

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8784 OF 2017

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash all further proceedings against the petitioners in D.V.C. No.13 of 2017 on the file of Additional Junior Civil Judge – cum – Additional Judicial Magistrate of First Class, Chirala.

Sri Nimmagadda Satyanarayana, learned counsel for the petitioners, contended that there is absolutely no iota of truth in the allegations made in the complaint and the victim is cantankerous lady, hence proceeding against the petitioners herein is nothing but abuse of process of Court, and prayed to quash the proceedings in D.V.C.No.13 of 2017 on the file of Additional Junior Civil Judge – cum – Additional Judicial Magistrate of First Class, Chirala.

Petitioner No.1 herein is the husband of respondent No.2, petitioner Nos.2 and 3 herein are the in-laws of respondent No.2, petitioner Nos.4 and 5 are the children of petitioner Nos.2 and 3.

The present petition is filed under Section 482 of Cr.P.C. while admitting the domestic relationship as defined under Section 2 (f) of the Protection of Women from Domestic Violence Act, 2005 (for short, hereinafter referred to as "the Act") between the petitioner No.1 herein and respondent No.2.

Undisputedly, there exists domestic relationship between the petitioner No.1 and the respondent No.2 being husband and wife as defined under Section 2 (f) of the Act.

In “**Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.**”¹ it is 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 by the parties, despite receiving notices, can conduct enquiry and pass ex parte order based on 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 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.

Thus, the scope of interference in the proceedings under the Act is limited.

In view of the principle laid down in the above judgment, it is clear that Section 482 Cr.P.C. has no application to cases filed

¹ 2015 (2) ALD (Crl.) 470 (AP)

under the Protection of Women from Domestic Violence Act if there exists domestic relationship between the parties. Moreover, the proceedings under the Protection of Women from Domestic Violence Act are civil in nature and the power under Section 482 of Cr.P.C. can be exercised only when there exists no domestic relationship or any action initiated under Section 28 (2) of the Act but not in all other circumstances. Therefore, I find no ground to quash all further proceedings against the petitioners in D.V.C. No.13 of 2017 on the file of Additional Junior Civil Judge – cum – Additional Judicial Magistrate of First Class, Chirala. Consequently, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed. No costs. However, the Magistrate concerned is directed to follow the principles laid down in “**Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.**” (referred supra).

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

18.09.2017
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