

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.12073 of 2018

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a writ of certiorari or any other appropriate writ or calling for the records relating to the proceedings in DVC No.2/ 2017 on the file of the Special Judicial Magistrate of First Class for Prohibition & Excise, Kurnool and quash the same and pass such other or further orders as the Hon'ble Court feels deem fit and proper in the facts and circumstances of the case.”

2. I have heard the submissions of *Sri O.Manohar Reddy*, learned senior counsel appearing for the petitioners, and of the learned Government Pleader for Home (AP) appearing for the 1st respondent. I have perused the material record.

3. To begin with, it is to be noted that at the hearing, this Court requested the learned senior counsel to explain as to how the present writ petition seeking the aforementioned relief is maintainable, in the facts & circumstances of the case. Therefore, on the limited aspect of the maintainability of the writ petition, submissions are heard at the stage of admission and the writ petition is coming for consideration and orders on that limited aspect.

4. The petitioners herein are the answering respondents 2 to 8 in DVC no.2 of 2017 filed by the 2nd respondent herein on the file of the Court of the Special Judicial Magistrate of First Class (Prohibition & Excise), Kurnool. The 2nd respondent herein, who is the petitioner in the said DV case, is the wife of the 1st respondent in the DV case. The petitioners 1 and 2 herein, that is, the

respondents 2 & 3 in the said DV case, are the parents-in-law of the said petitioner in the DV Case, that is, the 2nd respondent herein. Thus, the petitioners herein who are the respondents 2 to 8 in the DV case and the 2nd respondent herein, who is the petitioner in the DV case are closely related. The request in the writ petition filed under Article 226 of the Constitution of India is to quash the DV case proceedings against the petitioners herein who are the respondents 2 to 8 in the said DV case. The principal contention is that all the allegations in the DV case are made against the husband of the 2nd respondent herein and that the writ petitioners are unnecessarily roped in by impleading them as respondents 2 to 8 in the DV Case and that, therefore, the initiation of DV case proceedings against the petitioners herein, that is, the respondents 2 to 8 in the DV case, is a clear abuse of the process of law and the same is liable to be interdicted at the threshold.

5. Before proceeding further, it is apt to make a passing reference to the following Sections of law in the Protection of Women from Domestic Violence Act, 2005 ('DV Act').

12. Application to Magistrate.—

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure,

1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

27. Jurisdiction.—

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

28. Procedure.—

(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

36. Act not in derogation of any other law.—The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

6. On the aspect of maintainability, learned senior counsel appearing for the writ petitioners fairly submits that in view of the settled legal position obtaining in the States of Andhra Pradesh & Telangana, a quash proceeding for quashing of DV case is not entertainable either under Section 482 of the

Criminal Procedure Code, 1973 ('Code', for short) or Article 227 of the Constitution of India, and that therefore, the present writ petition is filed under Article 226 of the Constitution of India. He fairly submits that this Court in *Giduthuri Kesari Kumar and others v. State of Telangana and another*¹ and other decisions held that quash petitions under Section 482 of the Code on the plea that the petitioners are unnecessarily arrayed as parties, are not maintainable and that in that decision, this Court held that the remedies under the DV Act are civil in nature and that the enquiry is not a trial similar to the one in a criminal case. The correctness or otherwise of the legal position obtaining is not under challenge in this writ petition. Accepting the above said legal position only, the present writ petition is filed *inter alia* stating that regular quash proceedings are not maintainable. Therefore, learned senior counsel further submits that in view of the aforestated legal position obtaining in our States, the present writ petition to quash the DV case proceedings is maintainable as the writ petitioners cannot be left without any remedy, in view of the well settled legal position enshrined in the maxim '*Ubi Jus Ibi Remedium*' which means that 'wherever there is a right, there is a remedy'. However, admittedly, the petitioners herein did not explore the possibility of seeking the same remedy in the pending DV case, by invoking any provisions of law, which may be applicable. Nonetheless, the petitioners directly approached this Court and invoked the writ jurisdiction. In the considered view of this Court, the petitioners ought to have first approached the trial Court before which the DV case is pending and ought to have sought the present remedy and ought not to have filed a writ petition of this nature without exhausting the said remedy.

7. Thus, the sum and substance of the submissions of the learned senior counsel appearing for the petitioners is as follows: - 'As per settled legal

¹ 2015 (2) ALD (CrL.) 470

position, the remedies under DV Act are civil remedies. Therefore, a quash proceeding either under Section 482 of the Code or Article 227 of the Constitution of India is not maintainable. Therefore, the petitioners who are left with no other remedy are entitled to file the writ petition under Article 226 of the Constitution of India and seek quashment of the DV case.' This Court no doubt held that the remedies under DV Act are civil remedies and that the proceedings conducted till the passing of the orders under Sections 18, 22 are only civil in nature. In that view of the matter, the petitioners ought to have filed an application seeking the instant remedy by invoking the jurisdiction of the trial Court either under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908, or under Section 151 of the said Code or under Section 151 of the said Code read with any other provision of law, which according to the petitioners, may be applicable. Had the petitioners resorted to such a course, the learned Judge of the trial Court ought to have passed some orders either rejecting such an application on the ground of maintainability or on consideration of merits, in the event of the learned trial Judge were to hold that the said application is maintainable. Merely on the assumption that the learned Judge of the trial Court may not entertain such an application and that on the further assumption that no remedy is available before the trial Court, the petitioners cannot be permitted to institute the writ petition of the present nature. In the considered view of this Court, the writ petition filed on such assumptions and without first invoking the jurisdiction of the trial Court is not maintainable, in the considered view of this Court.

8. On the above analysis, the writ petition is disposed of reserving liberty to the petitioners to first invoke the jurisdiction of the trial Court by filing an appropriate and necessary application for the instant relief, if they so desired and are so advised. It is, however, made clear that this Court did not express any opinion finally on the maintainability of the writ petition of this nature, as

this Court only held that this writ petition, without first invoking the jurisdiction of the trial Court, is not maintainable. Therefore, it is needless to state that the petitioners are always having the liberty to invoke the jurisdiction of this Court after first approaching the trial Court and exhausting the remedies, if any, which the law permits. It is also made clear that this Court has not expressed any opinion on the jurisdiction of the trial Court on the instant subject matter as it is for the learned trial Judge to take a considered decision in the matter, in the event the petitioners file an application invoking its jurisdiction.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

02.05.2018
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M. SEETHARAMA MURTI, J