

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

Criminal Revision Application No. 215 of 2004

District : Ahmednagar

Rajendra s/o. Suresh Sugandhi,
Age : 41 years,
Occupation : Business,
R/o. Zarekar Lane, Nalegaon, .. Applicant
Taluka & District Ahmednagar. (Original accused)

versus

01. The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai.

02. Sangita w/o. Rajendra Sugandhi,
Age : 30 years, .. Non-applicants
Occupation : Household, (No.2 - Original
R/o. Abhona, Taluka Kalvan, complainant)
District Nasik.

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Mr. P.P. Mandlik, Advocate, for the applicant.

*Mr. K.S. Hoke Patil, Addl. Public Prosecutor, for
non-applicant no.01.*

*Respondent no.02 not necessary party
(As per order dated 10.06.2004)*

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CORAM : Z.A. HAQ, J.

DATE : 14TH DECEMBER 2016

ORAL JUDGMENT :

Heard Mr. P.P. Mandlik, learned Advocate for the applicant, and Mr. K.S. Hoke Patil, learned Addl. Public Prosecutor for the non-applicant no.01 - State of Maharashtra.

The orders passed by this Court on 24th June, 2005 and 15th September, 2006 show that the non-applicant no.02 is aware about the pendency of this Revision Application. None appears for the non-applicant no.02.

02. The applicant, his father, mother, brother and sister were prosecuted for offence punishable under Section 498A read with Section 34 of the Indian Penal Code. The learned Magistrate acquitted the father, brother and sister of the applicant and convicted the applicant and his mother for offence punishable under Section 498A read with Section 34 of the Indian Penal Code.

The judgment passed by the learned Magistrate was challenged by the applicant and his mother before Sessions Court in appeal which is partly allowed. The mother of the applicant is acquitted, however, conviction of the applicant is maintained.

The applicant being aggrieved by the judgment passed by the Sessions Court maintaining his

conviction has filed this Revision Application.

03. The learned Advocate for the applicant has referred to the evidence and has submitted that the prosecution has failed to establish the guilt of the applicant.

After examining the record and going through the impugned judgment, I find that the conviction of the applicant is substantially based on the alleged letter (Exhibit No.47) which is of 1995. In paragraph No.16 of the impugned judgment, the learned Sessions Judge has recorded that there is no date on the letter (*inland letter*), however, postal stamp of Abhona shows the date as 09.09.1995. The complaint is filed on 30th of January, 1998. There is no explanation for this inordinate delay in lodging the complaint. Apart from this, the subsequent events which are brought on record by the affidavit sworn by the applicant on 12th December, 2016 are relevant. It is stated by the applicant that a compromise deed was executed between the parties on 03rd December 2004 and as per the terms of compromise, the applicant and the non-applicant no.02 agreed to cohabit and the non-applicant no.02 had agreed to withdraw the pending cases. There is a reference about this compromise in the order passed by this Court on 24th June, 2005. There is reference of some documents and letter dated 14th August, 2006 sent by

the non-applicant no.02 which is placed on record, in the order passed by this Court on 15th September, 2006. This Court recorded in the above orders that the compromise deed and other documents will be considered at the time of final hearing.

In the affidavit filed by the applicant, it is stated that after the compromise deed was executed, the applicant and the non-applicant no.02 cohabited for about 03 - 04 years and the non-applicant no.02 gave birth to a son on 09th of August 2005. It is stated that again the non-applicant no.02 started residing separately.

I see no reason to discard the affidavit filed by the applicant. The non-applicant no.02 has chosen not to contest this application.

04. As I find that there was inordinate delay on the part of the non-applicant no.02 in lodging the complaint, and considering the subsequent events, in my view, the impugned judgment maintaining the conviction of the applicant for offence punishable under Section 498A read with Section 34 of the Indian Penal Code is required to be set aside.

05. Hence, the following order :-

(a) The judgment passed by the Sessions Judge in

Criminal Appeal No. 63/2003 on 20th May, 2004, to the extent of the present applicant, is set aside.

(b) The applicant is acquitted of the offence punishable under Section 498A read with Section 34 of the Indian Penal Code.

(c) The amount of fine deposited by the applicant be returned to the applicant. Bail bonds furnished by the applicant stand cancelled.

(d) The Revision Application is disposed in the above terms.

(Z.A. HAQ)
JUDGE

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