

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.2647 of 2011

ORDER:

This criminal petition is filed seeking for quash of proceedings in D.V.C.No.4 of 2010 on the file of the Special Mobile Judicial Magistrate of First Class at Machilipatnam.

2. Heard learned counsel for the petitioner and learned Public Prosecutor. None appears for the 1st respondent in spite of notice.

3. The case is filed under the provisions of the protection of Women from Domestic Violence Act. The proceedings under which are civil in nature except for Section 31, which prescribes punishment for breach of protection order.

4. The contention of the learned Public Prosecutor is that quash petition is not maintainable in DVC in view of the ratio laid down by this Court in a judgment reported in *Gaddameedi Nagamani vs. The State of Telangana*¹, wherein at paragraph 17 it was held as follows:

“17. Undisputedly, more than three expressions of different Single Benches of this Court held, if not also by referring to Section 29 and also referring to clause (f) of State of Haryana v. Ch.Bhajan Lal, that there is a statutory and substantial, besides efficacious remedy available under Section 29 of the Act. Thereby quash proceedings are not automatically sustainable. It is important to note from one of the guidelines in Bhajan Lal (supra) that where there is a specific provision in the Code or the concerned Act,

¹ 2015(2) ALD (CrI.) 764

providing efficacious redress for grievance of the aggrieved party, quash proceedings are not maintainable under Section 482 Cr.P.C. to invoke. From this proposition, needless to say, the expression relied upon of M/s.Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors., it was held that an accused can approach the High Court under Section 482 Cr.P.C. or Articles 226 or 227 of the Constitution of India. Learned counsel for the petitioners by placing reliance on it want to impress the Court that when the constitutional remedies available under Articles 226, 227 of the Constitution of India or Section 482 Cr.P.C. equally irrespective of Section 29 of appeal remedy though statutory and efficacious, Section 482 Cr.P.C. proceedings are maintainable. In fact that expression is by giving approval to the expression and the guidelines of Bhajan Lal (surpa) and not even explaining much less dissenting to the guidelines. Undisputedly, guidelines of Bhajan Lal (supra) still rule the field as law of land under Article 141 of the Constitution of India.”

5. Hence, in view of the above, the criminal petition is not maintainable. However, the petitioners seek for dispensation of their presence before the court below. The petitioners are permitted to file a petition under Rule 37 of the Criminal Rules of Practice and under Section 126(2) or Section 205 of the Code of Criminal Procedure, 1973, to represent through special Vakalat or through Advocate.

With the above observations, the criminal petition is disposed of. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

November 6, 2017
LMV