

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.15620 OF 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to quash the proceedings in D.V.C.No.37 of 2015 pending on the file of I Additional Judicial Magistrate of First Class, Karimnagar.

The relationship between the parties is not disputed but to invoke jurisdiction of this court under Section 482 of Cr.P.C., the petitioners have to establish that there was no subsisting domestic relationship as defined under Section 2 (f) of the Act between the parties and if they are able to establish the said non-existence of domestic relationship, this court can exercise the powers under Section 482 of Cr.P.C.

In a decision reported in *GIDUTHURI KESARI KUMAR AND OTHERS v. STATE OF TELANGANA AND ANOTHER* (¹), this court held at paragraph 14 of judgment of this court which reads as follows:

“ To sum up the findings:

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 ex parte 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.

¹ 2015 (2) ALD (Cr.) 470

ii) In view of the remedies which are in civil nature and enquiry is not a trial of criminal case, the quash petitions under Section 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 the later decision reported in *ASHISH DIXIT AND OTHERS v. STATE OF UTTAR PRADESH AND ANOTHER* ⁽²⁾, the Supreme Court held that when an application under D.V.C. was filed against the tenant, the court would not exercise jurisdiction under Section 482 Cr.P.C. and quash the proceedings against him since there is no subsisting relationship between the tenant and aggrieved person as defined under the Act.

Therefore, the only in exceptional circumstances, this court can exercise powers under Section 482 Cr.P.C. but here petitioners and respondents are related to each other and there is subsisting domestic relationship between the parties as defined under Section 2 (f) of the D.V.C. Act and consequently, this court cannot exercise powers under Section 482 of Cr.P.C. to quash the proceedings.

In the entire petition, they never contended that there was no subsisting domestic relationship as defined under Section 2 (f) of the D.V.C. Act and in the absence of such contention, I do not find any

² (2013) 4 SCC 176

ground to exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings and consequently, this Criminal Petition is liable to be dismissed.

Accordingly, this Criminal petition is dismissed.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 2-11-2016.

Dvs.



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Dvs