

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.17115 of 2016

ORDER:

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973, is filed by the petitioners to quash the proceedings in DVC No. 105 of 2016 on the file of the Judicial Magistrate of First Class, Special Mobile Court at Eluru, West Godavari District.

2. The respondent No.2 herein filed a petition under Section 12 read with Sections 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, claiming various reliefs.

3. During hearing, Sri N.V.Anantha Krishna, learned counsel for the petitioners admitted that there is domestic relationship between the petitioners 1 to 4 and the 2nd respondent as defined under Section 2(f) of the Act, but requested to dispense with the appearance of the petitioners before the Court below in connection with DVC No. 105 of 2016.

4. The request of the petitioners is squarely covered by the judgment of this Court in *Giduthuri Kesari Kumar and others Vs. State of Telangana and another*¹, wherein, this Court, relying on the earlier judgments, in paragraph No.14, held 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

¹ 2015 (2) ALD (Cri.) 470

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 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.

5. In view of the principle laid down in the above referred judgment, this Court need not pass any order dispensing with the presence of the petitioners before the Court below in connection with DVC No. 105 of 2016, since their appearance cannot be insisted by the Magistrate on each and every date of adjournment in the proceedings under the Protection of Women from Domestic Violence Act, 2005. Therefore, the Court below is directed to follow the guidelines issued by this Court in *Giduthuri Kesari Kumar's* case *supra* and decide the matter in accordance with the law.

6. With the above directions, this petition is disposed of at the stage of admission. Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

M. Satyanarayana Murthy, J

27th December, 2016

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