

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.11850 OF 2016

ORDER:

This criminal petition, under Section 482 Cr.P.C., is filed to quash the proceedings in DVC No.19 of 2016 pending before the Special Judicial First Class Magistrate (Mobile) Court, Ananthapur, Andhra Pradesh, on the ground that there was no subsisting relationship between the petitioners and the person aggrieved, the first respondent herein, as defined under Section 2(f) of Protection of Women From Domestic Violence Act, 2005 (for short, 'the Act') and that the petition is barred by limitation in view of Section 28 of the Act.

Admittedly, the person aggrieved by name, M.Nirmala Bai is the daughter-in-law of petitioners 1 and 2. She filed a petition under Section 12 of the Act before the trial court claiming several reliefs. The contention of the petitioners before this court is that there was no subsisting domestic relationship between the petitioners and the first respondent herein.

Section 2(f) of the Act defines the word 'domestic relationship' as follows:

“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;”

The definition of the word 'domestic relationship' includes the relationship by marriage or through a relationship in the nature of marriage. The language used in the definition

indicates as an alternative, but not cumulative. Even the existence of domestic relationship on account of marriage comes within the definition of domestic relationship. Therefore, the petitioners 1 to 3, being the in-laws and sister-in-law, are related to the first respondent on account of her marriage and thereby there is subsisting domestic relationship between the petitioners 1 to 3 and the first respondent.

Whereas 4th petitioner is a distant relative of husband of the first respondent, 5th petitioner is the uncle's son of the husband of the first respondent. There is no subsisting domestic relationship between petitioners 4 and 5 and the first respondent.

In **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER**¹ this Court laid down certain guidelines to invoke jurisdiction under Section 482 Cr.P.C. in cases filed under the Act and they are 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

¹ 2015(2) ALD (CrL.) 470

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 view of the principle laid down in the Judgment referred to above, this court can exercise inherent power to quash the proceedings under Section 482 Cr.P.C. when there is no subsisting domestic relationship between the person aggrieved and the respondents, not in any other cases, except in cases where the court invoked Section 31 of the Act. Therefore, in the absence of domestic relationship between the first respondent and the petitioners 4 and 5, the proceedings against the petitioners 4 and 5 are liable to be quashed. Whereas in view of subsistence of domestic relationship between the petitioners 1 to 3 and the first respondent, this Court cannot exercise inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings under Section 12 of the Act against the petitioners 1 to 3.

The other contention raised by the counsel for the petitioners is that the claim of the first respondent is barred by limitation as the petition filed after more than 3 ½ years, since the limitation is only one year as per Section 28 of the Act read with Section 468 Cr.P.C.

Undisputedly, the Act is only a remedial legislation and not a penal legislation, intended to protect the women from domestic violence and to provide necessary reliefs as contemplated under Sections 18, 19, 20 and 22 of the Act. Except under Section 31 of the Act, the court exercising jurisdiction under the Act cannot impose any penalty or punishment under any provisions of the Act.

Section 31 of the Act deals with penalty for breach of protection order by the respondents. Such imposition of penalty would arise only in case, where the respondent violated protection order passed by the court. The present DVC is at the stage of enquiry and therefore, question of invoking jurisdiction under Section 31 of the Act by the Judicial Magistrate of First Class does not arise.

Section 28 of the Act prescribed the procedure to be followed and according to it, under Sections 12, 18, 19, 20, 22 and 23 and the offence under Section 31 of the Act shall be governed by the Code.

Learned counsel for the petitioners contended that the limitation prescribed under Section 468 Cr.P.C. is only one year and the petition is filed read with Section 28 of the Act.

Admittedly, the relief that can be granted under Sections 12, 18, 19, 20 and 22 of the Act. In the petition committed breach of protection order by the respondent, the court can impose penalty as contemplated under Section 31 of the Act.

Section 468 Cr.P.C. prescribed limitation period for taking cognizance, would not apply to the cases governed by the

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provisions of the Act. Hence, the limitation period prescribed under Section 468 Cr.P.C. is not applicable to the proceedings filed under Section 12 of the Act. On this ground, the proceedings cannot be quashed.

In view of my foregoing discussion, I find that it is a fit case to quash the proceedings against the petitioners 4 and 5, while permitting the learned Magistrate to proceed with the enquiry in DVC No.19 of 2016 against petitioners 1 to 3.

In the result, the criminal petition is partly allowed while quashing the proceedings in DVC No.19 of 2016 against the petitioners 4 and 5, and the rest of the claim against petitioners 1 to 3 is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date: 03.11.2016
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