

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10665 of 2017

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioner herein/respondent No.3 to call for the records relating to D.V.C.No.3 of 2016, on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam and quash the same.

2. The petitioner herein is respondent No.3 in the aforesaid D.V.C. Respondents 2 to 4 herein, who are the petitioners in the aforesaid D.V.C., filed petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act') claiming various reliefs.

3. The main contention of learned counsel for the petitioner before this Court is that respondents 2 to 4 filed the aforesaid D.V.C., without attributing any specific allegation against this petitioner, which is abuse of process of law, resulting in miscarriage of justice and requested this Court to quash the proceedings against this petitioner.

4. During the hearing, counsel for the petitioner raised several other contentions regarding execution of Will etc., bequeathing the property where the respondents 2 to 4 herein are allegedly residing, but such question cannot be decided in the present petition. However, this court can exercise inherent jurisdiction under Section 482 Cr.P.C., only in three circumstances where there was no subsisting domestic relationship as defined under Section 2 (f) of the Act or where the same incident was decided in any other proceedings or where the proceedings are initiated under

Section 29 of the Act to enforce the order by arrest etc. In other situations, this Court cannot quash the proceedings. None of the grounds referred to above are raised in the present petition, except contending that continuation of proceedings against this petitioner is abuse of process of law leading to great miscarriage of justice.

5. Identical question came up before this Court in “**Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.**” and this Court laid down certain guidelines for quashing the proceedings in D.V.C. Case at 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 levelled 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 above guidelines, the learned Magistrate cannot insist appearance of the petitioner herein on every date of adjournment as the proceedings under the Act are predominant

civil in nature. Therefore, I find no ground to quash the proceedings.

6. Accordingly, the Criminal Petition is dismissed. However, the learned Magistrate is directed to follow the guidelines issued by this Court in ***Giduthuri Kesari Kumar's*** case while deciding the proceedings in the aforesaid D.V.C.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

NOVEMBER 15, 2017
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M. SATYANARAYANA MURTHY, J



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Date: 15.11.2017

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