

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.5233 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), is filed by the petitioners - respondent Nos.1 to 4, to quash the proceedings against them in D.V.C. No.28 of 2017, pending on the file of the learned XI Metropolitan Magistrate, Cyberabad at L.B. Nagar, filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'Act, 2005').

2. The main grounds urged before this Court in the petition are that, there is any amount of inconsistency in the statement made before the concerned Officers, and the second ground is that petitioner Nos.3 and 4, who are respondent Nos.3 and 4 in the DVC, are residing at Rajahmundry, which is far away, and thereby there is no domestic relationship as defined under Section 2 (f) of the Act, 2005 and, as such, the proceedings against the petitioners cannot be continued under the Act, 2005.

3. During hearing, learned counsel for the petitioners, Sri K. Rajanna, reiterated the same grounds, and whereas, learned counsel for respondent No.2, Sri P. Jagadish Chandra Prasad, supported the petition in all respects, while contending that they are living together at Guntur in one house and the relationship would fall within Section 2 (f) of the Act, 2005, and requested to dismiss the petition.

4. The jurisdiction of this Court under Section 482 of the Code is limited, and this Court can evaluate the material on record and cannot appreciate the evidence. Inconsistency in the statements pointed out by the learned counsel for the petitioners if accepted, it would amount to appreciation of evidence. Therefore, on the ground of inconsistency in the statements, this Court cannot quash the proceedings against the petitioners herein.

5. The other ground urged before this Court is that, respondent Nos.3 and 4, who are petitioner Nos.3 and 4 herein, are the residents of Rajahmundry and they are not living with petitioner No.1 in one room at Guntur, and thereby there was no domestic relationship as defined under Section 2 (f) of the Act, 2005. As per the cause title of the application filed under Section 12 of the Act, 2005, all the respondents therein are residents of door No.8-6-68, 5th Line, Nehru Nagar, Guntur, whereas the petitioners are contending that petitioner Nos.3 and 4 are the residents of Rajahmundry, which is far away to the place where the alleged domestic incident took place. More curiously, in the long cause title of the present Criminal Petition, it is mentioned that petitioner Nos.3 and 4 - Chetty Leelakrishna and Chetty Naga Shivaji, are residents of Tanuku, West Godavari District. The plea of petitioners, on the face of record, is inconsistent. While contending that petitioner Nos.3 and 4 are residing at Rajahmundry, they conveniently mentioned their address at Tanuku, which is part of West Godavari District. Therefore, at this stage, this cannot be accepted in view of the inconsistent statement, both in the

application and during arguments. However, the petitioners are not required to appear before the Court below in view of the law declared by this Court in **Giduthuri Kesari Kumar v. State of Telangana**¹, wherein this Court laid down certain guidelines, to quash the proceedings in D.V.C. Case, in paragraph No.14, which are as follows:

“14) To sum up the findings:

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 exparte order with the material available. It is only in the exceptional cases where the Magistrate feels that the circumstance requires that he can insist the presence of the parties even by adopting coercive measures.

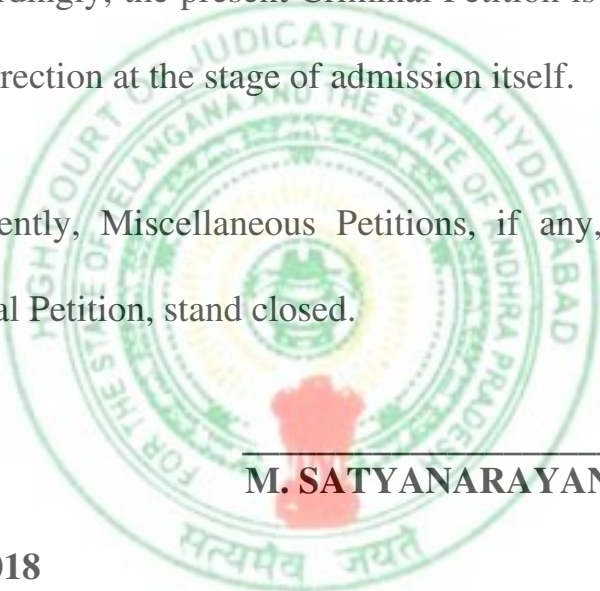
ii) In view of the remedies which are in civil nature and enquiry is not a trial of criminal case, the quash petitions under Sec.482 Cr.P.C on the plea that the petitioners are unnecessarily arrayed as parties are not maintainable. It is only in exceptional cases like without there existing any domestic 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 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.”

¹ 2015 (2) ALD (CrI.) 470 (AP)

6. Having considered the grounds urged before this Court, I find that none of the grounds sufficient to exercise inherent jurisdiction under Section 498 of the Code and, consequently, the present Criminal Petition is liable to be disposed of. However, the learned XI Metropolitan Magistrate, Cyberabad at L.B. Nagar, is directed to follow the guidelines issued by this Court in **Giduthuri Kesari Kumar¹**.

7. Accordingly, the present Criminal Petition is disposed of with the aforesaid direction at the stage of admission itself.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition, stand closed.



M. SATYANARAYANA MURTHY, J

October 03, 2018
Mgr