

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 11907 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") to quash the proceedings in D.V.C.No. 4 of 2016 on the file of the Court of learned Special Excise Judicial Magistrate of I class at Nellore (for short, 'the Court below').

2. Respondent No. 2 filed D.V.C.No. 4 of 2016 before the Court below for the following substantive reliefs:

- "a) *Protection orders directing the respondents from committing the act of domestic violence against the aggrieved person;*
- b) *Direct the respondents to return the possession of her gold ornaments 60 sovereigns and the amount of Rs.23,00,000/- belonging to the aggrieved person;*
- c) *Direct the respondents to pay a sum of Rs.25,00,000/- towards monitory reliefs towards the loss caused by the respondents by not giving the share of the family income to the aggrieved person;*
- c) *Direct the respondent No. 1 to pay Rs.1,00,000/- per month to the aggrieved person to maintain herself;*
- d) *Direct the respondent No. 1 to pay Rs.1,00,000/- per month to the aggrieved person to maintain herself and*
- e) *The respondents may be directed to pay compensation and damages to aggrieved person for the mental torture and emotional distress committed by the respondents."*

3. The main contention of learned counsel for the petitioner before this Court is that in view of obtaining decree of divorce dated 06-06-2017 in F.C.O.P.No. 161 of 2016 on the file of the learned Judge, Family Court, S.P.S.R. Nellore District, dissolving the marriage between the petitioner and respondent No. 2, the domestic relationship between them ceases to exist and therefore the latter is

disentitled to claim any relief and requested this Court to quash the proceedings. I find from the record, the reliefs claimed in D.V.C.No. 4 of 2016 are with regard to return of gold ornaments, payment of compensation *etc.*, as reproduced above, and the said reliefs were claimed basing on the subsisting domestic relationship as on the date of filing the petition. Hence, it is for the Court below to decide the same and this Court cannot quash the proceedings at this stage on account of grant of divorce dissolving the marriage between the petitioner and respondent No. 2.

4. In ***Giduthuri Kesari Kumar and others Vs. State of Telangana and others***¹, this Court laid down certain guidelines to quash the proceedings in D.V.C. 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 requires 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.”

¹ 2015 (2) ALD (CrI.) 470 (AP)

In view of the guidelines laid down by this Court, the proceedings in D.V.C. cannot be quashed on the basis of ceasure of the subsisting domestic relationship between the petitioner and respondent No. 2. However, it is left open to the petitioner to take appropriate steps before the Court below to complete the inquiry/trial in D.V.C.No. 4 of 2016 and after completion of inquiry, the Court below is directed to decide the petition in accordance with law.

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

Date: 05-12-2017.

JSK

M.SATYANARAYANA MURTHY, J.

