

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10491 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in D.V.C.No.109 of 2016 on the file of the II Additional Judicial I Class Magistrate, Eluru, West Godavari.

The main contention of the learned counsel for the petitioner is that, there was no domestic relationship between the petitioner and the first respondent as defined under Section 2(f) of The Protection of Women from Domestic Violence Act, 2005 (for short 'D.V.C Act'). But, as seen from the allegations made in paragraphs 8, 11 & 12 of D.V.C.No.109 of 2016, the petitioner herein developed illicit contact with one Pathuri Siva Raghava Rao (first respondent in D.V.C No.109 of 2016) who is none other than the husband of the first respondent herein. But, such question whether there is subsisting domestic relationship between them is a question of fact to be decided at the end of trial.

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

¹ 2015 (2) ALD (CrL.) 470 (AP)

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.”

Therefore, I deem it appropriate to direct the II Additional Judicial I Class Magistrate, Eluru, West Godavari, to follow the guidelines prescribed in “**Giduthuri Kesari Kumar and Ors. v. State of Telangana and Ors.**” (referred supra).

Hence, the II Additional Judicial I Class Magistrate, Eluru, West Godavari, 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) and shall not insist the appearance of the petitioner, except on the dates when her personal appearance is required.

With the above directions, the petition is disposed of.
No costs.

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

JUSTICE M. SATYANARAYANA MURTHY

Dated:13.11.2017

SP