

**HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CRIMINAL PETITION No. 11248 OF 2013**

**ORDER :**

This Criminal Petition is filed under section 482 of Cr.P.C., seeking to quash the proceedings in DVC.No. 92 of 2013 on the file of the Court of III-Metropolitan Magistrate, Erra Manzil, Hyderabad by the petitioners 1 to 5.

2. On the complaint dated 22/04/2013 filed by the first respondent D.V.C.No. 93 of 2013 was registered against the petitioners. The case of the petitioners is that the ingredients of the provisions of Protection of Women from Domestic Violence Act, 2005 are not attracted in the D.V.C. case registered against the petitioners and therefore, the petitioners 2 to 5 are entitled for quashing of the proceedings.

3. It is further alleged that the allegations of demanding additional dowry are false and baseless, that the respondent No.1, had withdrawn D.V.C., case, and therefore, the case against the petitioners 2 to 5 is not maintainable, as such, sought for quashing of the proceedings in D.V.C. No. 93 of 2013.

4. Sri Suresh Bhatia, learned counsel for the petitioners not present and there is no representation on behalf of the petitioners.

5. The learned Public Prosecutor submits that petition under section 482 Cr.P.C., is not maintainable in the light of the decision rendered by this Court in

**GIDUTHURI KESARI KUMAR AND ORS. V/s. STATE OF TELANGANA AND**

**ORS.**, vide Crl.P.Nos. 7289 of 2014 and batch, held at para No.10, which is 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**<sup>1[5]</sup>, a learned judge of this High Court observed thus:

*"None of the reliefs claimed in D.V.C. No.8 of 2011 by the 2<sup>nd</sup> 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**<sup>2[6]</sup>, a learned judge of this High Court observed thus:

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<sup>1[5]</sup> 2012 (2) ALD 910

*“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 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 assing of the orders under Section 18 to 22 are only civil in nature to rovide a civil remedy. Thus it is a civil comfit packed with a criminal rapper*

It is clearly held that 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. However, in the lights of the facts and circumstances of this case, it is to be seen whether the petitioners 2 to 5 are entitled for seeking quashing of the proceedings.

6. The contention of the petitioners are that the allegations demanding additional dowry are baseless and false and the petitioners 2 to 5 have not harassed or caused injury to the first respondent. All these are questions of facts,

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<sup>2[6]</sup> 2010(1)ALT (Cri) 105

which can be decided after receiving the evidence. The scope of this petition is very limited to the extent of finding out whether the allegations made in the F.I.R. or complaint, even if they are taken on the face value are accepted in their entirety do not prima facie constitute case against the accused. In the light of the guidelines in BHAJAN LAL's case referred in the Supreme Court Judgment in **C.B.I. V/s. A. RAVI SHANKER PRASAD** <sup>3</sup>, the criteria is if any allegation in the F.I.R. or any other material do not disclose the cognizable offence justifying by the Police Officer under section 156 [1] of the Code, the provisions under section 482 of Cr.P.C., cannot be invoked. In the guidelines, different criterias are given for consideration as to whether under what circumstances section 482 of Cr.P.C. can be invoked.

7. In the present case, the complaint was against respondents 1 to 5. The first respondent is the husband, second respondent is mother-in-law, third respondent is father-in-law, fourth respondent is brother-in-law and fifth respondent is co-sister, who are all residents of the same house bearing No.21-6-544 Chandra Chowk Jhula, Ghansi Bazaar, Hyderabad. The allegations are that on 10/07/2007 the complainant's marriage was performed with the first respondent as per Hindu rites and customs. At the time of marriage, they incurred Rs.10 lakhs towards marriage expenses and the illegal demands of the petitioners. As per the demand

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<sup>3</sup>) 2009 [6] SCC-351

of the petitioners, an amount of Rs.2 lakhs was given to the petitioner No.1 in cash and 15 tulas of gold articles, one Kg., of silver and household articles worth Rs.1,60,000/- as dowry in the name of custom. Immediately after her marriage, she joined the company of the first respondent in her matrimonial home at 21-6-544, Chandra Chow Jhula, Ghansi Bazaar, Hyderabad. The second respondent, immediately took all gold jewellery, gifts, costly clothes, articles, belongings, stridhan, etc., into her custody and the complainant was restrained from utilizing the same. They treated her like maid servant, cook and domestic servant in the house without providing her proper food to her. In the month of October 2007, she conceived while she was not provided proper food and medical treatment during her pregnancy. Due to tension, trauma, fear and threats of the petitioners, she suffered physically and mentally which resulted in miscarriage of her pregnancy and her health was badly affected. In the similar manner, there are several allegations made against the petitioners.

8. A perusal of the complaint do not prima facie disclose that if all the allegations are taken into consideration, no cause would be made out. It is further stated in the complaint that the family members of the petitioners with a mala fide intention conspired together stating that they are renovated their bed room shifted to a rented house, the first petitioner and his family members in order to avoid the

legal consequences they approached her parents and threatened her that they will spoil the life of her parents, brother and her married sister and asked them to send an amount of Rs.2 lakhs and twenty tulas of gold, other wise they will not allow her to come into their house.

9. In the light of the judgment rendered by this Court in the case of **GIDUTHURI KESARI KUMAR AND ORS. V/s. STATE OF TELANGANA AND ORS.**, vide CrI.P.Nos. 7289 of 2014 and batch and in view of the facts and circumstances of the case and in the light of the decision rendered in the case of **C.B.I. V/s. A. RAVI SHANKER PRASAD** referred supra, there are no grounds to quash the proceedings in this matter. The petitioners are already granted interim stay and the proceedings against the petitioners are being stayed by this Court and the same shall be effected in view of the findings in this case. However, the presence of the petitioners 2 to 5 during trial is dispensed with. The Criminal Petition filed by the first petitioner was dismissed vide orders dated 01/10/2013.

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

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

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*JUSTICE GUDISEVA SHYAM PRASAD.*

03/04/2018  
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HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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Date: 03/04/2018

Circulation No.196

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