

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10354 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in DVC.No.13 of 2016 on the file of the II Additional Judicial First Class Magistrate, Huzurabad, Karimnagar District, filed for the offence punishable under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ("the Act" for brevity) on the ground that the petitioners-respondent Nos.1 to 6 are no way concerned with the offence, that they are closely related to one another, respondent No.2 herein roped all the petitioners in a Domestic Violence (DV) case and the earlier complaint lodged by the petitioners with the police would disclose that they proposed to dissolve the marriage by receiving Rs.3,00,000/- and reduced the same into a memorandum of understanding and therefore, the question of subjecting the second respondent herein to domestic violence does not arise and unnecessarily all these petitioners were arrayed as respondents by the aggrieved person as defined under the Act and requested this Court to quash the proceedings.

Sri M.V.Swamy, learned counsel for the petitioners, while reiterating the contentions urged in the petition, requested to permit the first petitioner to appear before the Court below in DVC.No.13 of 2016 on behalf of petitioners 2 to 6.

This Court had an occasion to decide an identical question in ***Giduthuri Kesari Kumar and Ors. v. State of Telangana***

and Ors.¹. This Court 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 defined 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 one 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 the present case, a complaint was lodged and FIR in Crime No.90 of 2016 was registered by the Women Police Station, Karimnagar, against petitioner Nos.1 to 6 for the offences punishable under Sections 498-A, 420 and 406 of the Indian Penal Code but the petitioners' counsel expressed his inability to disclose the stage of proceedings in the above crime and therefore, none of

¹ 2015 (2) ALD (Cr1.) 470 (AP)

the grounds urged in the present petition would fall within the guidelines issued by this Court in ***Giduthuri Kesari Kumar*** (1 supra). However, in the same judgment it is observed that the Magistrate can pass an *ex parte* order and the presence of the petitioners herein cannot be insisted to attend the Court on every date of adjournment except on the days when their presence for personal appearance is required. Hence, I find that it is appropriate to issue a direction to the II Additional Judicial First Class Magistrate, Huzurabad, Karimnagar District, to follow the guide lines issued by this Court in ***Giduthuri Kesari Kumar*** (1 supra).

With the above direction, the Criminal Petition is disposed of. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

8th November 2017
RRB

