

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL PETITION No.13075 OF 2010

ORDER:

Heard the counsel for the petitioners, Public Prosecutor (TG) for respondent No.1 and Sri Lala Ramu, counsel for respondent No.2.

The petitioners who are respondents 1 to 3 in D.V.C.No.237 of 2010 on the file of IV Metropolitan Magistrate, Metropolitan Criminal Courts at Nampally, Hyderabad, have filed this criminal petition seeking to quash the proceedings initiated against them in the said D.V.C.No.237 of 2010.

It is the case of the petitioners herein that originally the 2nd respondent herein filed a petition under section 12 of the Protection of Women from Domestic Violence Act, 2005 (herein referred to as Act, 2005) stating that she was married to the 1st petitioner in the year 2009. The petitioners 2 and 3 who are the father-in-law and the brother-in-law of 2nd respondent used to harass her. In order to meet her monthly maintenance, she used to do part time job as a Junior Artist in cinema field and she used to reside at Khairatabad since the place was close to Film Nagar. She has handed over her photographs in various job centres and in that connection, the 1st petitioner approached her stating that he was working as a Director in the film industry and he is very influential and told that he has fallen in love with the 2nd respondent herein and frequently he used to make calls and express his love.

It is also stated in the petition filed under section 12 of Act, 2005 that the 1st petitioner had tied Mangalasutra and established physical relationship and introduced her to his family members and

thereafter when the 2nd respondent got pregnancy, he got the pregnancy terminated. In those circumstances, the 2nd respondent filed a complaint U/s.12 of Act, 2005 in the Court of IV Metropolitan Magistrate, Metropolitan Criminal Courts at Nampally, Hyderabad.

The counsel for the petitioners would contend that the 2nd respondent had earlier filed a complaint before the concerned Police stating that the 1st petitioner had cheated her and she became pregnant and he got the pregnancy terminated. The provisions of Act, 2005 does not attract for the allegations mentioned in the complaint and there is no domestic relationship between the 1st petitioner and the 2nd respondent. Hence, the question of invoking the provisions of Act, 2005 does not arise. There are no allegations against the petitioners 2 and 3. Therefore, sought to quash the proceedings initiated against them.

Per contra, learned Public Prosecutor would contend that the present criminal petition filed under section 482 Cr.P.C. is not maintainable in the light of the law laid down by this Court in criminal petition Nos.22371 of 2015 dated 17.7.2015.

A perusal of the contents of the complaint and the charge sheet filed in the material papers relating to FIR No.264 of 2010 between the 1st petitioner and the 2nd respondent would reveal that the 2nd respondent would come within the definition of “aggrieved person” as per Act, 2005. Being the aggrieved person, the 2nd respondent also established the domestic relationship between her and the 1st petitioner and the further allegations made in the complaint would also attract the provisions of Section 3-A of Act, 2005.

Be that as it may, this Court, while dealing with similar criminal petition Nos.22371 of 2015, in respect of a complaint filed under the provisions of Act, 2005, observed as under on 17.7.2015:

“19. Now coming back to Sections 26, 28 and 29 of the Act, even referring to *Sulochana v. Kuttappan* (supra) the very expression says in para-12 that I have no hesitation to agree that the expression ‘the order’ must take within its sweep all orders under Sections 18 to 23 and I find no reason to exclude, going by language and semantics; an order passed under Section 23 from the sweep of the expression ‘the order’ in Section 29. It is to say even from that expression as order used in Section 29 is not an exclusive but an inclusive expression. It is with reference to it, even one reads Section 28, it speaks that all are proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and one reads the same with Section 190 Cr.P.C.; numbering the same is by applying judicial mind and that tantamounts to taking of cognizance. This also for the reason Section 28 is preceded by Section 29. In this regard cloud is cleared by the expression of the Apex Court way back in *Dharangadhra Chemical Works v. Dharangadhra Municipality* particularly referring to expression in *Kutner v. Phillips*, [1891] 2 Q.B. 267 at 272. *Zaverbai Amaldas v. The State of Bombay* MANU/SC/0040/1954 : [1955] 1 S.C.R. 799, that not only in two legislations to prevail the subsequent one; even in one legislation among the provision in the order if any inconsistency or irreconcilability, the latter provision prevails over the earlier provision. Once such is the case, though reading of Section 29 it also to be read Section 28(1) of all proceedings with reference to Section 26 of the procedure provided in the criminal procedure code with reference to Section 190 Cr.P.C. to say even the taking of cognizance is also within the sweep of the order as can be seen the expression of the Kerala High Court relied upon by one of the learned counsel. 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 Bhajan Lal (supra) 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.

20. Having regard to the above, while upholding the office objection and at request of learned for the petitioners, the un-numbered petitions are disposed of with the following terms:

Needless to say if any appeal is filed by any of the petitioners herein, they can file for the period beyond one month with application invoking Section 14 of the Limitation Act before the learned Sessions Judge to entertain as it is of bona fide prosecution in this Court instead of proceeding by appeal before the Court of Sessions, within the sweep of Section 14 of the Limitation Act. Further, if any application is filed under Rule 37 of Criminal Rules of Practice or under Section 126 (2) or Section 205 to represent through special vakalat or through advocate or for one to represent others as the case may be, the learned Magistrate shall entertain, hear and pass appropriate orders granting the same with necessary conditions.

21. Accordingly, these criminal petitions (S.R.) are disposed of."

Therefore, the present criminal petition is also disposed of in terms of the above Criminal Petition Nos.22371 of 2015, disposed of on 17.7.2015.

Miscellaneous Petitions, if any, filed in this Criminal Petition shall stand dismissed.

JUSTICE P.KESHAVA RAO

Dated: 6.12.2017
KPM

