

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.8637 of 2012

ORDER:

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the proceedings in DVC No.21 of 2011 on the file of Additional Judicial Magistrate of First Class, Jagityal, Karimnagar District, for the offence under Section 12 of Protection of Women from Domestic Violence Act, 2005.

The petitioner herein is the mother-in-law of respondent No.1 herein/petitioner in D.V.C.No.21 of 2011. The basis for filing the petition under DVC Act is that the respondent No.1 herein/wife was subjected to cruelty by the petitioner and respondent No.2 herein/ husband for filing a criminal case against them and made them to withdraw the divorce petition filed by her husband/respondent No.2 herein against respondent No.1/wife by making a false promise and finally she was subjected to cruelty that on 5.10.2016, the respondent No.2 came to the complainant and threatened her with dire consequences demanding to bring additional dowry of Rs.2,00,000/-, otherwise, he will kill her and create her death as suicidal one and hence, on 8.10.2016 the respondent No.1/wife again lodged a complaint against the respondent No.2 herein and others, which was registered by the police as a case in Cr.No.246 of 2006 under Section 498-A IPC and Section 3 and 4 of DP Act, which is the subject matter of C.C.No.2460 of 2008.

It is further averred in para Nos. 3,4 and 5 that the respondent No.1 herein filed M.C.No.18 of 2008, which is pending on the file of Additional Judicial Magistrate of First Class, Jagtial, for awarding maintenance of

Rs.1000/- per month on 24.04.2009. Against the respondent No.2 herein filed divorce petition vide O.P.No.1097 of 2007 against her on the file of Family Court, Karimnagar. Later, the same was transferred and numbered as O.P.No.31 of 2009, which was dismissed on 26.07.2010. An appeal was preferred against the Order passed by the Family Court in O.P.No.31 of 2009 before this Court and it is pending.

The specific allegation made in para No.5 of the petition that whenever respondent No.2 attending the Court of Judicial First Class Magistrate in a Criminal Miscellaneous Petition No.586 of 2011 in M.C.No.18 of 2008 which is filed to recover the arrears of maintenance amount, he abused her in filthy language and also used to threaten her. On 16.06.2011 the respondent No.2 herein attended the Court in M.C.No.18 of 2008 and threatened her to kill her and asked her if she wants to live with him to give Rs.5,00,000/- as additional dowry or to give divorce.

Learned counsel for the petitioner mainly contended that the allegations made in para No.2 of the DVC are identical to the subject matter of C.C.No.2460 of 2008, which ended in acquittal by Calender and Judgment dt. 09.07.2015, disbelieving the allegations made by the complainant therein. So far as the allegations made in para No.5 are concerned, those allegations are against her husband, who is not the petitioner before this Court i.e., respondent No.2 herein, who did not seek any relief to quash the proceedings in the present petition.

Though notice was served on the respondents, none appeared.

Undisputedly, the allegations made in para No.2 of the DVC are identical to the allegations made in C.C.No.2460 of 2008, which ended in acquittal by Calender and Judgment dt. 09.07.2015. So far as the allegations made in para No.5 are concerned, they are not against this petitioner and only against respondent No.2 herein. Therefore, the same allegations were made in earlier case, which ended in acquittal, this Court can quash the proceedings in DVC, in view of the law declared by this Court in ***GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER***¹

wherein it was held as follows:

“1) 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 the circumstance require that he can insist the presence of the parties even by adopting coercive measures.

2) 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 the present case, an identical allegations were made and the petitioner herein, who is accused No.2 in C.C.No.2460 of 2008 was

¹ 2015(2) ALD (Crl.) 470

acquitted and by following the guideline No.2 in ***GIDUTHURI KESARI KUMAR***'s case, the proceedings against the petitioner can be quashed since the allegations made in para No.5 of the application filed under Section 12 of Protection of Women from Domestic Violence Act, 2005 pertains to respondent No.2 herein, but not against this petitioner.

The law is settled on the powers as to when such inherent power under Section 482 Cr.P.C. can be exercised and cannot be exercised in various perspective pronouncements of the Apex Court. The leading case on this aspect is "*State of Haryana v. Bhajanlal*"², wherein the Apex Court laid down the following seven guidelines:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

² 1992 Supp.(1) SCC 335

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In view of the law declared by the Apex Court in *Bhajanlal's case* and this Court in *GIDUTHURI KESARI KUMAR's* case, the continuation of proceedings in DVC against this Petitioner amounts to abuse of process of the court since the same allegations against the petitioner was not proved in C.C.No.2460 of 2008. vide judgment dt. 09.07.2015. Hence, by applying the principle laid down in *Giduthuri Kesari's* case, the proceedings against the present petitioner are hereby quashed.

Accordingly, this Criminal Petition is allowed and the proceedings against the petitioner in D.V.C.No.21 of 2011 on the file of Additional Judicial Magistrate of First Class, Jagityal, are quashed.

Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand dismissed.

M. Satyanarayana Murthy, J

16th March, 2017
eha

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRIMINAL PETITION No.8637 of 2012
Dt.16.03.2017

cha