

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.5108 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the order passed in CrI.M.P.No.2683 of 2015 in D.V.C.No.34 of 2015 dated 21.03.2016 on the file of the IX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur, Ranga Reddy District, granting interim maintenance of Rs.10,000/- during pendency of the D.V.C.

The only ground urged before this Court for quashing the impugned order is that the petitioner earlier filed a CrI.R.C.No.520 of 2016 before this Court seeking an order to set-aside the *exparte* order dated 06.10.2015 passed by the Trial Court. But, this Court while setting aside the order passed by the Court, with a direction to decide the matter on or before 15.03.2016, remanded the matter to the IX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur, Ranga Reddy District, who passed the order in CrI.M.P.No.2688 of 2016 in D.V.C.No.34 of 2015 on 21.03.2016 granting maintenance at Rs.10,000/- per month towards monthly maintenance during pendency of the petition, with a specific direction to deposit the same to the credit of the account of the petitioner before it in any nationalized bank on intimation of the account number.

Aggrieved by the said order the petitioner preferred CrI.A.No.79 of 2016 under Section 29 of Protection of Women From Domestic Violence Act, 2005 (for short 'Act') on the file of

IX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur, Ranga Reddy District and it is pending for disposal.

During pendency of the appeal, the petitioner did not obtain any stay before the District & Sessions Court, Ranga Reddy. But, now, he is requesting to grant stay while quashing the proceedings. In view of the specific contention stated above, i.e. non-consideration of direction issued by this Court in Crl.P.No.520 of 2016, the order is not liable to be set-aside. The said question can be decided even by the Appellate Court while exercising jurisdiction under Section 29 of the Act, since the jurisdiction of the Appellate Court is more comprehensive than the jurisdiction under Section 482 of Cr.P.C. The petitioner is prosecuting the proceedings simultaneously both in the appeal and under Section 482, which is impermissible.

In **State of Haryana v. Bhajan Lal**¹, the Apex Court laid down seven guidelines while exercising jurisdiction under Section 482 of Cr.P.C. Guideline No.6 is the relevant guideline and it is extracted hereinunder:

“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 redress for the grievance of the aggrieved party.”

In the present case, the efficacious remedy is provided under Section 29 of the Act i.e an appeal before the District & Sessions Court. When the petitioner approached the Court prosecuting an appeal and filing simultaneous application under Section 482 of Cr.P.C for the same relief, it is nothing but abuse

¹ 1992 Supp. (1) SCC 335

of process of Court. Therefore, I am not inclined to exercise jurisdiction under Section 482 of Cr.P.C to quash the proceedings, in view of the proceedings pending on the file of IX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur, Ranga Reddy District.

In the result, criminal petition is dismissed.

Consequently, miscellaneous petitions, if any, pending in this criminal petition, shall stand closed. No costs.

Date:02.11.2016
SP

M. SATYANARAYANA MURTHY, J

