

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.17078 OF 2016

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the proceedings against the petitioners in D.V.C. No.27 of 2016 pending on the file of III Additional Metropolitan Magistrate Cyberabad at L.B. Nagar, Ranga Reddy District, on various grounds.

The main contention of the petitioners is that the allegations made in the complaint filed by the first respondent are all false and there are no grounds to proceed against the petitioners.

The first petitioner is the husband, petitioners 2 and 3 are in-laws, of the person aggrieved, who is the first respondent herein, and the petitioners 4 and 5 are the sisters of first petitioner, who are living at different places, Saroor Nagar and Chennai. The relationship between the petitioners and the first respondent is not in dispute and such relationship is within the definition of domestic relationship as defined under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act').

In **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER**¹ this Court laid down certain principles at paragraph 14, and they are 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

¹ 2015(2) ALD (Cr.) 470

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 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 view of the principles laid down in the Judgment referred above, where there exists domestic relationship as defined under Section 2(f) of the Act, this Court cannot exercise inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings in domestic violence cases, except where the court invoke jurisdiction under Section 31 of the Act, or where the petitioners are acquitted on identical grounds by any competent court, earlier. But here it is not the case of petitioners that they are acquitted on identical allegations or the court invoked jurisdiction under Section 31 of the Act. This Court further gone to the extent of holding that the trial of cases under the Act cannot be equated with the trial of criminal cases and their appearance is not

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necessary, even the court can pass *ex parte* order. Therefore, the jurisdiction under Section 482 of Cr.P.C. cannot be invoked in the present case to quash the proceedings and it is made clear that the appearance of the petitioners is not necessary except on the occasions where their appearance is required to the court or directed by the court.

On overall consideration of the material on record, the truth or otherwise in the allegations is a disputed question of fact. It cannot be decided while exercising power under Section 482 of Cr.P.C., since knowledge about impotency can be established only by adducing evidence. In those circumstances, it is difficult to quash the proceedings exercising inherent jurisdiction under Section 482 of Cr.P.C. and the petition is liable to be dismissed.

In the result, the criminal petition is dismissed. However, the III Metropolitan Magistrate, Cyberabad, at L.B. Nagar, Ranga Reddy District, is directed to follow the guidelines laid down by this court in **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER** referred to supra.

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

M. SATYANARAYANA MURTHY, J

Date: 26.12.2016
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