

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL REVISION APPLICATION (FOR MAINTENANCE) NO. 451 of  
2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE A.G.URAIZEE**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?  |  |
| 2 | To be referred to the Reporter or not ?   |  |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?   |  |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? |  |

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YAKUB MUSA DEDKI....Applicant(s)

Versus

STATE OF GUJARAT &amp; 1....Respondent(s)

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**Appearance:**

MR MA KHARADI, ADVOCATE for the Applicant.

HCLS COMMITTEE, ADVOCATE for the Respondent(s) No. 2

MR KAIVAN K PATEL, ADVOCATE for the Respondent(s) No. 2

Ms. Monali Bhatt, Additional PUBLIC PROSECUTOR for Respondent No. 1.

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**CORAM: HONOURABLE MR.JUSTICE A.G.URAIZEE****Date : 30/11/2015****ORAL JUDGMENT**

Rule. Learned Additional Public Prosecutor Ms.

Monali Bhatt waives service of Rule on behalf of respondent no.1 State. Learned advocate Mr.Kaivn K.Patel waives service of Rule on behalf of respondent no.2.

2. By consent of the learned advocate for the parties, the matter is taken up for final disposal as the issue involved in the Revision Application is in very narrow compass.

3. By way of this Revision Application, the applicant has challenged the judgment dated 3.1.2015 passed by the learned Principal Judge, Family Court, Godhara in Criminal Miscellaneous Application No. 386 of 2014 , whereby the applicant is directed to pay Rs. 10,000/- per month to the respondent no.2 as maintenance.

4. The learned advocate for the applicant has mainly contended that there was no proper service of the summons of the Maintenance Application and, therefore, the learned trial Judge has proceeded to decide Maintenance Application ex parte. It is his further contention that because of non-service of the process of the application, the applicant could not produce material evidence before the trial Court and therefore, he has urged that the matter may be remanded to the trial court for a fresh consideration in accordance with law. He has stated at the bar that the applicant shall continue to pay Rs. 10,000/- to the respondent no.2 till the matter is decided by the trial court on remand.

5. The learned advocate Mr. Patel for respondent no.2 has no objection if the matter is remanded to the trial court for fresh consideration with a direction to the applicant to pay Rs. 10-,000/- per month till the matter is decided by the trial

court upon remand. It is his further contention that the trial court may be directed to decide the matter afresh within time frame that may be fixed by this Court.

6. Considering the consensus arrived at between the learned advocate for the contesting parties, this Court is of the opinion that ends of justice would be served if the matter is remanded to the trial court for fresh consideration after affording an opportunity of leading evidence to both the parties with a condition that the applicant shall continue to pay Rs. 10,000/- per month as maintenance to the respondent no.2 in terms of the impugned judgment of the trial court till fresh decision is taken by the trial court upon remand. The trial court is directed to decide the application afresh after giving an opportunity of hearing to the contesting parties preferably on or before 31.3.2016. In the meantime, till the matter is decided afresh by the trial court, the applicant shall continue to pay monthly maintenance of Rs. 10,000/- to the respondent no.2.

7. In view of the reasons recorded, the Revision Application is allowed. The impugned judgment dated 3.1.2015 passed by the Principal Judge, Family Court, Godhara in 3.1.2015 passed by the learned Principal Judge, Family Court, Godhara in Criminal Miscellaneous Application No. 386 of 2014 is hereby quashed and set aside and the matter is referred to the Court below for fresh consideration after affording opportunity of hearing and adducing evidence to the contesting parties in accordance with law.

8. The applicant shall continue to pay Rs. 10,000/- per month as maintenance to the respondent no.2 in terms of

the impugned judgment of the trial court till fresh decision is taken by the trial court. The applicant has deposited a sum of Rs. 1,30,000/- in the trial court, which amount shall be paid to the respondent no.2 upon proper verification. The Court below is directed to finally decide the matter latest by 31.3.2016. It is needless to say that this Court has not expressed any opinion on the merits of the case and it is expected that the trial court shall decide the matter afresh strictly on merits in accordance with law without being influenced by this order of the impugned order. Rule made absolute to the aforesaid extent.

**(A.G.URAIZEE,J)**

VC DARJI