

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.16989 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in D.V.C.No.133 of 2016 dated 23.11.2016 filed under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (for short 'Act'), on the sole ground that the order passed by the I Additional Chief Metropolitan Magistrate, Vijayawada, is in violation of Section 12(4) of the Act.

By order dated 23.11.2016, while the I Additional Chief Metropolitan Magistrate, Vijayawada, found out prima facie case against respondents herein 2 to 4 to proceed against them under Section 12 of the Act and directed to issue notice to the respondents 2 to 4 herein through Protection Officer and ordered the matter to be listed on 08.03.2017.

According to Section 12(4) of the Act, the Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

No doubt, according to Clause (4) of Section 12, the Court has to fix the first date of hearing subject to service of notice, which is mentioned under Section 13 of the Act.

For better appreciation of facts, it is appropriate to note Section 13 of the Act, which reads as follows:

“(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further

reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.”

In the present case, the Magistrate fixed the date of hearing or of appearance of the respondents after serving notice to them as 08.03.2017, almost granting five months adjournment for appearance of the petitioner, which is in violation of the Rules, since the petitions filed under D.V.C Act shall be decided within the time frame fixed under the Act i.e. 50 days.

Hence, the order passed by the I Additional Chief Metropolitan Magistrate, Vijayawada, in D.V.C.No.133 of 2016 dated 23.11.2016 is hereby set-aside, directing the Magistrate concerned to fix date for service of notice, keeping in mind the provisions incorporated in Sections 12(4) and 13 of the Act.

With the above direction, the criminal petition is disposed of.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:27.12.2016

SP