

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15714 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 DVC No.5 of 2016 pending on the file of I Additional Judicial First Class Magistrate, Huzurabad, on the ground that no specific allegation is made against these petitioners to attract the offence 'domestic violence' as defined under Section 2(g) of the Protection of Women From Domestic Violence Act, 2005 (for short, 'the Act, 2005'), and the other ground is that no relief was claimed against the petitioners.

At paragraph 9 of the complaint, the second respondent, who is the person aggrieved, sought for the following relief:

“a) prohibiting the respondents from committing any act of Domestic Violence as per Section 18 of Protection of Women From Domestic Violence Act, 2005.”

The part of the relief claimed by the second respondent is sufficient to attract the provisions of the Act, 2005, as Section 18 of the Act, 2005 provides protection i.e. prevent the respondents from committing the act of domestic violence, by passing protection order. Therefore, on this ground the proceedings cannot be quashed in DVC No.5 of 2016.

Learned counsel for the petitioners further contended that inherent jurisdiction under Section 482 Cr.P.C. can be invoked in domestic violence cases, when no allegation is made against the petitioners.

But the law declared by this Court in **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER**¹ this court can exercise jurisdiction under 482 Cr.P.C. to quash the proceedings in domestic violence cases, only when there is no domestic relationship as defined under Section 2(f) of the Act, 2005 or where the court invoked power under Section 31 of the Act, 2005 to impose penalties for breach of protection order under the Act, but not in other cases, while holding at paragraph 14 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 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.”

¹ 2015(2) ALD (CrL.) 470

A similar question came up before the Apex Court in **ASHISH DIXIT AND OTHERS v. STATE OF UTTAR PRADESH AND ANOTHER²** wherein it was held that

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

In the present facts of the case, it is an undisputed fact that there is subsisting domestic relationship between the petitioners and the person aggrieved. Hence, following principle laid down by the Apex Court and this Court, I find no ground to quash the proceedings and the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date: 07.11.2016
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² (2013) 4 SCC 176