

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10395 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings in D.V.C.No.52 of 2017 on the file of XIX Metropolitan Magistrate, Cyberabad at Miyapur, on the ground that no relief against the petitioners is claimed in the main petition and that too, the Court directly has taken the case on file without referring the case to protection officer and therefore, the proceedings under Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short 'D.V.C Act'), are not maintainable.

Learned counsel for the petitioners contended that, no specific allegations are made against any of these petitioners and the relief of maintenance is claimed only against the respondents 2 & 3, since the petitioners herein are not liable to pay maintenance under the provisions of the Act.

According to Section 12(1) of the Act, an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act; provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

Therefore, the contention that the respondents 2 & 3/aggrieved persons cannot file a petition directly under Section 12 of D.V.C Act is without any substance, since Section 12 of D.V.C. Act

permits an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to file an application under Section 12 of D.V.C. Act to claim reliefs under Sections 18 to 22 of the D.V.C. Act.

The other contention raised by the learned counsel for the petitioners is that, no relief is claimed against these petitioners in the main petition in D.V.C.No.52 of 2017. But, as seen from the relief claimed in last paragraph of page 5 in the petition, the respondents 2 & 3/aggrieved persons sought relief of shared hold order, compensation & damages order, monetary relief order and protection order and legal expenses to the respondents 2 & 3 against the petitioners herein. Therefore, the contention of the learned counsel for the petitioners herein that the persons aggrieved i.e. respondents 2 & 3 did not claim relief under the provisions of D.V.C. Act against the petitioners herein is also not sustainable.

In any view of the matter, this Court can exercise power under Section 482 Cr.P.C, only in exceptional circumstances, where there is no subsisting domestic relationship between the parties, as defined under Section 2(f) of D.V.C. Act. 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 or any action initiated for enforcement of order under the Act but not in all other circumstances.

In ***Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.***¹ this Court laid down certain guidelines to quash the proceedings in D.V.C. Case in paragraph 14, which are as follows:

“14) To sum up the findings:

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 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.

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 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 view of the law declared by this Court, when there is a subsisting domestic relationship, as defined under Section 2(f) of the D.V.C. Act, and the domestic incident complained was not the subject matter on any other case and decided by any competent Court and not for enforcement of the order passed by the provisions of the D.V.C. Act, this Court cannot exercise jurisdiction under Section 482 Cr.P.C.

¹ 2015 (2) ALD (CrI.) 470 (AP)

In the same judgment in **Giduthuri Kesari Kumar** (referred supra), the Court made it clear that, in view of the guideline no. 1, Magistrate 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, like civil proceedings. 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. In view of the principle laid down in the above case, the Magistrate cannot insist appearance of the parties before the Court.

Accordingly, the Magistrate is directed to adhere to the guidelines formulated by this Court in “**Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.**” (referred supra).

With the above directions, the petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:04.12.2017

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