

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1444 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioners in D.V.C.No.01 of 2017 having been aggrieved of the orders, dated 20.03.2017, of the learned XIII Metropolitan Magistrate, Ranga Reddy, at L.B. Nagar, passed in Memo SR No.859 of 2017 in the said DV case.

2. I have heard the submissions of *Sri R.Janaki Ram*, learned counsel appearing for the petitioners, and of the learned Public Prosecutor representing the 5th respondent-State of Telangana, at the stage of admission.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The petitioners 1 and 2, who are mother and child, filed the afore-stated DV case against respondents 1 to 4 *inter alia* claiming that the 1st petitioner is the legally wedded wife of the 1st respondent and that the 2nd petitioner is their child. In the DV case, the following reliefs are sought: 'Monetary relief @ Rs.1,50,000/- per month, return of Stridhana of the 1st petitioner, return of gold jewellery, documents & other articles, arrears of maintenance in a sum of Rs.12,34,000/- from 06.02.2016 and compensation of Rs.2,22,50,000/-, besides costs. When the D.V case is at the stage of service of notices, the petitioners filed a memo before the Court below stating that when summons were taken to the permanent residential address of the 1st respondent at Hyderabad, it is noticed that the 1st respondent is living at USA, and that his address at USA is not known to the petitioners and that therefore, they may be permitted to serve notice on the 1st respondent by taking summons to the 2nd respondent, who is the GPA holder of the 1st respondent. However, the trial Court without entertaining the said memo returned the same with an endorsement as to how

the memo, with a request to serve notice on the 1st respondent through the GPA Holder, is maintainable. Aggrieved thereof, the petitioners filed the present revision case.

4. At the outset, it is to be noted that by the order impugned, the trial Court has not rejected the memo of the petitioners. The trial Court only returned the memo with an office objection as to its maintainability. When the memo is returned with an office objection of the Court and an opportunity was given to explain with regard to the maintainability of the memo, the petitioners ought to have re-submitted the memo with submissions as to the maintainability of the memo instead of approaching this Court by way of this revision case. In that view of the matter, this revision case is misconceived. However, on this ground, this Court is not inclined to dismiss the revision case, as the issue raised is only with regard to service of notices.

5. Learned counsel for the petitioners submit as follows: As per the rules framed under the Protection of Women from Domestic Violence Act, 2005, and the procedure contemplated under Order V of the Code of Civil Procedure, 1908, which is applicable to the case on hand, the summons can be served on the duly authorised agent of a party. In the case on hand, the 1st respondent appointed the 2nd respondent as his General Power of Attorney Holder by executing a Registered General Registered Power of Attorney, dated 13.06.2016, as he is presently residing in USA on H1-B VISA. Under the said power, the 2nd respondent is duly authorised by the 1st respondent to sign vakalats and pleadings on his behalf and enter appearance on his behalf and represent him in all civil, criminal and other proceedings before all Courts. Therefore, the trial Court ought to have entertained the memo filed by the petitioner and ought to have allowed the petitioner to serve notice on the 1st respondent by ordering issuance of summons to the 2nd respondent, who is the GPA Holder of the 1st respondent.

6. At the hearing, the learned counsel for the petitioners brought to the notice of the Court that a learned single Judge of this Court in the decision in *Giduthuri Kesari Kumar and others v. State of Telengana and others* [2016(2) ALD Crl. 470 (AP)] held as follows:

- 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 circumstances 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 levelled 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.

It was further brought to the notice of this Court that the above views of the learned single Judge are squarely under challenge in a proceeding pending before a Division Bench of this Court.

7. Be that as it may, in a matter of the instant nature, the Trial Court shall issue notice for the appearance of the respondent but shall not insist for the attendance of the respondent on the date of every hearing and may even dispense with the appearance of the respondent, in accordance with the procedure, or permit a duly authorised agent to appear on behalf of the respondent and represent the respondent in the proceeding or may even conduct an enquiry *ex parte*. However, in the considered view of this Court, in the first instance, service of summons shall be affected on the party concerned as the appearance of the party may be necessary on the date of first hearing unless the Court at the request of such party, dispenses with the appearance of the party at the first hearing and permits either a Special Vakalat Holder or a GPA Holder to appear on behalf of the party and represent the party. Therefore, in the well considered view of this Court, it is proper to issue

summons to the party in the first instance before issuing summons for service on the agent of the party. In that view of the matter, this Court is of the considered view that the revision can be disposed with appropriate directions.

8. Accordingly, the learned XIII Metropolitan Magistrate, Ranga Reddy District, shall direct the 2nd respondent, who is said to be the GPA holder of the 1st respondent, to furnish the present residential and official addresses of the 1st respondent at USA within a reasonable time and then issue summons simultaneously for service on the 1st respondent at the said address/s that may be furnished by the 2nd respondent as directed and also on the 2nd respondent, who is said to be the duly authorised agent of the 1st respondent, and then proceed further in the matter in accordance with the procedure established by law. It is made clear that on the failure of the 2nd respondent to furnish the present address/s of the 1st respondent at USA, the learned Magistrate may issue summons for service on the 2nd respondent alone, who is said to be the agent of the 1st respondent. The petitioners are directed to file a copy of the GPA before the trial Court, if not already filed.

9. The Criminal Revision Case is accordingly disposed of.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

12th June 2017
RAR