

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.17089 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in D.V.C.No.13 of 2016 on the file of the Additional Junior Civil Judge, Chirala, Prakasam District.

Respondents 1,2,3 & 5 are the husband, in-laws and sister in law of the first respondent respectively.

Learned counsel for the second respondent submits that the second respondent does not want to live in matrimonial house with the first petitioner and thereupon, the first respondent filed D.V.C.No.13 of 2016 against the petitioners herein before the Additional Junior Civil Judge, Chirala, Prakasam District under Section 12 for the reliefs under Sections 18,19,20,22,23,31,33 of Domestic Violence Act.

It is stated that attending D.V.C. proceedings at Chirala on all the dates of adjournments would be difficult for the petitioners, as all of them are residents of Bangalore City.

During hearing, learned counsel for the petitioners requests this Court to dispense with the appearance of the petitioners in D.V.C proceedings before the Additional Junior Civil Judge, Chirala, Prakasam District, without inviting any other orders on merits.

Though a specific request made by the learned counsel for the petitioners, as there exists domestic relationship between the first petitioner and the second respondent i.e husband and wife as defined under Section 2(f) of The Protection of Women from

Domestic Violence Act, 2005 (for short 'Act'), I need not go into the merits of case.

The term "domestic relationship" is defined under Section 2(1)(f) of the Act and it means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

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

¹ 2015 (2) ALD (CriL.) 470 (AP)

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 law declared by this Court in the judgment referred supra, the appearance of the parties on each and every date of adjournment before the Additional Junior Civil Judge, Chirala, Prakasam District in respect of the petitions filed under the Act cannot be insisted and the Trial in D.V.C proceedings cannot be equated with criminal trial, therefore, the Court cannot insist appearance of the petitioners before the Court on the dates of adjournment. Therefore, the Additional Junior Civil Judge, Chirala, Prakasam District 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, the criminal petition is disposed of at the admission stage.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:26.12.2016

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