

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

954 CRIMINAL WRIT PETITION NO.1349 OF 2021

SACHIN TUKARAM TORGIKAR

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA

..RESPONDENT

...
Advocate for Petitioner : Mr. Reddy Ajinkya
APP for Respondent-State: Mrs. G. L. Deshpande
...

**CORAM : N.R. BORKAR, J.
DATE : 16.12.2021**

PER COURT :-

This petition takes an exception to the order dated 11.10.2021 passed by the learned Magistrate Pathari in R.C.C. NO. 80 of 2014 below Exh. 82.

2. The petitioner who is facing trial for the offences punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code, had filed an application seeking recall of the prosecution witnesses namely Santosh Shivraj Hanmante and Amol Shivraj Hanmante. According to the petitioner, the said witness had given certain admission in their evidence

recorded in Session Case No. 65 of 2018 and Hindu Marriage Petition No. 93 of 2013.

3. It is stated that said admissions are necessary to be brought on record of the present case for just decision of the case. The trial Court rejected the application at Exh.82 by the order impugned.

4. I have heard the learned counsel for the petitioner and the learned A.P.P for the respondent State.

5. The trial Court while rejecting the application has observed that the petitioner can file the copy of evidence of witnesses Santosh Hanmante and Amol Hanmante recorded in Sessions Case No. 25 of 2018 and Hindu Marriage Petition No. 93 of 2013. The trial Court has however lost sight of the fact that mere filing of depositions would be of no consequence, unless the contingencies provided under Section 33 of the Evidence Act are met and the said contingencies are absent in the present case. The trial Court therefore, ought to have allowed the application.

6. In view of the above the order impugned is set-aside. The learned trial Court shall recall the witnesses mentioned in the application at Exh. 82.

7. Petition is disposed of.

(N. R. BORKAR)
JUDGE

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