

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4156 of 2015

-

ORDER :

The criminal petition is filed by the petitioner/respondent under Section 482 Cr.P.C. to stay all further proceedings in D.V.C.No.10 of 2015 on the file of the XIX Metropolitan Magistrate at Miyapur.

2. Heard the learned counsel for petitioner and the respondent and perused the material on record. No doubt, the learned counsel for the petitioner (respondents in D.V.C) placed reliance on the expression of the Apex Court in **Ashish Dixit and Others v. State of Uttar**

Pradesh and another^[1]. Undisputedly, the scope of Section 29 of the Domestic Violence Act, 2005 (for short, 'the Act') is not referred therein even much less came for consideration but for the general observation saying the refusal to entertain the quash saying not connected with offence in the domestic violence is not sustainable (It is because the procedure is almost akin to Section 125 of Cr.P.C and quasi criminal in nature). It is needless to say against the order of taken on file the D.V.C., as per Section 29 of the Act appeal lies as an efficacious remedy. In fact, the Apex Court in **State of Haryana v.**

Bhajan Lal^[2] laid down the seven guidelines which include showing of no other alternative or efficacious remedy as per clause (f) of (a to g) to maintain the quash

proceedings. Here, once there is an efficacious appeal remedy provided undisputedly even to impugn the taking of cognizance (taken on file) of the matter for the relief sought, such order to impugn before Court of Sessions, this Court is not inclined to stretch its hand to admit for quash the proceedings.

3. No doubt, Smt. M.Bhaskara Lakshmi, learned counsel for the petitioners made efforts to convince the Court by drawing attention of the expression of Bhajan Lal (supra) guidelines and the conclusions in Para No.8.1 of the expression in submitting that what clause (f) provided of specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party is not to read each clause independently as the Court's power under Section 482 Cr.P.C. is either to enforce the order of a Court or to prevent abuse of process or to sub serve the ends of justice and if it is within any of the three ingredients of Section 482 Cr.P.C., the power can be exercised and in the case on hand once it is the contention that there is no domestic relationship.

4. In fact, appeal remedy is a statutory and substantial remedy as discussed supra. Further, the appeal remedy is not confined to the material filed by the complainant of DVC petition. Even from the wording of any order used in Section 29 of the Act order of Magistrate having taken the case on file is also prone to appeal remedy to impugn it by maintaining the appeal from the statutory and efficacious

remedy. Thus the appellants as some of the respondents to the D.V.C. case, can with additional material to support their contention also can impugn the taking of cognizance. Once such is the efficacious remedy and Bajanlal clause (f) (supra) specifically speaks specific provision providing efficacious redress for the grievance of the aggrieved party, this Court is not inclined to entertain quash proceedings as there is efficacious remedy before the Sessions Court.

5. In the result, the Criminal Petition is disposed of giving liberty to the petitioner to move the trial Court to dispense with the personal presence of all petitioners, but for one representing others by invoking Rule 37 of Criminal Rules of Practice or Section 205 Cr.P.C. or Section 126(2) Cr.P.C. if not to dispense with under Section 126(2) of his presence to record the evidence in the presence of his advocate and in such an event, the learned Magistrate after hearing shall consider and allow the same with necessary conditions as it is submitted that the respondents are residents of a far of place in Ujjaini of Madhya Pradesh, whereas the Court proceedings are at Hyderabad and it is a great difficulty to appear all personally by undertake journey for all hearings. As the petitioner instead of filing an appeal before the Sessions Judge approached this Court, which is a bonafide prosecution within the scope of Section 14 of the Limitation Act, same is condoned by directing the

appellate Court can entertain the appeal if filed with seven days from the date of receipt of this order.

6. Miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

9th July 2015

mar

[\[1\]](#) (2013) 4 SCC 176

[\[2\]](#) AIR 1992 SC 604