

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16157 of 2016

ORDER :

This criminal petition is filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in D.V.C.No.20 of 2016 on the file of the Special Mobile Magistrate Court, Guntur, on the sole ground that the person aggrieved i.e., 2nd respondent herein never resided along with the petitioners, who are mother-in-law, brother in-law and his wife and unmarried daughter of the 1st respondent in D.V.C. and thereby there is no subsisting domestic relationship as defined under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (for short, the 'Act').

2. Though in the criminal petition D.V.C.No.20 of 2016 is mentioned, the copy of the petition annexed to the criminal petition disclosed that D.V.C.No.120 of 2016, therefore, the learned counsel for the petitioners sought for quashing the proceedings only in D.V.C.No.120 of 2016.

3. The person aggrieved filed petition under Section 12 claiming reliefs under Sections 18, 19, 20, 21 and 22 of the Act against all the petitioners including her husband. But, the contention of the petitioners is that there was no subsisting domestic relationship as defined under Section 2(f) of the Act.

4. Section 2(f) of the Act defined the domestic relationship as follows:

“domestic relationship” 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”

The language used in Section 2(f) of the Act is clear that it is alternative the word used ‘or’ indicates that each word is separate and they cannot be read conjointly to decide the domestic relationship. Therefore, mere living away to the petitioners is not sufficient to disbelieve the subsisting domestic relationship as defined under Section 2(f) of the Act. Hence, on the ground that there was no subsisting domestic relationship, the Court cannot quash the proceedings.

5. The jurisdiction of this Court under Section 482 Cr.P.C. is limited and such jurisdiction cannot be exercised in proceedings under Protection of Domestic Violence Act, unless there exists no domestic relationship as defined under Section 2(f) of the Act or where the Court invoked its jurisdiction under Section 31 of the Act. But, here it is not the case of the petitioners that the Court invoked Section 31 of the Act, but challenge is only on the basis of absence of domestic relationship. But, as per definition of Section 2(f) of the Act, there is a subsisting domestic relationship between the person aggrieved and

respondents in D.V.C. In those circumstances, this Court cannot exercise its jurisdiction to quash the proceedings under Section 482 Cr.P.C. as held in **Giduthuri Kesari Kumar and ors. v. State of Telangana and ors.**¹, wherein this Court 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 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’.*

¹ 2015 (2) ALD (Crl.) 470

6. In **Ashish Dixit and Others v. State of Uttar Pradesh and another**², also same principle was laid down.

7. In view of the principle laid down in the above judgments, this Court cannot exercise the jurisdiction under Section 482 Cr.P.C. to quash the proceedings in D.V.C. since there was subsisting domestic relationship between the parties as defined under Section 2(f) of the Act. Therefore, I find no merits in the criminal petition to quash the proceedings.

8. Accordingly, the criminal petition is dismissed at admission stage.

9. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

22nd November 2016

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² (2013) 4 SCC 176