

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15979 OF 2016

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to quash the proceedings in D.V.C. No.3 of 2013 registered against the petitioners and another under Section 12 of Protection of Women From Domestic Violence Act, 2005 (for short, 'the Act') pending on the file of Junior Civil Judge-cum-Judicial Magistrate Of First Class, Narsapur, Medak District.

The petitioners are in-laws of the person aggrieved and they filed the petition on the ground that the matter was settled before the elders in the year 22.02.2012.

Though both parties settled before the elders and executed document in the name and style of Voppanda Patram (settlement deed), these questions cannot be gone into at this stage, as there is subsisting domestic relationship between the petitioner and the person aggrieved, as defined under Section 2(f) of the Act.

A similar question came up before this court in **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER¹** wherein this Court laid down certain principles at paragraph 14, they are 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

¹ 2015(2) ALD (CrI.) 470

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.”

If the principle laid down in the above Judgment is applied to the present facts of the case, when there is no domestic relationship as defined under Section 2(f) of the Act, the petitioners can seek quashment of proceedings. But, in view of the Judgment of this Court referred to above, the petition sought for quashment of proceedings under the Act is not maintainable.

The Apex Court in **ASHISH DIXIT AND OTHERS v. STATE OF UTTAR PRADESH AND ANOTHER**² 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.”

² (2013) 4 SCC 176

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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 view of the principle laid down by the Apex Court and this Court, I find that there is subsisting domestic relationship as defined under Section 2(f) of the Act, between the petitioners and the second respondent and hence the 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: 15.11.2016
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