

D/L.35
July 14,
2021

C.R.R. No.867 of 2012

Bpg.

In Re : An application under Section 482 of the Code of Criminal Procedure, 1973;

In the matter of : Mehera Bibi. ...petitioner.

The present revisional application has been preferred by the wife against the judgment and order dated 24.12.2010 passed by the learned ACJM, Diamond Harbour in connection with M-280 of 2009 (TR 41 of 2010).

The grounds which have been assigned by the learned Magistrate include amongst others that the wife returned back to her father's house without any justified reason and in order to squeeze money from her husband, she has filed the application. The order of the learned Magistrate reflects that the marriage was admitted, there was tortured inflicted upon the wife and the husband has remarried. The reason for disbelieving torture being inflicted upon her was that no document has been shown for any assault being inflicted upon her by her husband.

The reasons so assigned by the learned Magistrate are not in consonance with appreciation of evidence under Section 125 of the Code of Criminal Procedure. It is surprising that the learned Magistrate ignored the Explanation provided under sub-Section 3 of Section 125 of the Code of Criminal Procedure and did not consider the grounds so assigned for refusing to go back to her matrimonial home as the husband has subsequently married again. The order passed by the learned Magistrate is against the provisions of law

and, as such, interference is called for.

Accordingly, the judgment and order dated 24.12.2010 passed by the learned ACJM, Diamond Harbour is set aside.

Thus, CRR 867 of 2012 is allowed.

Pending applications, if any, are hereby disposed of.

Learned Magistrate is directed to issue notice forthwith upon the parties and decide afresh after appreciating the evidence, keeping in background the very object and purpose for which Section 125 of the Code of Criminal Procedure was incorporated by the legislature.

The Department is directed to immediately inform the learned ACJM, Diamond Harbour positively within a period of seven days from date.

Learned ACJM, Diamond Harbour is directed to take steps and arrive at fresh findings within a period of ninety days from the date of communication of this order.

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

(Tirthankar Ghosh, J.)