

THE HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.7532 of 2011

ORDER:

This petition is filed by the petitioners under Section 482 of Cr.P.C., seeking to quash the proceedings in DVC.No.15 of 2011 on the file of Special Mobile Judicial First Class Magistrate, Kakinada, East Godavari District.

2. It is represented by the learned Counsel for the petitioners and the learned Additional Public Prosecutor that the issue involved in the present Criminal Petition has already been adjudicated by the High Court in *GIDUTHURI KESARI KUMAR AND ORS Vs. STATE OF TELANGANA AND ORS*, reported in {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 trial 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.”

3. Thus, in view of the submissions made by the learned Counsel for the petitioners and the learned Additional Public Prosecutor and on verification of the material placed on record, it is 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., are 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 exparte 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

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

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

JUSTICE N. BALAYOGI

DATED: 15-02-2018.
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Dated:15-2-2018

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