

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8354 OF 2017

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order in CrI.M.P.No.33 of 2017 in CrI.A.No.16 of 2017 on the file of II Additional District & Sessions Judge at Parvathipuram, dismissing the petition filed under Section 70(2) of Cr.P.C for recall of the warrant issued against the petitioner herein/A-5 in CrI.A.No.16 of 2017.

The petitioner herein/Accused No.5 is the respondent in D.V.C.No.5 of 2012 before the Additional Judicial Magistrate of I Class who lost his case, filed CrI.A.No.16 of 2017 before the file of II Additional District & Sessions Judge at Parvathipuram, under Section 29 of the Domestic Violence Act, 2005 (for short 'D.V.C Act'). But, for non-appearance, NBW was issued on 25.05.2017 . Thereafter, CrI.M.P.No.33 of 2017 was filed under Section 70(2) Cr.P.C to recall NBW issued against him 25.05.2017 and the same was dismissed.

The proceedings under D.V.C. Act are purely civil in nature and the Magistrate is conferred with powers under Section 28(2) of D.V Act shall issue notice to the parties for their first appearance for trial. In "***Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.***"¹ this Court laid down certain guidelines to quash the proceedings in D.V.C. Case in paragraph 14, which are 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

¹ 2015 (2) ALD (CrI.) 470 (AP)

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.”

In view of the guidelines of this Court in **Giduthuri Kesari Kumar¹** case, it is clear that the proceedings under D.V.C. Act are purely civil in nature and the Court 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, the Court can conduct enquiry and pass exparte order with the material available. In such case, invoking power by the Court below is illegal and therefore the order passed by the Court below is hereby set-aside, while allowing Crl.M.P.No.33 of 2017 in Crl.A.No.16 of 2017, with a direction to the II Additional District & Sessions Judge at Parvathipuram, to follow the guidelines issued by this Court in **Giduthuri Kesari Kumar¹** case.

With the above direction, the criminal petition is allowed.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:08.12.2017
SP