

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 10151 OF 2017

ORDER:

This petition is filed under Section 482 of Cr.P.C. to quash the proceedings in D.V.C.No. 9 of 2017 on the file of the Court of Additional Junior Civil Judge, Chilakaluripet (for short, 'the Court below').

2. Respondent No. 2 filed a petition under Sections 12 and 18 (a) (d) (f) of Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act'), seeking reliefs like protection under Section 18 of the Act, compensation under Section 22 of the Act and monetary relief under Section 20 of the Act. The main contention raised before this Court is that petitioner No. 1 is elder brother of husband of respondent No. 2 and petitioner No. 2 is wife of petitioner No. 1 and there is no domestic relationship between them. In the absence of any domestic relationship, respondent No. 2 is not entitled to proceed against these petitioners and therefore requested to quash the proceedings.

3. Admittedly, petitioner No. 1 is brother of husband of respondent No. 2 and petitioner No. 2 is wife of petitioner No. 1. They are closely related to one another by marriage and thereby there is a domestic relationship as defined under Section 2 (f) of the Act. When a similar question came up for consideration in ***Giduthuri Kesari Kumar and others Vs. State of Telangana and others***¹, this Court held as follows:

"Since the remedies under the Act are civil remedies, the Magistrate, in view of his powers under Section 28 (2) of the 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

¹ 2015 (2) ALD (CrI.) 470 (AP)

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 petition under Section 482 Cr.P.C. on the plea that the petitioners are unnecessarily arrayed as parties is not maintainable. It is only in exceptional cases like without there existing any domestic relationship as laid under Section 2 (f) of the 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 guidelines laid down in the above judgment, this Court cannot exercise power under Section 482 Cr.P.C. except in case where there was no domestic relationship *prima facie* or when the same question was decided in any other proceedings. Here in this case, the contention of the petitioners is that there is no domestic relationship between them and respondent No. 2 but *prima facie* they are no other than brother and brother's wife of husband of the aggrieved person and their relationship would fall within Section 2 (f) of the Act. Therefore, at this stage, this Court cannot exercise its powers to quash the proceedings.

4. Learned counsel for the petitioners however requested this Court to dispense with the appearance of the petitioners before the Court below but this Court need not give any direction in view of the guidelines issued in **Giduthuri Kesari Kumar** (*supra*). Hence, the Court below is directed to follow the guidelines issued by this Court in the above judgment.

5. With the above direction, the criminal petition is disposed of. Pending miscellaneous petitions, if any, in this petition shall stand closed in consequence.

Date: 03-11-2017.

JSK

M.SATYANARAYANA MURTHY, J.