

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10119 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in D.V.C.No.36 of 2017 on the file of the Additional Judicial First Class Magistrate at Armoor, Nizamabad District filed under Section 12 of Protection of Women From Domestic Violence Act, 2005 (for short 'Act'), claiming various reliefs.

The respondents 1 & 2 herein being the wife and daughter of the first petitioner herein filed D.V.C.No.36 of 2017 claiming maintenance amount of Rs.10,000/-, Rs.5,000/- towards medical and treatment costs, Rs.4,000/- towards maintenance of the second petitioner and Rs.10,00,000/- towards harassment and mental torture of the first petitioner, on the ground that the first respondent suffered cruelty at the hands of the first petitioner.

The main contention before this Court is that, there was no domestic relationship and no proof is produced before the Magistrate for their living together. Therefore, the proceedings are liable to be quashed.

Learned counsel for the petitioner mainly contended that when there was no domestic relationship between the first petitioner and the first respondent, the proceedings are liable to be quashed. The main contention of the petitioners is that, the petitioners and the first respondent are living at different places

and they never lived as members of joint family under one roof and thereby, they cannot be proceeded under the provisions of the Act.

It is contended that the first petitioner is the husband and second petitioner is the mother-in-law of the first respondent. The wife and husband i.e. first petitioner and first respondent are deemed to have resided under one roof, as the first respondent gave birth to the child. But, this contention is false on the face of record.

The word 'Domestic relationship' is defined under Section 2(f) of the Act and it 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.

The definition of domestic relationship is wide enough and it covers not only the relationship between two persons who are living at any point of time, lived together in a shared household, when they are related by marriage or through a relationship in the nature of marriage. Therefore, the petitioners are closely related to one another and question of producing evidence at this stage does not arise, since it is a matter of trial to be undertaken by the Magistrate. If the Magistrate finds that the aggrieved person failed to prove the subsisting domestic relationship, the Court may decline to grant any of the reliefs claimed in the petition. But, at this stage, this Court cannot exercise its power under Section 482 Cr.P.C to quash the proceedings.

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 in **Giduthuri Kesari Kumar** (*referred supra*), this criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:02.11.2017

SP

¹ 2015 (2) ALD (CrL.) 470 (AP)