

HON'BLE SMT. JUSTICE ANIS
CRIMINAL PETITION No. 3488 OF 2012

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ORDER:

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This is a Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the petitioners/respondents 1 to 3 requesting to quash the proceedings in D.V.C.No.5 of 2011 on the file of the learned Judicial First Class Magistrate at Nuzvid, Krishna District .

2. The origin of the case is that the first respondent/complainant filed D.V.C.No.5 of 2011 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act'), stating that she filed the case against her father for properties; that she is a widow having two children; that after the death of her husband, she came and resided with her father i.e. the

1st petitioner from 2003 to 2010; that her father took away her money and gold and refused to return the same; that on her demand, her father, sister and sister's husband beat her and necked out her from the house; that she is helpless women and facing problems; that her son is residing at Bangalore for his employment and her daughter is residing at Gudur for education; that as the petitioners threatened her to kill, she filed a complaint before the Protection Officer seeking to return the gold articles, domestic items and money took by her father along with interest @ 24% per annum and also to pay compensation of Rs.5 lakhs to her.

3. According to the petitioners, there is no domestic relationship between the petitioners and the 1st respondent and thus, the domestic violence which the 1st respondent alleges does not attract; that the entire grievance of the

1st respondent is to return of her gold and money in the hands of her

father, but the complaint shows that she herself gave money and gold to her father voluntarily, hence non-refund of the same cannot be termed as 'domestic violence'; that the trial Court, without considering the facts, has erroneously taken the cognizance on the complaint filed by the 1st respondent; that the 1st petitioner is aged about 75 years and the petitioners 2 and 3 are living separately in Guntur District and when the petitioners 2 and 3 are not residing at Kommuru, sharing of the house does not arise and finally prayed the Court to quash the proceedings in D.V.C.No.5 of 2011 on the file of the Judicial First Class Magistrate at Nuzvid, Krishna District.

4. The 1st respondent filed Counter and denied that she never lived in shared house with the petitioners, but stated that in the year 2006, her father took away cash of Rs.3 lakhs and gold ornaments to a tune of 27 sovereigns along with her domestic properties, such as, two electrical pump sets and two iron safes; that her brother-in-law also took Rs.4,50,000/- from her under threat of coercion; that she sought for directions in the DVC case under Sections 18, 19, 20 and 22 of the Act against the petitioners; that the present petition is filed only to drag on the proceedings in DVC case and therefore, prayed the Court to dismiss the quash petition.

5. The learned counsel for the petitioners argued that the domestic violence which was alleged does not attract to the facts of the present case. It is also argued that O.S.No.73 of 2011 filed by the 1st respondent is pending before the Nuzvid Court and the 1st respondent has civil remedies, as such she has to approach the Civil Court for recovery of the amounts and other things from the 1st petitioner and not by filing DVC case.

6. On the other hand, the learned counsel for the

1st respondent argued that there is no bar to file DVC case against the petitioners, who are the father, sister and brother-in-law. It is also argued that after the death of her husband, the 1st respondent took shelter with the 1st petitioner and she shared the house along with her properties i.e. gold and cash which were taken by the petitioners, and argued that DVC case is maintainable against the petitioners and prayed the Court to dismiss the present petition.

7. Now, the point for determination is –

Whether the petitioners are entitled to quash the proceedings in D.V.C.No.5 of 2011 on the file of the Judicial First Class Magistrate at Nuzvid, Krishna District?

8. **Point:**

The 1st respondent, who is the complainant, filed D.V.C.No.5 of 2011 against the petitioners herein seeking protection under the Act before the Judicial First Class Magistrate at Nuzvid, Krishna District. When the matter is pending before the learned Magistrate, the petitioners who are the respondents in D.V.C.No.5 of 2011, filed the present petition to quash D.V.C.No.5 of 2011 on the ground that they never took the cash, gold ornaments and domestic articles from the 1st respondent and never harassed her or driven her out from the house. It is also argued by the learned counsel for the petitioners that the 1st respondent already filed O.S.No.73 of 2011 before Nuzvid Court and still it is pending and to harass the petitioners, the 1st respondent filed DVC case without any right.

9. It is no doubt true that the 1st petitioner is the father of the 1st respondent and the petitioners 2 and 3 are the sister and brother-in-law of the 1st respondent. There is no dispute that the 1st respondent is a widow having two children was residing with the 1st respondent at Kommuru village from 2003 to 2010. Therefore, whether the

petitioners are liable to pay cash, gold ornaments and domestic articles to the

1st respondent and whether the petitioners 2 and 3 are not the residents of Kommuru village but residents of Guntur, are to be gone into during enquiry by adducing oral and documentary evidence.

10. The main contention of the petitioners is that DVC case is not maintainable as they do not have any domestic relationship with the 1st respondent.

Section 2(f) of the Act reads thus:

“domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

In this case, there is no dispute about the relationship of the petitioners with the 1st respondent. Being widow, the 1st respondent must have been living with her father at Kommuru village after the death of her husband. Whether there is any domestic violence suffered by the 1st respondent in the hands of the petitioners is the subject-matter of D.V.C.No.5 of 2011. At this stage, the petitioners have not made out any case to quash the proceedings in D.V.C.No.5 of 2011 on the file of the Judicial First Class Magistrate at Nuzvid, Krishna District.

11. Accordingly, the Criminal Petition is dismissed. However, the Judicial First Class Magistrate at Nuzvid, Krishna District is directed to dispose of D.V.C.No.5 of 2011 as early as possible, preferably within a period of three (3) months after the receipt of a copy of this order.

12. Miscellaneous petitions pending, if any, in this Criminal Petition

shall stand closed.

Date: 10.02.2015
Anr

ANIS, J