

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16089 OF 2016

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. to quash the proceedings in D.V.C.No.79 of 2016 pending on the file of IV Metropolitan Magistrate, Erramanzil, Somajiguda, Hyderabad, for the offence punishable under Section 13(1) of the Dowry Prohibition Act (herein after referred to as "the Act") on the ground that first petitioner filed a divorce petition before Delhi High Court in 2011 and it was transferred to Judge Family Court, Secunderabad and numbered as O.P.No.141 of 2013 pending for trial and second respondent who is the wife of first petitioner filed Maintenance Case No.76 of 2014 which is pending.

She also lodged a complaint which is registered as a case in Cr.No.175 of 2014 against all the petitioners for the offences punishable under Sections 498-A of I.P.C. and Sections 4 and 6 of the Act and after investigation, Investigating Agency filed charge sheet, the court numbered it as C.C.No.193 of 2015 pending for trial and she also lodged another complaint with Women Police Station, Begumpet, Hyderabad which is registered as a case in Cr.No.38 of 2016 for the offence punishable under Section 406 and the same is pending. Now the petitioners filed present D.V.C. and filing of present petition is abuse of process of court and by exercising jurisdiction under Section 482 Cr.P.C. this court can quash the proceedings.

Learned counsel for the petitioners during hearing drawn the attention of this court to several proceedings pending before this court and requested to quash the proceedings.

Undisputedly, the 1st petitioner who is the husband of 2nd respondent who filed divorce petition pending on the file of Judge, Family Court, thus the marital relationship between the first petitioner and the second respondent is still subsisting. Respondent Nos.2 and 3 are in-laws, 4 and 5 are the brother and his wife. Thus there exists a domestic relationship as defined under Section 2 (f) of the Act and it is an undisputed fact in view of the pendency of O.P.No.141 of 2013 on the file of Judge, Family Court, Secunderabad.

Present petition is filed under Section 482 of Cr.P.C. to quash the proceedings in D.V.C.No.79 of 2016 while admitting the subsisting domestic relationship with the offence under Section 2 (f) of the Act between the petitioners and second respondent but in view of filing of several criminal cases and civil cases etc., the petitioners are not entitled to prosecute the present proceedings since it is abuse of process of the court.

Section 3 of the Act deals with various types of domestic violence and no mandatory procedure is prescribed under Section 3 of the Act to be followed by the court. However, it is evident from the record that several proceedings are pending in different courts which are pending for trial or enquiry, when a domestic relationship as defined under Section 2 (f) of the Act is admitted, this court can not exercise jurisdiction under Section 482 Cr.P.C. in view of law

declared in *GIDUTHURI KESARI KUMAR AND OTHERS v. STATE OF TELANGANA AND ANOTHER* ⁽¹⁾ whereunder this court held as follows:

"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."

Thus the law declared by the court, it is clear that when there was no subsisting domestic relationship between the parties or where the petitioners were acquitted for the similar allegations or identical allegations leveled in the domestic proceedings in a different proceedings.

But herein all the cases referred above are pending for trial or enquiry and no cases attained finality, in such a case, this court cannot exercise power under Section 482 Cr.P.C. in view of the law laid down in the decision referred *GIDUTHURI KESARI KUMAR AND OTHERS v. STATE OF TELANGANA AND ANOTHER* (1st cited).

Thus it is clear from the law declared by the court that this court cannot exercise power under Section 482 Cr.P.C.

Mere filing of number of cases is not a ground to quash the proceedings to exercise inherent powers under Section 482 of Cr.P.C.

¹ 2015 (2) ALD (Crl.) 470

However, the orders if any passed in M.C.No.76 of 2014 and in C.C.No.193 of 2016 if passed on mere allegation, it can be revived if ended in acquittal. But at this stage, I find no ground to exercise inherent power of jurisdiction under Section 482 Cr.P.C. in quashing the proceedings in D.V.C. No.79 of 2016 and accordingly this Criminal Petition is liable to be dismissed.

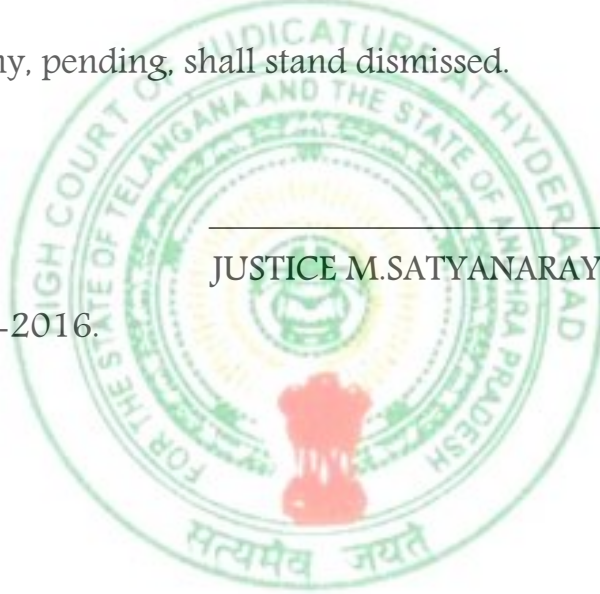
In the result, this Criminal Petition is dismissed with the above observation.

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

JUSTICE M.SATYANARAYANA MURTHY

Dated 21-11-2016.

Dvs.



HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 21-11-2016

Dvs