

HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No. 4500 OF 2011

ORDER:

1. This petition under Section 482 Cr.P.C. is filed seeking to quash the proceedings in DVC.No.30 of 2011 on the file of learned IV Metropolitan Magistrate, City Criminal Courts, Nampally, Hyderabad.

2. Learned Counsel for the petitioners contended that petitioners 1 and 2 are not having any inherited property and that petitioners 1 to 3 are the daily wage earnings working in shops as assistants. It is further contended that the second respondent is claiming share from the property of the second petitioner and she is also claiming maintenance from petitioners 1 to 3. It is further contended that even presuming that if the second respondent/complainant had any share from the property of the petitioners 1 and 2, she can claim by filing civil case for partition. It is further contended that the second respondent/complainant filed false case against the petitioners only to harass them.

3. Per contra, learned Additional Public Prosecutor contended that the present Criminal Petition is not maintainable under Section 482 Cr.P.C. in view of the judgment of this Court in *GIDUTHURI KESARI KUMAR AND ORS Vs. STATE OF TELANGANA AND ORS* {2015 (2) ALD (CrI) 470 (AP)} wherein this Court held that in view of the remedies D.V.Act are civil in nature, and enquiry therein is not a trail of criminal cases the

quash petitions under Section 482 Cr.P.C., are not maintainable. It was held therein as under:

“ 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 leveled 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.”

4. In the case on hand also, the second and third respondents/ complainants filed DV case restraining the petitioners herein from causing any act of domestic violence including threatening over phone; to direct the petitioners 1 to 3 herein to pay maintenance of Rs.5,000/- to the second respondent and Rs.2,500/- to the third respondent herein per month from the date of petition; to direct the petitioners to return dowry amount of Rs.1,75,000/-, Rs.1,05,000/- given towards '*Atha and Adapaduchu Katnam*', 2 tulas of gold, 15 tulas of silver and all the house hold articles including furniture worth Rs.50,000/- and marriage expenses of Rs.1,00,000/-; to direct the petitioners herein to return the original documents pertaining to the LIC Jeevan Saral Policy bearing No.685765804, dt. 30.06.2010; to direct the petitioners herein to provide residence to the complainants or alternatively to pay Rs.2000/- per month towards house rent allowance; and to direct the petitioners herein to deposit an amount of Rs.5,00,000/- in the name of third respondent herein towards his future requirements, like education and other expenses.

5. It is thus clear that the relief sought for in the DV case is purely civil in nature and as held in the aforesaid decision, the quash petitions under Section 482 Cr.P.C. is not maintainable. Further, as held in the decision referred to supra, 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 require that he can insist the presence of the parties even by adopting coercive measures

6. In view of the above and following the decision of this Court referred to supra, the present Criminal petition is dismissed in terms thereof.

7. Miscellaneous petitions pending consideration if any in the Criminal Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 9th February, 2018.
Msnr_x