

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRL.P. No.7195 of 2013

ORDER:-

This petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking to quash the proceedings in Crl.M.P.No.3406 of 2012 in D.V.C No.19 of 2012 on the file of the Court of III Metropolitan Magistrate, Cyberabad at L.B.Nagar.

The brief facts of the case are that respondents 1 and 2 herein have filed D.V.C on the file of the court of III Metropolitan Magistrate, Cyberabad at L.B.Nagar against the petitioner and others. During the course of D.V.C proceedings, respondents 1 and 2 have filed an application for interim maintenance in Crl.M.P.No.3406 of 2012 and the said application was resisted by the petitioner.

The main ground urged by the petitioner is that 1st respondent has got means to maintain herself as she is gainfully employed and working as a Lecturer in Sri Chaitanya Junior College. The further contention of the petitioner is that he was having a meager salary of Rs.5,118/- and that the court below has not appreciated the fact that the 1st respondent was working as a Junior Lecturer in Sri Chaitanya Junior College and she has

sufficient income to maintain herself and without considering this aspect the court below granted maintenance. It is further submitted that the 1st respondent has intentionally deserted the petitioner and, therefore, she is not entitled for claiming maintenance. On these grounds the petitioner sought for quashing the D.V.C proceedings pending against him.

Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

It is submitted by the learned counsel for the petitioner that the petitioner has no capacity to pay the maintenance amount as he was working as an Electrician and getting only an amount of Rs.5118/- per month and he cannot afford to pay the maintenance to the 1st respondent. Further, it is argued by the learned counsel for the petitioner that the 1st respondent is working as a Lecturer in Sri Chaitanya Junior College and she has sufficient income to maintain herself and the said fact has been admitted by her in a petition filed under Section 498-A IPC before the criminal court and, therefore, she is not entitled for maintenance.

On the other hand, the learned counsel for the respondents argued that this question of fact cannot be gone into in this petition at this stage. It is further

submitted that since the quash proceedings are sought in a DVC case, which cannot be considered by this Court as per the decision of this court in *Giduthuri Kesari Kumar And Ors. Vs. State of Telangana And Ors* [In CrI.P.No.7289 of 2015 on 16-02-2015].

It is pertinent to note that D.V.C No.19 of 2012 is filed by the 1st respondent-wife seeking several reliefs *inter alia* maintenance for herself and her child during the pendency of D.V.C. The D.V.C proceedings are going on before the court below. This Court has not granted any interim stay of proceedings in this petition. In the light of the decisions rendered in the *Giduthuri Kesari Kumar And Ors. Vs. State of Telangana And Ors*; and in the light of the other decisions rendered in *CBI vs. A.Ravishankar Prasad*⁽¹⁾; *State of Haryana v. Bhajan Lal*⁽²⁾ wherein the broad guidelines are given for consideration of the petition under Section 482 Cr.P.C.

On consideration of these decisions and in the light of the facts and circumstances of the case, it is obvious that this court cannot go into the merits of the case and decide whether the respondents are entitled for maintenance or

¹(2009) 6 SCC 351

²1992 Supp.(1) SCC 335

not, since this question of fact has to be considered by the trial court after full-fledged trial.

Having regard to the facts and circumstances of the case, this is not a fit case for considering to quash the proceedings in D.V.C at this stage.

Accordingly, this Criminal Petition is disposed of directing the court below to dispose of the D.V.C, if not disposed of, as expeditiously as possible preferably within a period of six(6) months from today in accordance with law.

GUDI SEVA SHYAM PRASAD, J

Date: 09-04-2018
TSNR

