

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16069 OF 2016

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to set aside the order dated 17.03.2016 in D.V.C.No.9 of 2016 passed by the II Additional Judicial Magistrate of First Class, Nizamabad, whereby the learned Magistrate directed the Protection Officer to register the case against R.1 to R.3 alone and issued notice to R.1 to R.3.

The main contention of the petitioner is that she filed D.V.C. against her husband, in-laws, and the respondents 2 to 4 herein, and also claimed relief against all of them, but the learned Magistrate did not register the case against the respondents 2 to 4, without assigning any reason.

The order challenged in the present petition is an order passed by the Judicial Magistrate of First Class under Protection of Women from Domestic Violence Act. This court can exercise jurisdiction under Section 482 of Cr.P.C. in DVC only when there exists no domestic relationship or where the Magistrate invoked jurisdiction under Section 31 of Protection of Women from Domestic Violence Act, but not in other cases as held by this court in **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER**¹ wherein it was held as follows:

“i) 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

¹ 2015(2) ALD (CrL.) 470

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 exparte order with the material available. It is only in the exceptional cases where the Magistrate feels that the circumstance require that he can insist the presence of the parties even by adopting coercive measures.

ii) 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 AND ANOTHER**² the Apex Court held as follows:

“...in the matter of this nature we are of the opinion that the High Court atleast should have directed the trial court to proceed only against her husband, where the husband and parents-in-law including all and sundry persons were arrayed, even a tenant is not known to her.”

It is further held that

“....the High Court should have directed that the petition be confined to her husband and parents-in-law and should not have allowed the impleadment of respondents 4 to 12, the proceedings against appellants 4 to 12 in case No.240 of 2007 are quashed, directing the learned

² (2013) 4 SCC 176

Chief Judicial Magistrate, Agra, to proceed with the aforesaid case only against the husband.”

In view of the principle laid down by the Apex Court and this Court, the order passed by the learned Magistrate can be challenged by way of appeal under Section 29 of the Protection of Women From Domestic Violence Act. In such case, this Court cannot exercise jurisdiction under Section 482 of Cr.P.C.

Even according to guideline No.6 laid down by the Apex Court in **STATE OF HARYANA v.. BHAJAN LAL**³, where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redressal for the grievance of the aggrieved party, this court cannot exercise jurisdiction.

By applying the guideline No.6 to the present facts of the case, there efficacious remedy of appeal is available to the petitioner for redressal of her grievance i.e. challenging the order passed by the Judicial Magistrate of First Class dated 17.03.2016. In such case, this Court cannot exercise jurisdiction under Section 482 of Cr.P.C.

Therefore, I find no ground to quash the proceedings and the criminal petition is liable to be dismissed, however granting liberty to the petitioner to prefer an appeal under Section 29 of the Protection of Women from Domestic Violence Act, against the order passed by the learned Magistrate.

³ (1992) SUPP (1) SCC 335

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With the above direction, the criminal petition is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in the criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 17.11.2016
BV

