

HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 13164 OF 2013

ORDER :

This Criminal Petition is filed under section 482 of Cr.P.C., seeking to quash the proceedings in D.V.C.No. 9 of 2011 on the file of the Court of Judicial Magistrate of First Class, Metpally, Karimnagar district by the petitioners/respondents 2 to 4.

2. The second respondent herein is the wife of the first respondent. The second respondent has filed D.V.C.No. 9 of 2011 against the petitioners, who are respondents 1 to 4 in the D.V.C.No. 9 of 2011. The first respondent is the husband, second and third respondent are the parents of the first respondent and the fourth respondent is the sister of the first respondent.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor for the first respondent.

4. The learned counsel for the petitioners fairly submitted that in the light of the judgment of this Court in **GIDUTHURI KESARI KUMAR AND ORS. V/s. STATE OF TELANGANA AND ORS.**, vide CrI.P.Nos. 7289 of 2014 and batch, held at para No.10 as follows :

10) So, a study of statement of objects and reasons would show that though the domestic violence against women was addressed to some extent by the penal law under Section 498A, the same was not addressed by the civil law it was felt. Hence, Protection of Women from Domestic Violence Act was brought into force w.e.f. 26.10.2006. The reliefs sought to be provided under this enactment, as we will presently see are therefore predominantly civil in nature in tune with the object of the Act. In the line, Section 18 provides Protection order against domestic violence; Section 19 intended to grant Residence order; Section 20 confers Monetary reliefs; Section 21 grants Custody order relating to the custody of the children and Section 22 confer compensation and damages to the victim of domestic violence. So these remedies are purely civil in nature and it is important to note none of the several forms of the domestic violence committed by the respondents under these sections is referred as an offence and respondents as offenders. It is only when an order is passed under any of the aforesaid sections and the breach of protection order is caused by them, such breach will be termed as an offence under Section 31 of the D.V. Act and the same is categorized as cognizable and non-bailable under Section 32 of the D.V. Act. That is what held in *Velisetti Chandra Rekha's* case (1 *supra*). In the subsequent judgments also similar view was expressed as below:

i) In *Gundu Chandrasekhar vs. The State of Andhra Pradesh*^{1[5]}, a learned judge of this High Court observed thus:

"None of the reliefs claimed in D.V.C. No.8 of 2011 by the 2nd respondent can be called crimes. Though, the Act empowers a Magistrate to entertain the complaint of an aggrieved person under Section 12 of the Act and makes it incumbent on the Magistrate to make enquiry of the same under the Code of Criminal Procedure, 1973, reliefs under Sections 18 to 22 of the Act are in the nature of civil reliefs only. It is only violation of order of the Magistrate which becomes an offence under Section 31 of the Act and which attracts penalty for breach of protection order by any of the respondents. Similarly Section 33 of the Act provides for penalty for discharging duty by Protection Officer. Except under Sections 31 and 33 of the Act which occur in Chapter V, all the reliefs claimed under Chapter IV of the Act are not offences and enquiry of rights of the aggrieved person under Sections 18 to 22 of the Act cannot be termed as trial of a criminal case." (Emphasis supplied)

ii) In *Mohit Yadav and another vs. State of Andhra Pradesh*^{2[6]}, a learned judge of this High Court observed thus:

"Para 22: If a statute does not provide an offender liable to any penalty (conviction or sentence) in favour of the state, it can be said that legislation will be classified as remedial statute. Remedial statutes are known as welfare, beneficent or social justice oriented legislations. A remedial statute receives a liberal construction. In case of remedial statutes, doubt is resolved in favour of the class of persons for whose benefit the statute is enacted. Whenever a legislation prescribes a duty or penalty for breach of it, it must be understood that the duty is prescribed in the interest of the community or some part of it

^{1[5]} 2012 (2) ALD 910

^{2[6]} 2010(1)ALT (Cri) 105

and the penalties prescribed as a sanction for its purpose. None of the provisions of the Domestic Violence Act, 2005 has direct penal consequences. (Emphasis supplied)

Para 23: Under Section 31 of the Domestic Violence Act, 2005, breach of protection order, or of an interim protection order, by the Respondent shall be an offence under the Act. Therefore, all other orders passed under Sections 17,18,19,20 and 22 of the Domestic Violence Act, 2005 have no penal consequences, even if the Respondent committed breach of the order, except as provided under Section 31 of the Act." (Emphasis supplied)

Therefore, it is clear that the proceedings conducted till passing of the orders under Section 18 to 22 are only civil in nature to provide a civil remedy. Thus it is a civil complaint packed with a criminal wrapper.

In the light of the above judgment, the proceedings under section 18 to 22 are in the nature of civil reliefs, therefore, the petitioners 2 to 5 cannot file a petition under section 482 of Cr.P.C. Therefore, it is prayed that the proceedings in the above D.V.C. may go on and that the presence of the petitioners may be dispensed with during trial, as they are residing in separate village in Karimnagar district and not residing with the defacto-complainant.

5. The learned Public Prosecutor has not opposed for the said submission.

6. Considering the request of the learned counsel for the petitioners and in the light of the judgment referred **GIDUTHURI KESARI KUMAR AND ORS. V/s. STATE OF TELANGANA AND ORS.**, vide CrI.P.Nos. 7289 of 2014 and batch and **C.B.I. V/s. A. RAVI SHANKER PRASAD** reported in 2009 [6] SCC-35, the petitioners are directed to approach the trial court and seek their remedies before it.

However, the presence of the petitioners is dispensed during trial except on the occasion insisted by the trial court.

7. With the above observation, this Criminal Petition is disposed of accordingly.

8. As a sequel, miscellaneous petitions if any, pending in this Criminal Petition stands vacated.

JUSTICE GUDISEVA SHYAM PRASAD.



03/04/2018
I s L

HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD



CRIMINAL PETITION No. 13164 OF 2013

Date: 03/04/2018
Circulation No.194
I s L