

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.15046 OF 2016

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 03.09.2016 passed in D.V.C.No.75 of 2013 by the II Additional Junior Civil Judge – cum – XIX Metropolitan Magistrate, Cyberabad, Kukatpally, Miyapur.

In D.V.C.No.75 of 2013 the Presiding Officer directed the petitioner herein/respondent to pay monthly maintenance of Rs.10,000/- to his wife, from the date of the order and further directed the wife to open a Savings Bank account with a Nationalized Bank or Post Office and directed to furnish account number to the petitioner herein/respondent and the petitioner herein was directed to deposit the maintenance amount to the credit of the said account.

The present petition is filed under Section 482 of Cr.P.C. to quash the said order while admitting the domestic relationship as defined under Section 2 (f) of the Protection of Women from Domestic Violence Act, 2005 (for short, hereinafter referred to as "the Act") between the petitioner and respondent No.2 but complained about noncompliance of Sections 14 and 3 of the Act and Rule 5 of the Rules framed thereunder.

During hearing learned counsel for the petitioner contended that noncompliance of Sections 3 and 14 of the Act and Rule 5 of the Rules framed thereunnder, vitiates the entire proceedings, on that ground alone the impugned order is liable to be quashed. He

also contended that mere availability of remedy by way of appeal is not a ground to deny the relief under Section 482 of Cr.P.C. and placed reliance on a judgment rendered in “**Prabhu Chawla v. State of Rajasthan and Anr.**”¹

Undisputedly, there exists domestic relationship between the petitioner and 2nd respondent being husband and wife as defined under Section 2 (f) of the Act, the only grievance is that the learned Magistrate has not complied with the provisions of Section 3 of the Act.

Section 3 of the Act deals with the definition of domestic violence and no mandatory procedure is prescribed under Section 3 of the Act to be followed by the Court. Therefore, there is no substance in the contention that noncompliance of Section 3 of the Act vitiates the entire proceedings since the trial Court came to a conclusion there exists domestic relationship and that the 2nd respondent was subjected to domestic violence and failure to provide maintenance is nothing but economic abuse as defined in clause (iv) of explanation I to Section 3 of the Act, which includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance. Therefore, failure to provide

¹ 2016 (1) Decisions Today (SC) 415

maintenance is nothing but domestic violence, consequently the contention of the learned counsel for the petitioner that noncompliance of Section 3 of the Act would not stand to any legal scrutiny to exercise jurisdiction under Section 482 of Cr.P.C.

The other contention raised before this Court is noncompliance of Section 14 of the Act.

According to Section 14 of the Act, the Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

It appears from the record the Magistrate did not issue any direction to the parties to undergo counselling, but the language used in Section 14 of the Act indicates that counselling is not mandatory and is the discretion of the Magistrate as the word “may” indicates the option of Magistrate to direct the parties to go for counselling. Therefore, a direction to be issued under Section 14 of the Act for counselling is not mandatory, on that ground the order cannot be interfered with, while exercising jurisdiction under Section 482 of Cr.P.C. It is also pointed out that under sub-section (2) of Section 14 of the Act, the Magistrate has to fix the next date of hearing within a period not exceeding two months when the Magistrate issued any direction under sub-section (1) of Section 14 of the Act. Here, the Magistrate did not issue any direction for counselling under sub-section (1) of Section 14 of the Act. Hence, fixing the next date of hearing under sub-section (2) of Section 14

of the Act does not arise. Consequently, it is not a ground to set aside the order while exercising power under Section 482 of Cr.P.C.

The other contention raised before this Court is that the Protection Officer did not submit any report in Form I to the Magistrate and the Court itself took the case on file by receiving complaint. This itself is an irregularity according to the learned counsel for the petitioner. It is evident from the record that a complaint was submitted by the respondent No.2 herein to the Protection Officer alleging that she was necked out from house and she has no capacity to meet the illegal demand made by the petitioner herein and police referred them for counselling and they went counselling also, but no purpose was served. Therefore, requested the Protection Officer to file a case on her behalf for maintenance and protection. But it appears from the record that the copy of the report is not available and the order is silent with regard to receipt of any report from the Protection Officer in Form I in compliance of Rule 5 of the Rules framed thereunder. While exercising power under Section 482 of Cr.P.C. this Court can decide the matter based on facts available on record and need not go into the disputed questions. Merely because the report is not referred in the order, this Court cannot set aside the order by exercising power under Section 482 of Cr.P.C. and such questions can be decided after re-appraisal of evidence in an appeal provided under Section 29 of the Act. Since the compliance of Rule 5 of the Rules is a disputed question, it can be decided only by the appellate Court in the appeal filed under Section 29 of the Act. Therefore, it is difficult to accept the contention of the learned counsel for the petitioner to set aside the order by exercising power

under Section 482 of Cr.P.C. in view of the disputed question. Therefore, I find no ground to quash the impugned order.

In “**Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.**”² it is held that since the remedies under D.V. Act are civil remedies, the Magistrate in view of his powers under Section 28 (2) of D.V. 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 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**

² 2015 (2) ALD (Crl.) 470 (AP)

and another³” 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. Apart from it, the petitioner challenged the order passed by the Magistrate on various grounds, which can be decided in an appeal under Section 29 of the Act effectively. No doubt, mere availability of remedy by way of appeal is not a ground to deny the relief under Section 482 of Cr.P.C. as held in “**Prabhu Chawla v. State of Rajasthan and Anr.**” (referred supra), but the same principle cannot be applied to the present facts of the case for the reason that 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 or any action initiated under Section 28 (2) of the Act but not in all other circumstances. Therefore, I find no ground to set aside the order dated 03.09.2016 passed in D.V.C.No.75 of 2013 by the II Additional Junior Civil Judge – cum – XIX Metropolitan Magistrate, Cyberabad, Kukatpally, Miyapur.

Accordingly, the petition is dismissed. No costs.

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

JUSTICE M. SATYANARAYANA MURTHY

24.10.2016
Ksp

³ (2013) 4 SCC 176