

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15022 OF 2016

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') to quash the proceedings in DVC No.27 of 2014 pending before the I Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District.

The first petitioner is the husband, Petitioners 2 and 3 are in-laws, of the second respondent/ *de facto* complainant. Thus, there is domestic relationship between the petitioners and the second respondent as defined under Section 2(f) of Protection of Women from Domestic Violence, 2005 .

In **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER¹** 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 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

¹ 2015(2) ALD (CrL.) 470

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, this Court cannot exercise power under Section 482 Cr.P.C. to quash the proceedings in DVC No.27 of 2014 except in the absence of domestic relationship, between the petitioners and the *de facto* complainant, as defined under Section 2(f) of the Act.

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. 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.

² (2013) 4 SCC 176

- 3 -

In view of the principles 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.

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: 24.10.2016
BV

