

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.14624 OF 2016

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 to quash the proceedings in DVC No.53 of 2014 pending before the Special Mobile Magistrate of First Class, Guntur, on various grounds mostly contending that the petitioner is only a tenant in occupation of portion of the house, but impleaded as a party to the domestic violence case and there was no domestic relationship as defined under Section 2(f) of Protection of Women From Domestic Violence Act, 2005 (for short 'the Act'). Therefore, the proceedings initiated against her under the Act are not maintainable, and sought for quashment of the proceedings.

Though there is no domestic relationship as defined under Section 2(f) of the Act, fortunately, this Court accepted such contention for application of provisions of Criminal Procedure Code, more particularly, Section 482 Cr.P.C. to quash the proceedings.

In **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER**¹ 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

¹ 2015(2) ALD (CrL.) 470

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 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, when there is no domestic relationship as defined under Section 2(f) of the Act, the petitioner can seek quashment of proceedings. Therefore, in view of the Judgment of this Court referred to above, the petition sought for quashment of proceedings under the Act is maintainable as the petitioner contending that there is no domestic relationship between the petitioner and the second respondent/ de facto complainant before the Magistrate.

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

² (2013) 4 SCC 176

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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.

If the principles laid down in the above two judgments are applied to the present facts of the case, this Court can direct the Magistrate to proceed against the persons with whom the second respondent has got domestic relationship as defined under Section 2(f) of Act. Therefore, the proceedings in DVC No.53 of 2014 pending before the Special Mobile Magistrate of First Class, Guntur, against the petitioner are quashed exercising the jurisdiction under Section 482 of Cr.P.C.

Accordingly, the criminal petition is allowed.

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

M. SATYANARAYANA MURTHY, J

Date: 19.10.2016
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