

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5732 of 2015

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ORDER :

The criminal petition is filed by the petitioners/Respondent Nos.1 to 5 under Section 482 Cr.P.C to quash the proceedings in D.V.C. No.1 of 2015 on the file of Judicial Magistrate of the First Class, Puttur, chittoor District.

2. Heard in detail the learned counsel for petitioners and perused the material on record. The learned counsel for the petitioners contended that there is no order even by application of mind in numbering the petition. In fact, registering of the case itself is a judicial order, outcome of application of mind. No doubt, the learned counsel for the petitioners (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 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.PC and quasi criminal in nature). It is needless to say the remedy is to file an appeal against the order in D.V.C as per Section 29 of the Protection of Women from Domestic Violence Act as an efficacious remedy is any order includes taken on file by the learned Magistrate by application of mind. 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. In the result, the Criminal Petition is disposed of giving liberty to the petitioners to move the trial Court to dispense with their personal presence of all petitioners but for one by invoking Rule 37 of Criminal Rules of Practice or Section 205 Cr.P.C or Section 126(2) Cr.P.C if not dispensed with under Section 126(2) Cr.P.C of their presence to record the evidence in the presence of their advocate and in such an event, the learned Magistrate after hearing shall consider and allow the same with necessary conditions. Needless to say as the petitioners instead of filing an appeal before the Sessions Judge approached this Court, the appellate Court can entertain the appeal without insisting the limitation period as same is now condoned by invoking Section 14 of the Limitation Act.

4. Miscellaneous petitions pending, if any, in the Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

02.07.2015
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[\[1\]](#) (2013) 4 SCC 176

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