

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.366 OF 2014

JUDGMENT:

The present Criminal Revision Case is preferred by respondent Nos.4 and 5 in D.V.C. No.2 of 2012 challenging the order dated 10.12.2013 passed by the learned Judicial Magistrate of First Class, Yellareddy, in Criminal M.P. No.44 of 2013, whereby and whereunder, the learned Magistrate dismissed the discharge petition observing thus:

“1. Heard both sides, perused the case record.

2. the provisions of Section 258 Cr.p.c. invoked to file the petition is false and incorrect. It is not at all applicable to the averments made in the petition. There are specific overt acts against the petitioners. It is not worthy that the petitioner husband had put scandalous and abusive message against the victim in the internet. There is any amount of Domestic violence clubbed with emotional abuse being caused by the petitioners. All the allegations are prima facie well founded and the matter is coming up for enquiry. Therefore, it is not a fit case to discharge the petitioners, which is not at all applicable in D.V.C. Proceedings before the trial court. The truth or otherwise of the allegations have to be tested during trial only. The petition is not (Sic. not) maintainable at this stage and therefore liable to be dismissed.

Hence the petition is dismissed.”

2. Heard Sri Kowturu Vinaya Kumar, learned counsel for the revision petitioners, and Sri Raju Gubbala, learned counsel for respondent Nos.2 and 3, and perused the material on record.

3. The learned counsel for the revision petitioners would submit that the definition of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 (for short 'DVC Act') would only cover 'male persons' and the female persons are outside the purview and, therefore, the revision petitioners being females, the proceedings against them under DVC Act cannot be proceeded with, but the learned Magistrate went wrong in dismissing the discharge petition. The second ground is that since the procedure adopted in DVC matter is the procedure prescribed under the Code of Criminal Procedure, 1973, it cannot be said that discharge petitions cannot be filed.

4. The learned counsel for respondent Nos.2 and 3 would strongly resist the request contending that invoking Section 258 of the Code of Criminal Procedure, 1973, does not arise. In fact, the cause title in the discharge petition would show that all respondent Nos.1 to 5 have been jointly filed it, but, strangely, it is stated that only respondent Nos.4 and 5 filed the said petition and they preferred the present revision petition.

5. When the law laid down by the Hon'ble Supreme Court in **Hiral P. Harsora v. Kusum Narottamdas Harsora**¹ is applied, it is clear that Section 2(q) of the DVC Act was interpreted and on the ground that restricting perpetrators of violence against women acts actionable under the DVC Act to only "adult male person" fails the test of reasonable classification and held in paragraph No.50, thus:

"50. We, therefore, set aside the impugned judgment of the Bombay High Court and declare that the words "adult male" in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the proviso to Section 2(q), being rendered otiose, also stands deleted. We may only add that the impugned judgment has ultimately held, in para 27, that the two complaints of 2010, in which the three female respondents were discharged finally, were purported to be revived, despite there being no prayer in Writ Petition No.300 of 2013 for the same. When this was pointed out, Ms Meenakshi Arora very fairly stated that she would not be pursuing those complaints, and would be content to have a declaration from this Court as to the constitutional validity of Section 2(q) of the 2005 Act. We, therefore, record the statement of the learned counsel, in which case it becomes clear that nothing survives in the aforesaid complaints of October 2010. With this additional observation, this appeal stands disposed."

¹ (2016) 10 SCC 165

6. Therefore, the first submission made by the learned counsel for the revision petitioners is without any merit. Touching the second submission, in fact, provisions of Section 258 of the Code of Criminal Procedure, 1973, were invoked, certainly, it is not available to them. When the first submission fails, automatically, second submission also fails. Thus, there is no merit in the present revision.

7. However, as could be seen from the order under challenge which is extracted in the above, positive findings were recorded by the learned Magistrate. Therefore, holding that these findings would not have any bearing on the disposal of D.V.C., the learned Magistrate is directed to dispose of the same uninfluenced by the observations made therein.

8. With the above observations, the Criminal Revision Case is dismissed confirming the order under challenge.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision stand closed.

A. SHANKAR NARAYANA, J

November 21, 2017.

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