

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No. 6 OF 2018

ORDER:

This petition is filed under Section 407 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to withdraw D.V.C.No. 14 of 2017 pending on the file of the Court of Judicial I Class Magistrate, Adilabad (for short, 'the Court below'), and transfer the same to the Court of Judicial I Class Magistrate, Nizamabad, on the ground that the petitioner is the only son to his parents, that his father is suffering from paralysis and mother from brain tumour and that there was none to assist his parents.

2. The respondent-aggrieved party filed petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005, before the Court below claiming various reliefs. The petitioner is contesting the matter by filing counter affidavit. The petitioner also filed O.P.No. 1690 of 2016 on the file of the learned Judge, Family Court, Ranga Reddy District at L.B. Nagar, under Section 32 of Divorce Act for restitution of conjugal rights. It is the case of the petitioner that he is the only son to his parents and he has to assist them who are suffering from their respective old aged ailments. The proceedings in D.V.C. are quasi criminal and mostly civil in nature. Therefore, the petitioner is not required to appear before the Court below as pleaded by him. This Court in ***Giduthuri Kesari Kumar and others Vs. State of Telangana and others***¹ laid down certain guidelines to quash proceedings in D.V.C. in paragraph No. 14 which are as follows:

“14) To sum up the findings:

¹ 2015 (2) ALD (CrI.) 470 (AP)

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.”

In view of the law declared by this Court, the petitioner is not required to appear before the Court below on every adjournment and the Court below cannot insist for appearance of the petitioner as well before it. The ground urged by the petitioner is therefore not tenable. Consequently, the petition is liable to be dismissed. However, the Court below is directed to adhere to the guidelines formulated in *Giduthuri Kesari Kumar* (*supra*).

3. With the above direction, the transfer criminal petition is dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this petition shall stand dismissed in consequence.

Date: 04-01-2018.

JSK

M.SATYANARAYANA MURTHY, J.