

THE HON'BLE JUSTICE SRI GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 15860 of 2013

ORDER :

This Criminal Petition is filed under Section 482 of Criminal Procedure Code, seeking to quash the proceedings in D.V.C. No.23 of 2013 on the file of Additional Judicial First Class Magistrate, Miryalaguda, by the petitioners 1 to 5, who are the respondents 2 to 6 in the Domestic Violence Case.

2. The learned counsel for the petitioners is not present. No arguments are advanced on behalf of the petitioners. Heard the Learned counsel for the 1st respondent and the learned Public Prosecutor.

3. The case of the petitioners is that the 1st respondent gave a complaint against the petitioners 1 to 5, alleging that at the time of marriage, her parents gave an amount of Rs.10 lakhs cash and 20 tulas of gold and house hold articles worth 2 lakhs, as gift to the petitioners. She and her husband led happy marital life for about one month and thereafter she came to know through messages that her husband had illicit relationship with another girl. It is further alleged that she was physically and mentally tortured for additional dowry by her elder brother-in-law and his wife, who are living in the same house with her.

4. The main case of the petitioners is that there are no specific allegations against the petitioners 1 to 5, who are respondents 2 to 6 in D.V.C. Case. Therefore, sought for quash of proceedings against them.

5. The learned counsel for the 2nd respondent submits that in view of the grant of stay of all further proceedings, in this case, the proceedings in D.V.C. case have been stayed and the case could not proceed further.

6. The learned counsel for the 2nd respondent further submitted that in the light of the judgment rendered by this Court in Criminal Petition No. 7289/2015 and the Batch, in the case of **Giduthuri Kesari Kumar and Ors. Vs. State of Telangana and Ors.**, the proceedings under D.V.C. Act cannot be quashed under Section 482 of Cr.P.C., as the proceedings under D.V.C Act are civil in nature. In the above case in para 10, this Court has observed as under :

“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.

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.

In that view, when the present Criminal Petitions are perused, except CrI.P.No. 7289 of

2014, the other petitions are filed with the plea that there is no domestic violence and the petitioners were unnecessarily roped in the case. Hence, they are held not maintainable and accordingly dismissed. In CrI.P.No. 7289 of 2014, the ground for quashment of proceedings is that the earlier CC No. 554/2010 for the offence under Section 498-A IPC with similar allegations was acquitted. Hence, the said petition is taken up for hearing. Criminal Petition Nos 16576, 16607, 16608 of 2014; 76,99,226, 311, 388, 395, and 476 of 2015 are dismissed.”

7. Placing reliance on the above decision, it is submitted that the remedies under D.V.C Act are civil remedies. If there is no domestic violence and there is no domestic relationship, in such cases only, proceedings can be quashed.

8. However, in the light of the facts and circumstances of this petition, taking into consideration the allegations, keep the attract the provisions of the Domestic Violence Act, the petitioners are not entitled for quashing the proceedings. In the light of the judgment in **C.B.I vs A.Ravishankar Prasad & Ors**¹ wherein a leading case in **State of Haryana v. Bhajan Lal**² was referred in respect of the guidelines formulated for exercising provisions under section 482 Cr.P.C., the Hon’ble Supreme Court held that :

“ (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate

¹ 2009 (6) SCC 351

² 1992 Supp.(1) SCC 335)

within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

9. On consideration of facts and circumstances of the case and in the light of the above two decisions, the question of facts stated in the complaint cannot be gone into to find out whether they are correct or not. It is to be seen whether there are any allegations made in the petition against the respondent No. 2 to 6 in D.V.C. Case or not. It is the case of the respondents that she has been tortured arrested mentally and physically. Therefore, there are no merits for consideration in this petition. Hence the petition is

liable to be dismissed. However, the presence of the petitioners is dispensed with before the Trial Court, during the trial, except on the occasion as required by the Trial Court.

10. With these observations, the petition is disposed of. The interim stay granted already, stands vacated. The Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

GUDISEVA SHYAM PRASAD,J

Dated: 03.04.2018

JR



THE HON'BLE JUSTICE SRI GUDISEVA SHYAM PRASAD



CRIMINAL PETITION No. 15860 of 2011

Dated: 03.04.2018

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