

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL PETITION No.365 OF 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the Code') requesting the Court to quash the proceedings in Domestic Violence Case No.5 of 2015 on the file of Additional Judicial Magistrate of First Class, Kandukur, Prakasam District.

2. The petitioners are arrayed as respondents 2 to 7. The husband of the 2nd respondent/*de facto* complainant is not a party to the present petition.

3. The complaint filed by the 2nd respondent, which was forwarded by the Protection Officer/Project Director, District Women & Child Welfare Development Agency, Ongole, was registered under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V. Act') read with Sections 18, 19 & 20 of the D.V. Act against the respondents 1 to 7. Summons were also issued to the complainant and respondents 1 to 7.

4. Sri K. Venkatesh Gupta, learned counsel for the petitioners, would submit that the petitioners never lived in a shared household; the 2nd respondent and her husband were living separately at Hyderabad; even prior to marriage, husband of the 2nd respondent used to live at Chanda Nagar, Hyderabad by doing coolie works; that the petitioners 1 & 2 are aged about

65 years and continuation of proceedings against them for their no fault is causing mental agony; the petitioners 3, 4 & 6 are married and they are living with their families separately at Hyderabad and Aadhaar cards filed would prove the same and with a *mala fide* intention to harass the petitioners, the 2nd respondent/*de facto* complainant invented frivolous allegations against them and filed the complaint.

5. Perused the complaint averments. Of course, every act constituting harassment by the petitioners herein have been detailed meticulously. These allegations against the petitioners even at this stage have to be construed as making out a *prima facie* case.

6. Learned counsel for the petitioners would rely on the ruling of the Hon'ble Supreme Court in **S.R. Batra v. Taruna Batra**¹ in support of his submission that the wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by him or is it a joint family property of which husband is a member. It is his submission that Section 2 (s) of the D.V. Act would define the expression 'shared household'. Therefore, his submission is to quash the proceedings so far as the petitioners in Domestic Violence Case are concerned. The Hon'ble Supreme Court had an occasion to deal with the matter at the appellate stage in Civil Appeal No.5837 of 2006 (*S.R. Batra v. Taruna Batra*) arising out of the judgment rendered by the

¹ 2007 (2) ALD (SC) 66

Delhi High Court, on merits, the decision was rendered, after full-fledged trial by the primary court.

7. This Court in **Gaddaameedi Nagamani v. State of Telangana**² (Criminal Petition No.22371 of 2015, dt. 17.7.2015) while dealing with quash proceedings under the provisions of the Domestic Violence Act held thus:

“19. Once such is the case, even taking of cognizance and numbering of D.V.C. is within the meaning of the order used in Section 29 of the Act and against which once there is an efficacious appeal remedy under Section 29 of the Act and from State of Haryana v. Ch. Bhajan Lal guidelines it is very clear that once there is an alternative and efficacious remedy, but for that, the proceedings under Section 482 Cr.P.C. are not sustainable. Hence, the office objection holds good thereby all the applications are liable to be rejected.”

8. In **Giduthuri Kesari Kumar v. State of Telangana**³ a learned Single Judge of this Court, while summing up the findings, held thus:

“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 ex parte 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.

² 2015 (2) ALD (CrI.) 746 (A.P.)

³ 2015 (2) ALD (CrI.) 470 (A.P.)

(ii) 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 allegations which are identical to the ones leveled in the Domestic Violence Case, the respondents can seek quashment of the proceedings since continuation of the proceedings in such instances certainly amounts to abuse of process of Court.”

9. The present Domestic Violence Case is pending before the learned Magistrate and summons appear to have been ordered. In response to the same, the petitioners herein, who are respondents 2 to 7, are supposed to attend or has to enter their appearance. Therefore, the submission of the learned counsel for the petitioners that the petitioners never lived in a common shared household, respondent No.2 and her husband lived separately at Hyderabad and even prior to the marriage the husband of the 2nd respondent used to live at Chanda Nagar, Hyderabad, by doing coolie work are all the factual aspects, which require a thorough probe. Having regard to the application filed under Section 482 of the Code, it is difficult to accept the submissions in toto, without there being proof of the pleas put forth in the present petition by the petitioners.

10. Since it is stated in the petition that the petitioners 1 and 2, who are the respondents 2 & 3, in the Domestic Violence Case are old aged, and the petitioners 3, 4 & 6 are married, and the petitioner No.4 being co-sister of

the *de facto* complainant, their presence can be exempted till the conclusion of the proceedings in the Domestic Violence Case. However, in case, the learned Magistrate directs them to appear whenever their presence is necessary they are required to appear before the learned Magistrate.

11. With the above observations, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

Dt. 13-03-2017
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A. SHANKAR NARAYANA, J

