

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.13717 OF 2016

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash all further proceedings against the petitioner in D.V.C. No.2 of 2016 on the file of Additional Judicial Magistrate of First Class, Special Court for Prohibition and Excise Offences at Sangareddy.

Sri J.Kumaresan, learned counsel for the petitioner, contended that the respondent is working as a teacher in private school and earning Rs.9,200/- per month. Learned counsel for the petitioner further contended that earlier she filed a petition under Section 125 of Cr.P.C. seeking maintenance, but the same was dismissed on the ground that she has got independent source of income for her maintenance and the order became final. After dismissal of maintenance petition, the respondent filed the present D.V.C.No.2 of 2016, as such the same is not maintainable since it is abuse of process of law.

The present petition is filed under Section 482 of Cr.P.C. while admitting the domestic relationship as defined under Section 2 (f) of the Protection of Women from Domestic Violence Act, 2005 (for short, hereinafter referred to as "the Act") between the petitioner and respondent No.1.

Undisputedly, there exists domestic relationship between the petitioner and the respondent No.1 being husband and wife as defined under Section 2 (f) of the Act.

Section 3 of the Act deals with the definition of domestic

violence and no mandatory procedure is prescribed under Section 3 of the Act to be followed by the Court. Here, the petition filed under Section 125 of Cr.P.C. was dismissed by the trial Court. It is clear from the material available on record that the respondent No.1 was subjected to domestic violence and failure to provide maintenance is also nothing but economic abuse as defined in clause (iv) of explanation I to Section 3 of the Act, which includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance. Therefore, failure to provide maintenance is nothing but domestic violence.

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

¹ 2015 (2) ALD (Crl.) 470 (AP)

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 “**Ashish Dixit and Others v. State of Uttar Pradesh and another**²” also same principle was laid down.

Thus, the scope of interference in the proceedings under the Act is limited. In D.V.C.No.2 of 2016 the respondent No.1 herein/wife sought for various reliefs, which are as follows:

“(a) to provide maintenance an amount of Rs.20,000/- per month to the petitioner under section: 20 (1) (d) of DVC Act.

(b) to provide compensation an amount of Rs.5,00,000/- to the petitioner under Section 22 of DVC Act.

(c) to pass any order or orders as this Hon’ble Court may deem fit and proper in the larger interest if justice and equity.”

Earlier petition under Section 125 of Cr.P.C. was filed only for grant of maintenance, which was ended in dismissal on the ground that she possessed sufficient independent source of income being a teacher, working in the private school and in the

² (2013) 4 SCC 176

D.V.C.No.2 of 2016 she claimed compensation also. However, the dismissal of petition filed under Section 125 of Cr.P.C. would not debar the claimant from claiming any of the reliefs in the present D.V.C.No.2 of 2016.

In view of the principle laid down in the above judgments, it is clear that Section 482 Cr.P.C. has no application to cases filed under the Protection of Women from Domestic Violence Act if there is domestic relationship between the parties. Moreover, the proceedings under the Protection of Women from Domestic Violence Act are civil in nature and the power under Section 482 of Cr.P.C. can be exercised only when there exists no domestic relationship or any action initiated under Section 28 (2) of the Act but not in all other circumstances. Therefore, I find no ground to quash all further proceedings against the petitioner in D.V.C. No.2 of 2016 on the file of Additional Judicial Magistrate of First Class, Special Court for Prohibition and Excise Offences at Sangareddy.

Accordingly, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

31.10.2016
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