

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.16964 OF 2016

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in D.V.C.No.19 of 2014 on the file of Special Judicial Magistrate of I Class (Mobile Court) at Nalgonda District.

The second respondent filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'Act') claiming certain reliefs. But the present petition is filed to quash the proceedings in D.V.C.No.19 of 2014 on various grounds.

It is admitted that the first petitioner is the husband of the second respondent, second petitioner is the brother and third petitioner is the mother of the first petitioner respectively. Therefore, there exists a domestic relationship as defined under Section 2(f) of the Act. The proceedings under DVC Act are purely civil in nature and the trial in DVC cannot be equated with trial of criminal case and the Court can set *exparte* and pass an order in the absence of the respondents. Moreover, the inherent jurisdiction under Section 482 of Cr.P.C cannot be exercised when there exists domestic relationship.

But, when there is no domestic relationship or in case whether proceedings are initiated under Section 31 of the Act, this Court can exercise inherent jurisdiction under Section 482 of

Cr.P.C.

In “**Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.**”¹ 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 view of the principle laid down by this Court in the above judgment, the Court cannot insist appearance of the petitioners

¹ 2015 (2) ALD (CrL.) 470 (AP)

before the Court on the dates of adjournment. Therefore, the Judicial First Class Magistrate, Nalgonda is directed to follow the guidelines issued by this Court in Sekhar's case (referred supra) and decide the matter in accordance with law.

With the above direction, criminal petition is disposed of.

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

JUSTICE M. SATYANARAYANA MURTHY

21.12.2016
SP

