

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.2319 of 2018

ORDER:

This Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioners/A.2 to A.4, A.8 & A.9, to quash the proceedings in D.V.C.No.36 of 2017 on the file of the I Additional Judicial Magistrate of First Class, Kadapa.

2. Heard the learned counsel for the petitioners/A.2 to A.4, A.8 & A.9, learned Assistant Public Prosecutor representing the 2nd respondent-State and perused the record.

3. Having argued for some time, learned counsel for the petitioners/A.2 to A.4, A.8 & A.9 would submit that if a direction is given to the Court below not to insist the appearance of the petitioners/A.2 to A.4, A.8 & A.9 except on the dates when their personal appearance is required, that would be sufficient. It is also brought to the notice of this Court the decision rendered in *Giduthuri Kesari Kumar and others Vs. State of Telangana and others*¹, wherein, this Court laid down certain guidelines in paragraph 14, which are as follows:

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 require that he can insist the presence of the parties even by adopting coercive measures.

¹ 2015 (2) ALD (CrL.) 470 (AP)

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.”

4. The remedies available to the victim under the Domestic Violence Act are civil in nature. Therefore, it is not appropriate to insist the personal appearance of the petitioners/A.2 to A.4, A.8 & A.9 except on the dates when their personal appearance is required. Further, the Court below is directed to follow the guidelines formulated by this Court in Giduthuri Kesari Kumar’s case (referred supra).

5. With the above directions, the Criminal Petition is disposed of.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

Dr.SHAMEEM AKTHER, J

26th February, 2018
Bvv