

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.4406 OF 2010

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in D.V.C.No.8 of 2010 on the file of the Judicial First Class Magistrate, Suryapet, Nalgonda District.

For the sake of convenience, the first petitioner and first respondent herein will hereinafter be referred as husband and wife respectively.

O.P.No.105 of 2008 is filed by the husband under Section 13(1)(ia) of the Hindu Marriage Act for dissolution of the marriage between the husband and wife. Thereafter, wife filed another petition O.P.No.29 of 2007 under Section 9 of Hindu Marriage Act, 1955, for restitution of conjugal rights. On 20.01.2010, Senior Civil Judge at Suryapet, dismissed O.P.No.29 of 2007 filed by the wife and allowed O.P.No.105 of 2008 by granting divorce to the husband during the marriage, on the ground of cruelty. But, the present D.V.C.No.8 of 2010 is filed after dismissal of O.P.No.29 of 2007 filed by the wife and allowing O.P.No.105 of 2008 filed by the husband. It is submitted in the petition that filing of present criminal petition is abuse of process of Court as the wife lodged complaint for the offence punishable under Section 498-A on same allegation which ended in acquittal and prayed to quash the proceedings in D.V.C.No.8 of 2010.

During hearing, learned counsel for the petitioners reiterated the allegations made in the complaint, while contending that very filing of D.V.C No.8 of 2010 is an abuse of process of the Court, since the wife suppressed the factum of divorce granted by the Trial Court while dismissing her petition under Section 9 of Hindu Marriage Act and thereby, the proceedings are liable to be quashed and prayed to quash the proceedings.

Whereas, learned counsel for the first respondent admitted about dissolution of marriage between the husband and wife in O.P.No.105 of 2008, while dismissing O.P.No.29 of 2007 filed under Section 9 of Hindu Marriage Act filed by the wife for restitution of conjugal rights. However, two appeals are preferred against those orders before this Court and they are admitted in C.M.A.Nos.236 & 276 of 2010, copy of the order is also produced before this Court, where this Court directed both parties to appear for conciliation before this Court on 12.10.2011. Therefore, the marital relationship is still subsisting, in view of the pendency of C.M.A.Nos.236 & 276 of 2010, but did not disclose whether any stay was granted by this Court or not. The order passed by the Trial Court in O.P.No.105 of 2008 and O.P.No.29 of 2007 is only subject to the final result in C.M.A.Nos.236 & 276 of 2010. Therefore, as long as there exists domestic relationship, as defined under Section 2(f) of the Act, the petition can be maintained under Section 12 of the Act and prayed for dismissal of the present application.

Undisputedly, O.P.No.105 of 2008 was allowed by dissolving the marriage between the husband and wife. However, it is pending before this Court in appeal and the findings whatever recorded in O.P.No.105 of 2008 have not attained finality. Therefore, on the ground that the similar contention was raised before the Senior Civil Judge at Suryapet in O.P.No.105 of 2008 and it was struck down by the Court, the first respondent maintain D.V.C.No.8 of 2010 is not acceptable, in view of the pendency of the appeal. As long as the decree of divorce has not attained finality, the domestic relationship as defined under Section 2(f) of the Act will not cease to exist and when such relationship is subsisting, wife is entitled to file D.V.C, subject to satisfying the requirements under Protection of Women from Domestic Violence Act.

An identical question came up for consideration before this Court in **“Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.”**¹ and this Court laid down certain guidelines to quash the proceedings in D.V.C. Case in paragraph 14, which is as follows:

“14) To sum up the findings:

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 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

¹ 2015 (2) ALD (CrL.) 470 (AP)

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.”

In view of the guideline no. 2 in **Giduthuri Kesari Kumar** case, when the competent court has already acquitted the respondent based on same allegations or identical allegations, which are made in the D.V. Case, the respondent can seek quashment of proceedings, since continuation of the proceedings in such instances amounts to abuse of process of Court.

Here, the petitioners contended that O.P.No.29 of 2007 was filed based on the same allegations and after full-fledged trial he was found not guilty and acquitted, copy of the judgment is enclosed. In such a case, the Court can exercise its inherent power under Section 482 Cr.P.C to quash the proceedings in D.V.C.No.8 of 2010. Hence, the proceedings in D.V.C.No.8 of 2010 on the file of the Judicial First Class Magistrate, Suryapet, Nalgonda District are hereby quashed, as the petitioners were already acquitted for

the offences punishable under Section 498-A IPC & Sections 3 & 4 of Dowry Prohibition Act, based on identical or similar allegations made in D.V.C.No.8 of 2010.

In the result, the criminal petition is allowed by quashing the proceedings in D.V.C.No.8 of 2010 on the file of the Judicial First Class Magistrate, Suryapet, Nalgonda District.

Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Dated:10.04.2017

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