

**(2024) 10 BOM CK 0013****Bombay High Court (Aurangabad Bench)****Case No:** Criminal Revision Application No. 417 Of 2005

Indubai w/o. Narayan Junghare

APPELLANT

Vs

Narayan s/o. Ramdas Junghare

RESPONDENT

**Date of Decision:** Oct. 17, 2024**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 97, 401
- Indian Penal Code, 1860 - Section 498A

**Hon'ble Judges:** S.G. Mehare, J**Bench:** Single Bench**Advocate:** P. D. Sangvikar, Usha N. Jadhav**Final Decision:** Dismissed**Judgement**

S.G. Mehare, J

1. Heard the learned counsel for the applicant and the learned counsel for the respondents/accused.
2. The applicant/wife had initiated the trial against the respondents/accused, for the offence punishable under Section 498A of the Indian Penal Code.
3. On scrutinizing the evidence, the learned Judicial Magistrate First Class, Hingoli, held respondents No.1 to 3/accused guilty and convicted them, by judgment and order in R.C.C.No.202 of 2000, dated 12.03.2003. However, in appeal, the learned Additional Sessions Judge, Hingoli, considered the facts and on appreciation of evidence held that the allegations of the particular day of the incident are imaginary and there was no substance in the allegations. Hence, he acquitted the accused by its judgment and order in Criminal Appeal No.2 of 2003, dated 29.09.2005.

4. The learned counsel for the applicant submits that the learned Additional Sessions Judge did not consider the fact that it was a mistake in writing the date. It was brought to its notice, but it was not considered. Only on technical ground, the respondents/accused have been acquitted.

5. The learned counsel for the respondents has vehemently argued that there are no errors of law on the face of record. The evidence produced before the Court was correctly appreciated. Therefore, revisional Court could not re-appreciate the evidence under Section 401 of the Code of Criminal Procedure ("Cr.P.C.").

6. Referring to the findings of the learned Additional Sessions Judge, she would argue that the allegations levelled against the respondents have been falsified from her own documents. The said documents supported the defence that at the relevant time, she was not residing with the accused. Therefore, concocted evidence was created and false report was filed. The applicant has no good case. Hence, revision application may be dismissed.

7. Perused the impugned judgment and order.

8. The learned Additional Sessions Judge has discussed the facts and arrived at the correct conclusion that from the material placed before it, the prosecution case has been destroyed. He has also considered the application filed before the Sub Divisional Officer, Washim, for the custody of child, under Section 97 of the Cr.P.C. and correctly appreciated the evidence. On appreciation of evidence, the learned Additional Sessions Judge has correctly come to the conclusion that, the learned Judicial Magistrate has incorrectly relied upon the evidence of the incident, dated 09.05.2000, which was subsequently washed out.

9. Bearing in mind the powers of the High Court under Section 401 of the Cr.P.C. and after having gone through the reasons recorded by the learned Additional Sessions Judge, the Court is of the view that there are no grounds to interfere with the impugned judgment and order.

10. In the result, the application stands dismissed. Rule stands discharged.