

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.11105 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.15 of 2016 on the file of Additional Judicial First Class Magistrate at Chirala, Prakasam District.

2) The petitioners are respondents Nos.4 and 5 in the D.V.C and respondent No.1 is the aggrieved person, who filed a petition under Section 12 (1) of Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') against the respondents herein. The petitioners 1 and 2 herein are the married sisters of husband of 1st respondent and they are residents of Cherukupalli Village, Repalle Mandal and Kothapet Post, Vinukonda Town & Mandal respectively and thereby, the contention is that they are residing at distant place and they are no way concerned with the alleged domestic violence, pleaded in the petition filed under Section 12 of the Act and therefore, they cannot be implicated in the case.

3) It is also contended that these petitioners were arrayed as accused Nos.4 and 5 in Crime No.386 of 2015 of Chirala I Town Police Station, registered for the offence punishable under Section 498-A IPC and Sections 3 & 4 of D.P. Act, therefore, sought for quashing of the proceedings against these petitioners to exercise the inherent jurisdiction under Section 482 Cr.P.C.

4) It is not the case of the petitioners that there was no domestic relationship as defined under Section 2 (f) of the Act and

after the marriage, 1st respondent and petitioners became known to each other and created domestic relationship as defined under Section 2 (f) of the Act. Learned counsel for petitioners requested this Court to direct the Magistrate to follow the guidelines formulated by this Court in **Giduthuri Kesari Kumar and Others. v. State of Telangana and Others**¹.

5) In **Giduthuri Kesari Kumar** (referred supra) 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 ex parte 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.”

6) In view of the principle laid down in the above judgment, respondents in DVC are not required to attend the Court on every adjournment since the proceedings under DVC Act are in the nature of civil and the Court can pass ex parte order but in case

¹ 2015 (2) ALD (Cri.) 470 (AP)

where there was no domestic relationship or when the allegations made in the petition filed under Section 12 of the Act are the subject matter of any other case and decided by the competent Court and the proceedings are initiated under Section 29 (2) of the Act, this Court can exercise the jurisdiction under Section 482 Cr.P.C to quash the proceedings. But in the present case on hand, such plea is not raised. Therefore, this Court cannot exercise the jurisdiction to quash the proceedings in DVC. However, the Magistrate is directed to follow the guidelines issued by this Court in ***Giduthuri Kesari Kumar and Others v. State of Telangana and Others*** and not to insist upon the appearance of the petitioners on every adjournment except when the Magistrate directs the petitioners to appear before the Court for any specific purpose.

7) With the above direction, the Criminal Petition is disposed of at the stage of admission.

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

JUSTICE M. SATYANARAYANA MURTHY

Dated:20.11.2017
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