

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8531 OF 2011

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash all further proceedings against the petitioners in D.V.C. No.2 of 2011 on the file of V Additional Judicial First Class Magistrate, Rajahmundry.

It is the contention of the respondent No.2 that the petitioners herein viz. D.Sesha Rao and his wife D.Malathi are having domestic relationship with her and sought for various reliefs in a petition filed under Section 12 of Protection of Women from Domestic Violence Act.

Sri S.R.Sanku, learned counsel for the petitioners, contended that the petitioners are residing at Delhi and the petitioner No.1 is working in Shiv Shakti Enterprises since 09.03.2007 as Commercial Manager and in support of it he has filed a letter dated 11.07.2011 issued by Umesh Gehlot, Proprietor of Shiv Shakti Enterprises. On the strength of the said letter, it is contended that there was no domestic relationship between the petitioners and the respondent No.2.

Admittedly, marriage of the respondent No.2 was performed with one D.Bala Veera Kumar. It is contended that at the time of their marriage, the parents of the respondent No.2 paid substantial amount towards dowry, but thereafter the husband of the respondent No.2 used to demand Ac.1.00 of land and Rs.5,00,000/- as additional dowry while threatening to marry another woman and subjected her to cruelty at the instance of her

brother-in-law D.Seshagiri Rao. Later, the husband of the respondent No.2 developed illicit contact with another woman and wanted to live with her while threatening to do whatever she likes. Since then the respondent No.2 and her son are residing with her parents and she was subjected to cruelty by her husband at the instigation of Sri Seshagiri Rao.

The name of the first petitioner was referred in column No.1 of page No.2 of complaint/petition. Now, the contention before this Court is that there was no subsisting domestic relationship as defined in Section 2 (f) of the Protection of Women from Domestic Violence Act, 2005 (for short, hereinafter referred to as “the Act”).

Section 2 (f) of the Act defined domestic relationship as follows:

Section 2 (f) – “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

Definition of domestic relationship contained two parts. First part is that when two person, who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage. Second part is that family members living together as a joint family.

Here the case of the petitioners is that they are living at Delhi and they have produced a certificate dated 11.07.2011 issued by Sri Umesh Gehlot, Proprietor of Shiv Shakti Enterprises,

which disclosed that the petitioner No.1 is working as a Commercial Manager since 09.03.2007 in his firm. Petitioners also produced a certificate issued by Sri Gopi Ram, landlord of the petitioner No.1 showing that the petitioners' permanent address is D.No.3-172, Sivalayam Road, Raja Nagram (Post), East Godavari District. But this fact has to be proved by adducing evidence only during the trial and at this stage while deciding an application under Section 482 of Cr.P.C. this Court cannot quash proceedings as it is a disputed question of fact.

If the petitioners and respondent No.2 lived together for sometime after the marriage of respondent No.2, that is sufficient to constitute domestic relationship as defined under Section 2 (f) of the Act. Except the certificates issued by Sri Umesh Gehlot, Proprietor of Shiv Shakti Enterprises and Sri Gopi Ram, land lord of the petitioner No.1, no other material is produced like Aadhar Card or voter identity card to establish prima facie the petitioners are residing at Delhi and the petitioner No.1 is working in Shiv Shakti Enterprises, Delhi. The contention of the petitioners that the petitioner No.1 is working at Delhi, which is a matter of evidence, at this stage it is difficult to accept such contention that there was no subsisting domestic relationship between the petitioners and respondent No.2 to quash the proceedings.

The certificates issued by Sri Umesh Gehlot, Proprietor of Shiv Shakti Enterprises and Sri Gopi Ram, landlord of petitioners, are not authenticated documents issued by any Government authority and on the strength of those documents, it is difficult to accept that there was no domestic relationship between the

petitioners and respondent No.2 since those disputed facts cannot be gone into while deciding the application filed under Section 482 of Cr.P.C.

In “**Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.**”¹ it is held that 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. 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 “**Ashish Dixit and Others v. State of Uttar Pradesh**”

¹ 2015 (2) ALD (Crl.) 470 (AP)

and another²” also same principle was laid down.

In view of the principle laid down in the above judgments, it is clear that Section 482 Cr.P.C. has no application to cases filed under the Protection of Women from Domestic Violence Act if there is domestic relationship between the parties. Moreover, the proceedings under the Protection of Women from Domestic Violence Act are civil in nature and the power under Section 482 of Cr.P.C. can be exercised only when there exists no domestic relationship.

Thus, the principle laid down by this Court and the Apex Court is that the Court can exercise inherent jurisdiction under Section 482 of Cr.P.C. if there is no subsisting domestic relationship as defined under Section 2 (f) of the Act or where any proceedings are initiated under Section 31 of the Act for imposing penalty, but in other circumstances this Court cannot exercise the power available under Section 482 of Cr.P.C. as the remedies available under the Act are civil in nature.

As discussed above, there was absolutely no material except certificates issued by the alleged landlord of petitioner No.1 and Proprietor of Shiv Shakti Enterprises, who certified that the petitioners are staying at Delhi, but the same is a disputed question, which cannot be decided at this stage while dealing with an application filed under Section 482 of Cr.P.C.

The Apex Court in “**State of Haryana v. Bhajan Lal**³” laid down certain guidelines to exercise jurisdiction under Section 482 of Cr.P.C. According to guideline No.1 the High Court can exercise

² (2013) 4 SCC 176

³ 1992 Supp. (1) SCC 3352

its inherent power to quash the criminal complaint 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.

But here the matter is purely civil in nature as held in **“Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.”** (referred supra). However, in view of the law declared by this Court in the said judgment, the appearance of the petitioners on all dates of adjournments is unnecessary and the Court concerned cannot insist the appearance of the parties.

As discussed above, I find no ground to quash the proceedings.

In the result, the petition is dismissed and the trial Court is directed to follow the guidelines issued by this Court in **“Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.”** (referred supra). No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

18.01.2017
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