

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.2790 OF 2013

ORDER:

In this petition filed under Section 482 CrPC., the petitioner/third respondent seeks to quash the proceedings against him in D.V.C.No.32 of 2013 on the file of the III Metropolitan Magistrate, Traffic Mobile Court, Hyderabad, registered against him and other respondents under Section 12 of the Protection of Women from Domestic Violence Act, 2015 (the Act, for short).

The first respondent is the husband of the complainant. The second respondent is the mother, the third respondent/petitioner herein is the brother and the respondents 4 and 5 are the sisters of the first respondent. The complainant gave report to the Protection Officer making allegations against the respondents for their alleged harassment meted out to her for the purpose of additional dowry and to transfer properties in their names and when she failed to do so, they drove her from out of the house. All the allegations made in the complaint are not essential. This petition is filed by the third respondent alone and hence, the allegations in the complaint touching the overt acts of the third respondent/petitioner alone are germane in this petition. They will be discussed a little while later.

Heard learned counsel for the petitioner Sri Gaddam Srinivas and the learned counsel for the second respondent/complainant Sri Ravi Shanker.

In view of the decision of this Court in **Giduthuri Kesari Kumar vs. State of Telangana**¹ holding that quash petition is not maintainable against the complaint made under the Act, unless the petitioner's case falls under the exceptions enumerated in the said decision, the matter is heard with regard to the maintainability. The learned counsel for petitioner

¹ 2015 (2) ALD (CrI) 470 (AP)

would submit that his case falls under one of the exceptions enumerated in the aforesaid decision to the effect the petitioner/third respondent had no domestic relationship with the complainant as held in Section 2(f) of the Act and therefore, he is not liable to answer any of the claims made by the complainant. In expatiation, his submission is that the petitioner has worked in United Arab Emirates (UAE) as a Sales Manager Emirates Photo Marketing LLC for about fifteen years and as the petitioner's health was deteriorated and he was diagnosed as Deep Vein Thrombosis (DTP) by the Doctors at UAE and therefore, he returned to India in 2012 and since then he has been staying at Begumpet, Hyderabad, with his family. Learned counsel would further submit that the petitioner never resided with the first respondent and the complainant since after their marriage and even now also, he is not residing with them and therefore, there was no domestic relationship between the complainant and the petitioner within the ambit of Section 2(f) of the Act. Further, he is not responsible for any of the reliefs claimed by the second respondent/complainant. Therefore, continuation of the proceedings against him would amount to abuse of process of the Court and hence, the petition be allowed.

Opposing the petition by filing counter, learned counsel for the second respondent/complainant would argue that the petition is maintainable against the present petitioner also in view of the fact that he along with other respondents demanded additional dowry from the complainant and due to their pressure, an amount of Rs.5,00,000/- was paid by the parents of the complainant by selling their family properties and the petitioner and his parents spent that amount for the development of the matrimonial house situated at Kukatpally, Hyderabad. However, learned counsel would fairly admit that the petitioner/third respondent is not directly responsible for any of the reliefs claimed by the complainant.

The point for consideration is whether there are merits in this petition to allow.

In **Giduthuri Kesari Kumar** (supra), this Court has observed that in view of the remedies which are in civil nature and enquiry is not a trial of criminal cases, the quash petitions under Section 482 CrPC 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 Act between the parties, the petitioner filed DV 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, respondents can seek quashment of the proceedings since continuation of the proceedings in such instances certainly amounts to abuse of process of Court. The submission of the petitioner is that there is no domestic relationship between him and the complainant in terms of Section 2(f) of the Act.

A perusal of the complaint allegations would show that the complainant alleged that the respondents therein soon after marriage started making hefty demands and in that process, due to their pressure, an additional amount of Rs.5,00,000/- was paid in cash by her parents having sold their family properties and the said amount was spent for the development of matrimonial house at Kukatpally, Hyderabad by constructing first floor and other structures. The other allegations in the complaint are mainly aimed against the first respondent therein, who is the husband of the complainant, and only peripheral and omnibus allegations are made against the respondents therein. Be that as it may, so far as the allegation that the respondents therein demanded additional amount and the parents of the complainant paid Rs.5,00,000/- is concerned, in the complaint there was no mention about the date when the said amount was allegedly demanded by the respondents therein and paid by the parents of

the complainant. Hence, there is no clarity as to when the said amount was demanded. On the other hand, the submission of the petitioner/third respondent is that for about 15 years, he resided in UAE and worked as Sales Manager there and returned to India due to his ill-health in 2012 and he has been residing at Begumpet separately from the complainant and the first respondent. This fact is not controverted. There is no denial with regard to his stay at Begumpet in the counter filed by the complainant/second respondent. Therefore, the petitioner's submission to that extent can be believed. If the petitioner/third respondent stayed for a long period of fifteen years away from India and even from 2012 onwards also he has been residing separately from the complainant/second respondent, it will be difficult to believe that he had any influence over the family affairs of his younger brother. Therefore, the submission of the petitioner that he has no domestic relationship with the complainant, can be accepted.

Section 2(f) of the Act defines domestic relationship, which reads as under.

2(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

A perusal of the said definition gives an understanding that in order to hold that two persons have domestic relationship, they must be living or have lived, at any point of time, together in a shared household and they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. No doubt, the petitioner/third respondent and the complainant/second respondent are related as members of the family in the sense that the complainant is the wife of the petitioner's younger

brother, but they never lived together in a shared house, which the fact is evident. Therefore, the petitioner's case falls within the exceptions enumerated in the case of **Giduthuri Kesari Kumar** (supra). Therefore, continuation of the proceedings against the petitioner/third respondent, in the present circumstances, would amount to abuse of process of Court.

In the result, the criminal petition is accordingly allowed and the proceedings in D.V.C.No.32 of 2013 on the file of the III Metropolitan Magistrate, Traffic Mobile Court, Hyderabad, are quashed insofar as the petitioner/third respondent is concerned.

Consequently, miscellaneous petitions pending, if any, shall stand closed. No costs.

25.06.2018
pln



U.DURGA PRASAD RAO, J