

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.13900 OF 2016

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in D.V.C.No.24 of 2015 on the file of XXIII Metropolitan Magistrate, Rajender Nagar, Ranga Reddy District, on the ground that the said D.V.C.No.24 of 2015 is barred by limitation while admitting that the domestic relationship between the petitioner and respondent No.2.

In "*Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.*"¹ it is held that since the remedies under Protection of Women from Domestic Violence Act, 2005 (for short hereinafter referred to as "the Act") are civil remedies, the Magistrate in view of his powers under Section 28 (2) of the Act shall issue notice to the parties for their first appearance and shall not insist for the attendance of the parties for every hearing and in case of non-appearance of the parties despite receiving notices, can conduct enquiry and pass ex parte order with the material available. It is only in the exceptional cases where the Magistrate feels that the circumstances require that he can insist the presence of the parties even by adopting coercive measures. In view of the remedies which are in civil nature and enquiry is not a trial of criminal case, the quash petitions under Sec. 482 Cr.P.C. on the plea that the petitioners are unnecessarily arrayed as parties are not maintainable. It is only in exceptional cases like

¹ 2015 (2) ALD (CrL.) 470 (AP)

without there existing any domestic relationship as laid under Section 2 (f) of the D.V. Act between the parties, the petitioner filed D.V. case against them or a competent Court has already acquitted them of the allegations which are identical to the ones leveled in the Domestic Violence Case, the respondents can seek for quashment of the proceedings since continuation of the proceedings in such instances certainly amounts to abuse of process of Court.

In “**Ashish Dixit and Others v. State of Uttar Pradesh and another**²” also same principle was laid down.

In view of the principle laid down in the above judgments, it is clear that Section 482 Cr.P.C. has no application to cases filed under the Protection of Women from Domestic Violence Act if there is domestic relationship between the parties. Moreover, the proceedings under the Protection of Women from Domestic Violence Act are civil in nature and the power under Section 482 of Cr.P.C. can be exercised only when there exists no domestic relationship.

Thus, the gist of the principle laid down by this Court and the Apex Court is that the Court can exercise inherent jurisdiction under Section 482 of Cr.P.C. if there is no subsisting domestic relationship as defined under Section 2 (f) of the Act or where any proceedings are initiated under Section 31 of the Act for imposing penalty, but in other circumstances this Court cannot exercise the power available under Section 482 of Cr.P.C. as the remedies available under the Act are civil in nature.

² (2013) 4 SCC 176

The other contention before this Court is that the petition is barred by limitation in view of Section 28 of the Act read with Section 468 of Cr.P.C.

Section 28 of the Act prescribed the procedure to be followed by the Court while deciding an application filed under Section 12 of the Act. Even according to Section 28 of the Act all proceedings under Sections 12, 18 to 23 of the Act and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973. But the relief covered by Sections 12, 18 to 23 is not a penalty or imprisonment, but the relief to be granted is civil in nature. Therefore, limitation prescribed under Section 468 of Cr.P.C. cannot be applied except for the penalty to be imposed under Section 31 of the Act, that apart, Protection of Women from Domestic Violence Act is a remedial legislation and not a penal legislation. Hence, it is difficult to accept the contention of the learned counsel for the petitioner that the claim is barred by limitation.

Therefore, I find no ground to quash the proceedings in D.V.C.No.24 of 2015 on the file of XXIII Metropolitan Magistrate, Rajender Nagar, Ranga Reddy District.

Accordingly, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

03.11.2016
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