

13.07.2021
AJ, Ct.34
Sl No. 21.

C.R.R. 393 of 2013
(Via Video Conference)

Re: An application under Sections 397/401 read with
Section 482 of the Code of Criminal Procedure, 1973.

And

In Re : **Kana Bose.** petitioner.

The present revisional application has been preferred against the judgment dated 27th November, 2012 passed in Misc. Case No. 179/2011 by the learned Additional Chief Judicial Magistrate, Uluberia, Howrah wherein the learned Magistrate was pleased to dismiss the application under Section 125 of the Code of Criminal Procedure.

I have perused the judgment so delivered by the learned Court below and I find that the evidence of the present petitioner who was examined as P.W.1 included amongst others, the factum of physical torture being inflicted upon her and being driven out from the matrimonial home.

On this background, the learned Magistrate should have appreciated that when a wife is physically tortured at her matrimonial home whether she would be able to stay and continue at the matrimonial home. The learned Magistrate having ignored the same arrived at the conclusion that the petitioner/wife on her own was not willing to go back to her matrimonial home. I am of the view that such finding of the learned Additional Chief Judicial Magistrate is erroneous and liable to be set aside.

Accordingly, the judgement and order dated 27th November, 2012 passed by the learned Additional Chief Judicial Magistrate, Uluberia is hereby set aside.

Accordingly, C.R.R. 393 of 2013 is allowed.

All pending applications, if any, are disposed of.

Interim order, if any, is hereby vacated.

The learned Magistrate is directed to immediately issue notices upon the parties and assign reasons for arriving at a fresh finding.

Needless to say that after issuance of notice a fresh judgment should be delivered within a period of three months from the date of communication of this order.

The Department is directed to communicate this order to the learned Additional Chief Judicial Magistrate, Uluberia, Howrah within seven days from date.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)