

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 3496 of 2022

**Astha Kanodia
Vs.
State of West Bengal and Anr.**

Mr. Subhrojyoti Bhowmick
...for the petitioner

Item No.213

Heard & Judgment on: 15.09.2022

Bibek Chaudhuri, J.

The petitioner is a destitute wife of the private opposite party. For her maintenance she filed two proceedings – one under Section 125 of the Code of Criminal Procedure and another under Section 12 read with other cognate provisions of the Protection of Women from Domestic Violence Act alleging, inter alia, that the Bench clerk

attached to the 1st Court of the learned Judicial Magistrate at Sealdah in collusion with the private opposite party or his learned advocate had been fixing the dates in the said proceedings after a long gap and thereby the petitioner is not getting even any interim relief in the said proceedings for the last three years.

By an order dated 25th August, 2022 the learned Judicial Magistrate, 1st Court at Sealdah released the case No.M/23 of 2021 from his file after receiving such allegation against the Bench clerk of the said Court and sent a letter to the Additional Chief Judicial Magistrate, Sealdah requesting him to transfer the record of M/23 of 2021 from his Court to any other Court having jurisdiction.

The learned Additional Chief Judicial Magistrate, Sealdah did not take any action over such letter on the ground that only the Chief Judicial Magistrate at Alipore has the power under Section 410 of the Code of Criminal Procedure to transfer a case pending in the file of a Judicial Magistrate to another Court.

The petitioner has approached this Court assailing the order dated 25th August, 2022 passed by the learned Judicial Magistrate, 1st Court at Sealdah.

On perusal of the order it is ascertained that the learned Judicial Magistrate, 1st Court at Sealdah was of the opinion that for ends of justice it would not be proper to take up her M/23 of 2021 filed by the

petitioner as the petitioner has made a specific allegation against the Bench clerk attached to the said Court.

On perusal of the order dated 25th August, 2022 I do not find any apparent error in the said order. The learned Judicial Magistrate, 1st Court at Sealdah recused himself from entertaining the aforesaid case because if any other order was passed against the petitioner it would have been a telling effect in the mind of the petitioner that she has been prejudiced.

Therefore, I do not find any merit in the instant revision and the same is liable to be dismissed.

Proper course of action in the instant matter is by filing an application under Section 410 of the Code of Criminal Procedure by the petitioner before the learned Chief Judicial Magistrate at Alipore praying for transfer of the said case.

In order to enable the petitioner to take such step as proposed hereinabove the petitioner is permitted to withdraw the certified copy of the impugned order replacing the same with a photostat copy of the order.

If any such application is filed by the petitioner before the learned Chief Judicial Magistrate at Alipore, the learned Chief Judicial Magistrate shall take all endeavour to dispose of the said application before coming winter vacation.

The instant revision is, thus, disposed of.

(Bibek Chaudhuri, J.)