – 06 years,

Applicant No. 2 to 4 appearing through
Applicant No.1.

All Resident of Tanga Chowk, Juni
Vasti, Murtizapur, District Akola.

..... APPLICANTS

// VERSUS //

1. Abdul Rehman Sheikh Karim,
Aged about – 83 years, Occupation-Nil,
2. Sheikh Jameel Abdul Rehman,
Aged about 48 years,
Occupation : Labourer,
3. Mohammad Akeel Abdul Rehman,
Aged about – 41 years,
Occupation : Labourer,
4. Mohammad Zakeer Abdul Rehman,
Aged about – 40 years,
Occupation : Labourer,
5. Abdul Rajik Abdul Rehman,
Aged about – 38 years,
Occupation : Labourer,
6. Mohammad Sadik Abdul Rehman
Aged about – 36 years,
Occupation : Labourer,

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7. Saleha Mohammad Akeel,
Aged about – 35 years,
Occupation : Household.

All Resident of Kommapura,
Tehsil - Anjangaon Surji,
District Amravati.

8. Mohammad Shakeel Abdul Rehmanm
Aged about – 48 years,
Occupation : Labourer,
R/o.Kommapura, Tehsil- Anjangaon Surji,
District – Amravati,

9. State of Maharashtra
Through Police Station Murtizapur,
District Akola.

.... NON-APPLICANTS

Ms. S. H. Bhatia, appointed Counsel for the applicants.
Mr. Asifuddin S. Siddiqui, Counsel for non-applicant Nos.2
to 8.
Ms. Swati Kolhe, APP for the non-applicant No.9 /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13.02.2025

ORAL JUDGMENT :

1. **Admit.**
2. Heard finally with the consent of learned Counsel appearing for the parties.
3. By this revision application, the applicant No.1, who is the original applicant – wife of Mohammad Shakeel challenges the order dated 05.06.2023 passed by the learned Additional Sessions Judge, Akola in Criminal Appeal No.1/2023, remanding the matter back to the learned Judicial Magistrate First Class for further

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considerations and directing the appellants therein to deposit the amount of Rs.1,000/- towards the expenses of the litigation.

4. The brief facts which are necessary for the disposal of the revision which are as under:

The applicant No.1 and original non-applicant No.1 are husband and wife and other non-applicants are family members. The marriage between them was solemnized on 04.06.2008, thereafter, there was some discord between them, as it is alleged that the original non-applicant No.1 has ill-treated the present applicant No.1 for the demand of money and treated with cruelty, physically as well as mentally. The applicant No.1 has lodged the report at Anjangaon Surji and Murtizapur against the original non-applicant No.1 and his relatives. On the basis of the same, the crime was registered against them. As the original non-applicant No.1 has not provided any maintenance or not made any provision for maintenance for the applicant No.1 and her children. She preferred an application for grant of maintenance and other protections. The applicants claimed the maintenance @ Rs.30,000/- and Rs.7,00,000/- as a compensation.

5. The said application is strongly opposed by the husband and his relatives. After considering the entire evidence on record, the learned Magistrate allowed the application and granted

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maintenance @ Rs.10,500/- towards the maintenance as well as rent towards the house.

6. Being aggrieved and dissatisfied with the same, the original non-applicant Nos.2 to 8 preferred the Criminal Appeal on the ground that no sufficient opportunity was granted to them to adduce the evidence and behind their back, the order was passed and claimed the remand of the matter. The Additional Sessions Judge, Akola, considered the said contention, and after hearing both sides, allowed the appeal partly and remanded back the matter to the Judicial Magistrate First Class, Murtizapur for reconsideration, after giving an opportunity to the appellants therein. It is further directed by the Additional Sessions Judge that the appellants shall pay Rs.1,000/- towards the expenses to the respondent Nos.1 to 4 in appeal. The order passed in Criminal Application No.103/2017 by the Judicial Magistrate First Class, Court No.1, Murtizapur against the original non-applicant Nos.2 to 8 is quashed and set aside and the matter is remanded back to the learned Judicial Magistrate First Class, Court No1, Murtizapur. It was further directed that the original non-applicant Nos.2 to 8 are permitted to cross-examine the applicant therein and also permitted to adduce the evidence.

7. Being aggrieved and dissatisfied with the said Judgment and order, the present revision application is preferred by the original applicant No.1 on the ground that the learned Additional

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Sessions Judge has not considered that the applicant No.1 has no sufficient means for her maintenance. After due notice, the original non-applicants failed to appear and therefore, the learned Judicial Magistrate First Class proceeded to dispose of the matter. It is further submitted that as the original non-applicant Nos.2 to 8 were not diligent, and therefore, the *ex parte* order was passed against them, therefore, there was no ground for the learned Additional Sessions Judge to consider the ground to remand the matter. Moreover, the original non-applicant No.1 has not paid any amount towards the maintenance, which is granted by the learned Judicial Magistrate First Class. The original non-applicant No.1 husband has not challenged the said order, therefore, the said order is still maintained against the husband and it is not set aside against the husband. The total arrears of the maintenance are Rs.12,12,000/- and he has paid only Rs.1,05,000/- towards the said maintenance. Considering the conduct of the original non-applicant No.1 – husband, the order passed by the Additional Sessions Judge remanding back the matter is erroneous, illegal and liable to be set aside.

8. Heard learned Counsel for the applicants as well as for the non-applicant Nos.2 to 8. Perused the impugned Judgment i.e. Judgment of the learned Judicial Magistrate First Class as well as the learned Additional Sessions Judge, Akola. On perusal of both

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Judgments, it reveals that admittedly the notice was served upon all the original non-applicants, but as they remained absent and therefore, the *ex parte* order was passed. The Additional Sessions Judge has considered that in the interest of natural justice, the opportunity is to be granted to the original non-applicant Nos.2 to 8 to contest the application, and therefore, the said appeal was allowed to the extent that the matter be remanded back to the trial Court and an opportunity be granted to the original non-applicant Nos.2 to 8 to cross-examine the witnesses and contest the application. Thus, as far as the order regarding remanding of the matter by giving an opportunity to the original non-applicant Nos.2 to 8 is concerned, which is legal and proper, and in the interest of justice. As far as the contention of the learned Counsel for the applicants that original non-applicant No.1, who has not challenged the said order against whom the order passed by the learned Magistrate is still in existence, has not deposited any amount towards the maintenance, it requires to be considered. Admittedly, the original non-applicant No.1 has only deposited Rs.1,05,000/- against the arrears of Rs.12,12,000/- therefore, the original non-applicant No.1 – husband has to deposit 50% of the arrears of the amount within six weeks.

9. In view of the above observations, the order passed by the learned Additional Sessions Judge as far as remanding the

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matter back to the trial Court is concerned, requires to be maintained. At the same time, direction is required to be given to the original non-applicant No.1 to deposit 50% of the total arrears of the amount within six weeks. In view of that, I proceed to pass following order:

ORDER

- (i) Criminal Revision Application is partly allowed.
- (ii) The order passed by the learned Additional Sessions Judge, Akola, remanding the matter to the trial Court is hereby maintained.
- (iii) The original non-applicant No.1 – husband shall pay the 50% arrears against the total arrears of the maintenance amount within six weeks.
- (iv) The parties to appear before the learned Judicial Magistrate First Class, Court No.1, Murtizapur on **10.03.2025.**

10. The revision application is disposed of.

11. The fees of the appointed Counsel be quantified as per rules.

(URMIL A JOSHI-PHALKE, J.)

Sarkate.