

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.11335 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.5 of 2016 on the file of the Judicial First Class Magistrate, Pithapuram, filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ("the Act" for brevity) on the ground that there are no specific allegations against second and third petitioners, who are mother-in-law and brother-in-law of the aggrieved person/ second respondent herein and the only allegation made against the petitioners is that when she delivered a baby second time, the second petitioner spit on her face while abusing her in filthy language.

The DVC was filed under Section 12 of the Act claiming various reliefs by the second respondent. There is subsisting domestic relationship as defined under Section 2(f) of the Act, but whether the act committed by the second and third petitioners would amount to domestic violence as defined under Section 3 of the Act is a question of fact to be decided. Therefore, there are specific allegations, which constitute domestic valance as defined under Section 3 of the Act, thereby the proceedings cannot be quashed.

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

¹ 2015 (2) ALD (Cr1.) 470 (AP)

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 on every date of 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 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 the present case, a complaint was lodged and FIR in Crime No.118 of 2016 was registered on 16.7.2016 by the Women Police Station, Kakinada, against petitioners for the offences punishable under Sections 498-A of the Indian Penal Code and police have filed charge sheet against first petitioner before the Court of the Judicial First Class Magistrate, Pithapuram and deleted the names of petitioner Nos. 2 & 3 since none spoke anything adverse against them and therefore, none of 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 Judicial First Class Magistrate, Pithapuram, 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.

JUSTICE M.SATYANARAYANA MURTHY

Date: 22.11.2017
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