

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15548 of 2016

ORDER :

This criminal petition is filed by the petitioners 1 to 3 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.8 of 2016 on the file of the Additional Judicial Magistrate of First Class-cum-Excise Cases, Kavali, SPSR Nellore District.

2. The petitioners are husband and in-laws of the de facto complainant-2nd respondent herein. The 2nd respondent filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the 'Act') claiming reliefs under Sections 18 to 22 of the Act.

3. The relationship between the petitioners and the 2nd respondent is not in dispute. The only contention before this Court is that the petitioners 2 and 3 never lived together in a shared household and thereby there is no subsisting domestic relationship as defined under Section 2(f) of the Act. But, the language used in Section 2(f) of the Act is clear that living together by marriage or in the nature of marriage or consanguinity or living together in a shared household, the word 'or' indicates in the section separates each of the relationship and therefore living together in a shared household is held by virtue of marriage or etc., is not required, it is an independent one. Here, by virtue of the marriage a domestic relationship is created between the

petitioners and the person aggrieved. Therefore, there is a subsisting domestic relationship between the parties as defined under Section 2(f) of the Act.

4. The jurisdiction under Section 482 of Cr.P.C. can be invoked only in cases of where there is no subsisting domestic relationship, but not otherwise. A similar question came up before this Court 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*

¹ 2015 (2) ALD (Crl.) 470

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’.

5. In **Ashish Dixit and Others v. State of Uttar Pradesh and another**², the Court held that when a petition is filed under Section 482 Cr.P.C. on the ground that there is no subsisting domestic relationship, the Court can quash the proceedings.

6. In view of the principle laid down in the above judgments, it is clear that Section 482 Cr.P.C. has no application to cases filed under the Protection of Women from Domestic Violence Act, if there is subsisting domestic relationship between the parties. Therefore, in view of the law declared by this Court and Apex Court, this Court cannot exercise jurisdiction under Section 482 Cr.P.C. in view the present facts of the case and consequently the criminal petition is liable to be dismissed.

7. Accordingly, the criminal petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

10th November 2016

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² (2013) 4 SCC 176