

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.4501 OF 2016

ORDER:

This Criminal Petition under Section 482 Cr.P.C. is filed by the petitioner herein/respondent in D.V.C.No.1 of 2016 pending on the file of Judicial Magistrate of First Class, Pathikonda to quash the proceedings in the said D.V.C. on the following grounds:

(i) The 2nd respondent herein (wife) herself deserted the company of the petitioner herein (husband) without reasonable cause and the petitioner filed a petition under Section 9 of the Hindu Marriage Act, 1955 (for short, 'the Act') for restitution of conjugal rights, which was decided in favour of the petitioner.

(ii) The averments made in the D.V.C. are the allegations made in the counter in a petition filed under Section 9 of the Act, which were disbelieved by the Principal Judge, Family Court, Ballari and therefore, based on the same contentions, the Domestic Violence Case (DVC) is not maintainable.

(iii) The allegations made in the DVC are vague and the claims made therein under various heads are exorbitant and filing of application with the same allegations, which were raised in the counter in a petition filed under Section 9 of the Act, is nothing but abuse of process of the Court and therefore, sought for quashing the proceedings in D.V.C.No.1 of 2015 pending on the file of the Judicial Magistrate of First Class, Pathikonda.

2. The 2nd Respondent filed counter denying the material allegations while admitting filing of a petition under Section 9 of the

Act for restitution of conjugal rights and allowing the petition, but contended that the 2nd respondent filed an appeal vide M.F.A.No.100347 of 2016 pending on the file of High Court of Karnataka, Circuit Bench at Dharwad. It is further contended that the 2nd respondent left the company of the petitioner only when she overheard the petitioner and in-laws about their plan to kill her in a room and went to her parents house at Ramachandrapuram Village without taking her children since she herself could escape with much difficulty. Thus, the reason for her separate living is that there is a threat to her life. It is also contended that the proceedings in D.V.C. No.1 of 2016 are purely civil in nature and therefore, the petitioner is not entitled to invoke the jurisdiction of this Court under Section 482 Cr.P.C. It is further contended that the relief claimed in the petition is totally distinct from the relief in other proceedings and consequently the grounds urged in the petition filed by the petitioner are not sufficient to quash proceeding and prayed to dismiss the petition.

3. During hearing, Sri Karanam Ramesh, learned counsel for the petitioner reiterated the contentions raised in the petition and drawn the attention of this Court to the allegations made in the complaint, dated 04.08.2015, to the Protection Officer by 2nd respondent and also the finding recorded by the Principal Judge, Family Court, Ballari in Matrimonial Case No.108 of 2015 regarding desertion of petitioner without any reasonable cause by the 2nd respondent and when the 2nd respondent made an identical allegations in the Matrimonial Case, which was turned down by the Court, on the basis of the same

allegations, the petitioner is not entitled to file D.V.C., which is abuse of process of the Court and thereupon, this Court can exercise the jurisdiction under Section 482 Cr.P.C. and quash the proceedings in the said D.V.C.

4. He also contended that no details regarding the dates with reference to subjecting her to cruelty are disclosed in the entire complaint and in the absence such details, the petition is not maintainable based on omnibus allegations in the complaint to the Protection Officer and has relied upon three judgments in support of this contention viz., in **Somarapu Satyanarayana V. Vijaya Lakshmi and another¹**; **Giduthuri Kesari Kumar and others V. State of Telangana and others²** and in **Inderjit Singh Grewal V. State of Punjab and another³**. Basing on the principles laid down in the above judgments, it is contended that when the Court found that filing of D.V.C. itself is abuse of process of Court, the Court can exercise the jurisdiction under Section 482 Cr.P.C. and quash the proceedings.

5. Per contra, learned Senior Counsel Sri K.G.Krishna Murthy, appearing for respondent No.2 contended that the proceedings in Matrimonial Case have not attained finality in view of pendency of the appeal and therefore, based on the findings recorded by the Principal Judge, Family Court, Ballari in Matrimonial case, the present proceedings in D.V.C.No.1 of 2016 cannot be quashed as the allegations made in the counter in the Matrimonial Case and the averments in the DVC are identical. Moreover, the reliefs claimed in

¹ 2015 (1) ALT (CrI.) 306 (A.P)

² 2015 (2) ALD (CrI.) 470 (AP)

³ (2011) 12 Supreme Court Cases 588

the petition filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'Act, 2005') are civil in nature and drawn the attention of this Court to the objects and reasons for enacting the Act i.e., Protection of Women from Domestic Violence Act and contended that it is not a ground to quash the proceedings since Section 482 Cr.P.C. cannot be invoked in civil proceedings and in support of his contention placed reliance on the judgment of the Apex Court reported in **Kunapareddy @ Nookala Shanka Balaji V. Kunapareddy Swarna Kumari and another**⁴. He also contended that the power under Section 482 Cr.P.C. cannot be exercised in a casual manner and such power has to be exercised sparingly in exceptional circumstances and drawn the attention of this Court to a judgment of this Court in **State of Bihar V. Rajendra Agrawalla**⁵.

6. Considering rival contentions and perusing the material available on record, the points that arises for consideration are:

- 1) Whether the proceedings under Protection of Women from Domestic Violence Act are civil in nature, if so, whether the power under Section 482 Cr.P.C. can be invoked and under what circumstances?
- 2) Whether the allegations made in the complaint would disclose any violation of the provisions of Protection of Women from Domestic Violence Act, if not, proceedings in a petition filed under Section 12 of the D.V.C Act pending on the file of Judicial Magistrate of First Class, be quashed?

⁴ 2016 SCC Online SC 531

⁵ (1996) 8 Supreme Court Cases 164

7. **POINT Nos.1 and 2:**

The relationship between the petitioner and the 2nd respondent is husband and wife and the petitioner filed a Matrimonial Case No.108 of 2015 on the file of Principal Judge, Family Court, Ballari under Section 9 of the Act for restitution of conjugal rights on the ground that the 2nd respondent herself left the company of the petitioner without any justifiable or reasonable cause. The 2nd respondent filed counter raising several contentions including subjecting her to cruelty etc., but the learned Judge negated the contention of the 2nd respondent in the said Matrimonial Case and ordered for restitution of conjugal rights by granting a decretal order in favour of the petitioner. The main endeavour of the petitioner is that when the 2nd respondent raised an identical contention, which she raised in the D.V.C. and those contentions were disbelieved by the Principal Judge, Family Court, Ballari, she cannot maintain the present petition and it amounts to abuse of process of Court.

8. The counter copy is not placed on record, but a copy of the order, dt. 30.11.2015, passed by the Principal Judge, Family Court, Ballari in Matrimonial Case No.108 of 2015 is placed before this Court. In the said order, there is a reference about the contentions raised by the 2nd respondent explaining reason for her separate living, but the Principal Judge, Family Court, Ballari disbelieved the alleged plan to kill the 2nd respondent on a particular day on the ground that mother of the petitioner was aged about 80 years and suffering from Asthama problem and thereby she might not have indulged in that

conspiracy along with petitioner. Similarly at para 8 of the said judgment it is observed as under:

“The claim of the petitioner that the respondent left the matrimonial home for without reasonable excuses remains un rebutted as the respondent did not able to produce any material to prove that the petitioner was ill-treating her with demands of dowry or any other kind of illegal demands. The petitioner and the respondent lived together for a period of more than 7 years and they have two children admittedly the children are suffering with neuron problems a and eye sight problems respectively and if there are any minor discrepancies between the petitioner and the respondent in their matrimonial relationship that can be resolved and sorted out by sitting together and preparing any agenda towards their future life no purpose will be served by living separately and by discarding the two minor kids. So, in order to save one marital life also. It is necessary to direct the respondent to return to the matrimonial home and to restitute their conjugal rights. So, under these circumstances, the petitioners is able to prove that the respondent has left the matrimonial home for without any reasonable excuses and hence I tried Point No.1 in the affirmative. Accordingly I treat the Point No.1 in the affirmative.”

The Principal Judge, Family Court, Ballari, disbelieved the contention of the 2nd respondent that her mother-in-law conspired with the petitioner to kill her. None of the contentions, which the 2nd respondent raised in this petition, are believed by the Principal Judge, Family Court, Ballari in the Matrimonial Case. Even if those contentions are identical and the order and findings recorded by the Principal Judge, Family Court, Ballari, have not attained finality as the appeal is pending before the High Court of Karnataka, Dharwad. Hence, it is not a ground to quash the proceedings in D.V.C. at this stage.

9. The main endeavour of the learned counsel for the petitioner is that when identical contentions are raised in the Matrimonial Case and they were turned down by the Principal Judge, Family Court, Ballari, filing the present petition is abuse of process of the Court.

10. No doubt, the 2nd respondent raised some of the contentions in the D.V.C., which were raised in the petition filed under Section 9 of the Act and they were not accepted by the Judge, Family Court, Ballari. But against the findings recorded by the Principal Judge, Family Court, Ballari, an appeal is pending, admittedly. In any view of the matter, learned counsel for the petitioner placed reliance on the judgment of **Giduthuri Kesari Kumar's case (2 supra)** where this Court held as follows:

“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 Sec. 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 down 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 law declared by this Court, this Court can exercise power under Section 482 Cr.P.C. only if the petitioner is arrayed as party to D.V.C without there being any domestic relationship as defined under Section 2 (f) of the Act or where the petitioner was acquitted for the same or identical allegations in any other proceedings.

11. But, here, no such criminal case was filed and the petitioner was not acquitted, but he was successful in Matrimonial Case No.108 of 2015 filed under Section 9 of the Act and against which an appeal is pending before the High Court of Karnataka. Even if the principle laid down in the above judgment is applied to the present facts of the case, there is undisputedly subsisting the domestic relationship as defined under Section 2(f) of the Act between the petitioner and the 2nd respondent, the petitioner was not acquitted in any case based on the identical or similar allegations made in D.V.C. Therefore, the judgment in **Giduthuri Kesari Kumar's case (2 supra)** is of no assistance to the petitioner to quash the proceedings exercising the powers under Section 482 Cr.PC.

12. Learned counsel for the petitioner drawn the attention of this Court to a judgment reported in **Somarapu Satyanarayana's case (1 supra)** where a question came up for consideration before this Court is that the maintenance payable to a person aggrieved. There the respondent and petitioner lived together for some time, but the relationship was not in the nature of marriage. Therefore, the Court held that when there is no subsisting domestic relationship as defined

under Section 2 (f) of the Act, the proceedings under D.V. Act are not maintainable and quashed the proceedings.

13. Even on this score also the present petition under Section 482 Cr.P.C., cannot be maintained as there is subsisting domestic relationship between the petitioner and the 2nd respondent.

14. Learned counsel for the petitioner further drawn the attention of this Court to **Inderjit Singh Grewal's case (3 supra)** contending that when an order of divorce was obtained by mutual consent under Section 13 (b) of the Act, filing application under Section 12 of Act, 2005 is nothing but abuse of process of Court. In the said judgment, the wife and husband approached the Court and obtained divorce by mutual consent under Section 13 (b) of the Act and it had attained finality. When such a decree of divorce by mutual consent was obtained, the question of subsisting the domestic relationship does not arise and on the date of the passing decree of divorce under Section 13 (b) of the Act, the relationship between the petitioner and the 2nd respondent/wife and husband or domestic relationship ceased to subsist. In such circumstances, the wife/respondent cannot entitle to file an application under Section 12 of the Act, 2005. Therefore, in those circumstances, the Apex Court concluded that a petition under Section 12 of the D.V.C Act is not maintainable and quashed the proceedings.

15. In the present case, domestic relationship is subsisting between the petitioner and the 2nd respondent and the petitioner himself filed an application under Section 9 of the Act seeking a direction against

the 2nd respondent to join with him to lead marital life on the ground that she voluntarily deserted the petitioner without any just or reasonable cause. Therefore, the judgments of **Giduthuri Kesari Kumar's case (2 supra)** and **Inderjit Singh Grewal's case (3 supra)** have no application to the present facts of the case.

16. Learned Senior Counsel Sri K.G.Krishna Murthy, for respondent No.2 contended that the reliefs under the Act, 2005 are really civil in nature and drawn the attention of this Court the statement of objects and reasons. But, I need not extract those objects and reasons to enact the Act, however, it is clear that the Act, 2005 is enacted only to provide civil remedies since Section 498-A IPC deals with penal provisions against the person, who subjected the wife to cruelty in different situations. The remedies available under the D.V.C. Act are purely civil in nature. Section 3 of the Act, 2005 defined the word domestic violence. Section 3 (d) (i) of the Act, 2005 deals with physical abuse, Section 3(d) (ii) of the Act, 2005 deals with sexual abuse and Section 3 (d) (iii) of the D.V.C Act deals with verbal and emotional abuse. Even according to this Section, any act or omission or conduct of the respondent will amount to domestic violence in certain circumstances and it includes causing physical abuse, sexual abuse, verbal and emotional abuse, which are also explained in this Section. Therefore, any act done by the person, which harms, injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse,

verbal and emotional abuse and economic abuse would amount to domestic violence.

17. Section 12 of the Act, 2005 provides procedure for obtaining orders for various reliefs. Sections 18 to 22 of the Act, 2005 deal with various reliefs that can be claimed by the person aggrieved under the provisions of the Act, 2005.

18. In a similar circumstance, the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's case (4 supra)** had an occasion to deal with the nature of the proceedings with reference to the objectives and reasons of the Act, 2005 and held that the proceedings under the Act, 2005 are civil in nature. In the facts of the above judgment, the D.V. case, which was filed before the II Additional Judicial Magistrate of First Class, West Godavari District, Eluru, filed a petition for amendment under Section 12 of the Act and the Court ordered the said petition. Aggrieved by the same, a petition under Section 482 Cr.P.C. was filed to quash the proceedings in the said D.V. petition and this Court allowed the petition by an order, dated 17.04.2009 thereby quashed the petition filed under Section 12 of the Act, 2005. Aggrieved by the same, the respondents filed SLP (Crl.) before the Supreme Court in Crl.A.No.516 of 2016. But the Supreme Court reversed the order of this Court restoring the order of JMFC on the ground that the nature of proceedings under Act, 2005 are purely civil in nature and therefore, the same cannot be quashed exercising the jurisdiction under Section 482 Cr.P.C.

19. Recent judgment of the Apex Court is totally inconsonance with the principles laid down in **Giduthuri Kesari Kumar's case (2 supra)** referred to supra. The law is well settled as on today when proceedings under Act, 2005 are civil in nature, this Court cannot exercise the jurisdiction under Section 482 Cr.P.C. unless there exists no domestic relationship as defined under Section 2 (f) of the Act, 2005 or where the petitioner was acquitted on the basis of identical or similar allegations by any competent Court, but not in any other circumstances. Therefore, the proceedings under the Act, 2005 are civil in nature and this Court cannot exercise power under Section 482 Cr.P.C. to quash the proceedings except in two circumstances stated above.

20. Learned Senior Counsel Sri K.G.Krishna Murthy for 2nd respondent would contend that this Court can exercise power under Section 482 Cr.P.C. sparingly in exceptional circumstances and drawn the attention of this Court to the judgment of the Apex Court in **State of Bihar V. Rajendra Agrawalla**⁶. No doubt, the extraordinary inherent power under Section 482 Cr.P.C. can be exercised sparingly in exceptional circumstances, more particularly in the seven circumstances pointed out by the Apex Court in **State of Haryana vs. Bhajan Lal**⁷ as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

⁶ (1996) 8 Supreme Court Cases 164

⁷ (1992 Supp.(1) SCC 335)

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

21. In similarly circumstances in ***R.P. Kapur Vs. State of Punjab***⁸,

the Apex Court laid down the following principles:-

“(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

⁸ AIR 1960 SC 866

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”

22. In any view of the matter, while exercising the power under Section 482 Cr.P.C., this Court cannot meticulously analyse the entire evidence on record to decide whether the case ends in conviction or acquittal and at best for limited purpose of deciding whether the allegations made in the complaint would constitute an offence or not, the Court has to advert to the documents produced along with the complaint or F.I.R., etc. At this stage, when the allegations made in the D.V.C.No.1 of 2016 constitute violation of provisions of the Act, 2005 this Court cannot exercise under Section 482 Cr.P.C.

23. In view of my foregoing discussion, I find that the proceedings under the Act, 2005 are purely civil in nature, the remedies provided therein also civil in nature, except the proceedings initiated under Section 31 (2) of the Act, 2005 therefore, this court cannot exercise power under Section 482 Cr.P.C. to quash the proceedings. The point is held against the petitioner and in favour of 2nd respondent.

24. **POINT NO.3:**

The other contention raised before this Court is that the allegations made in the D.V.C. are vague and those allegations are not

sufficient to grant any of the reliefs and that the reliefs claimed by the 2nd respondent are exorbitant. But, a bare look at petition submitted by the 2nd respondent on 04.08.2015 to the Protection Officer discloses that she was subjected to domestic violence and she referred to various dates of incidents of domestic violence. Therefore, there is no vagueness in the allegations in the petition submitted by the 2nd respondent to the Protection Officer and even otherwise that is not a ground to quash the proceedings in view the judgments referred supra.

25. The other contention is that the claims made are exorbitant and excessive. But, this Court while deciding the petition under Section 482 Cr.P.C. cannot decide whether the reliefs claimed by the petitioner are excessive or exorbitant. Therefore, I find no ground to quash the proceedings under Section 482 Cr.P.C., in a pending D.V.C.No.1 of 2016 filed by the 2nd respondent. Accordingly, Point No.2 is held against the petitioner and in favour of respondent No.2.

26. In view of findings on point Nos.1 to 3, I find no subsistence in the contention of the learned counsel for the petitioner to quash the proceedings exercising the power under Section 482 Cr.P.C.

27. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M.SATYANARAYANA MURTHY, J

DECEMBER 05, 2016
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION No.4501 OF 2016

Date: 05.12.2016

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