

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3981 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioners/respondents 1 to 5 seek to quash the proceedings against them in D.V.C.No.76 of 2012 on the file of IV Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District.

2a) Petitioners 2 and 3/R2 and R3 are parents; petitioner No.4/R4 is the elder brother and petitioner No.5/R5 is the sister-in-law (brother's wife) of 1st petitioner/R1.

b) Respondent No.1 herein is the wife of 1st petitioner and she filed DVC No.76 of 2012 alleging that the petitioners/R1 to R5 have committed manifold acts of domestic violence against her and prayed for several reliefs.

c) The averments in the petition filed by her in DVC No.76 of 2012 in brief are that the marriage between herself and R1 was held on 05.08.2009 at Vijayawada and at the time of marriage, her parents gave Rs.5 lakhs as Pasupu Kumkuma to respondents 1 to 3 and also 103 sq. yds. of house site at Ashok Nagar, Vijayawada besides gold ornaments. The petitioner was working in State Bank of India by the time of her marriage and 1st respondent was working as I.T. Recruiter at Hyderabad and whenever he visited Vijayawada, they used to reside at Guntur with her in-laws, as at that time R2 to R5 were residing at Guntur. Since short time after marriage, all the respondents started ill-treating her, besides 1st

respondent was behaving like a sadist and he was insulting and humiliating her at the instance of R2 to R5. The respondents also used to insult the parents of petitioner and 1st respondent sent message to her brother's mobile stating that her father was having illegal relationship. Her further averments are that as the petitioner was employee, 1st respondent used to suspect her character and make defamatory allegations and he blackmailed her for money and when she refused to comply with his illegal demands, he used to attribute illegal intimacy with others and used to send e-mails and messages to her, her brother and to her colleagues. When she informed this fact to her in-laws, instead of admonishing 1st respondent they supported and abused her in filthy language.

d) In June 2010, the petitioner was transferred to Hyderabad and but there is no change in the attitude of 1st respondent. He used to follow her secretly to watch her and on the ill-advice of respondents 2 to 5, he used to beat her mercilessly on silly reasons. The 1st respondent has taken away her PAN card, Identity card and cell phone and other belonging. On his pressure she took loan of Rs.36,000/- in April, 2010 and gave to him. He has forcibly taken away her jewellery worth Rs.3,75,000/-.

e) Her further averments are that in September 2010, respondents 2 to 5 came to her house at Hyderabad and stayed for 10 days and at that time all the respondents together demanded for Rs.2 lakhs and property documents, allegedly for the business of 1st respondent and when she refused, all of them manhandled and abused her as a Saturn to their

family. As she was pregnant at that time, she went to her parents' house and gave birth to a female child on 02.01.2011 at Vijayawada. When this fact was informed to respondents, they abused her for giving birth to a female child.

f) In March 2011, respondents 2 and 3 came to Vijayawada to attend the Gruhapavesam ceremony of respondents 4 and 5 and after function was over, all the respondents came to the house of her parents and demanded her parents to give Rs.2 lakhs and property documents and threatened that they would not allow her to lead marital life with 1st respondent unless they comply with their demand. In spite of request made by her parents, respondents were not pacified. Thereafter, 1st respondent sent messages to all the colleagues of petitioner as if she got illicit intimacy with one Subbaiah. Thus, respondents tortured the petitioner in many ways and respondents 1 to 3 necked her out from the house on 28.05.2011. The 1st respondent started demanding her to give divorce to marry another girl. The petitioner with her child took shelter in the house of her parents. She gave report to police of Chandanagar PS, Hyderabad against the respondents which was registered as case in Cr.No.382 of 2011 for the offence under Section 498A IPC and after investigation charge sheet was filed which was taken cognizance and registered as C.C.No.1938 of 2011 by the IX Metropolitan Magistrate, Kukatpally.

g) On all these averments, she claimed different reliefs such as: alternative accommodation under Section 19; protection order under

Section 18; maintenance at the rate of Rs.15,000/- to the petitioner and her daughter from 1st respondent; direction to respondents to pay Rs.20 lakhs towards compensation and damages for physical and mental torture caused by them and also a direction to the respondents not to cause domestic violence by communicating with her personally or in electronic form and also claimed Rs.5 lakhs towards return of gold ornaments.

Hence, the instant quash petition by respondents 1 to 5 in DVC.

3) Heard arguments of Sri T.Pradyumna Kumar Reddy, learned counsel for petitioners and learned Additional Public Prosecutor (AP) for respondent No.3. Notice served on respondents 1 and 2, but there is no representation.

4) I heard arguments of learned counsel for petitioners and learned APP about the maintainability of DVC and in view of judgment of this Court in *Giduthuri Kesari Kumar and others vs. State of Telangana and others*¹ wherein this Court observed thus:

“Para—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 ex parte order with the material available. It is only in the exceptional cases where the Magistrate feels that the circumstances require that he can insist the presence of the parties even by adopting coercive measures.

¹ 2015 (2) ALD (CrI.) 470 (AP)

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 levelled 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 view of the above ruling, I gave my anxious consideration to know whether there exists any exceptional circumstances to entertain the quash petition.

5) Severely fulminating that the petition allegations are false to the core, learned counsel would argue that the petition is not maintainable sofaras the petitioners 2 to 5/R2 to R5 are concerned because petitioners 2 and 3 are old parents of 1st respondent in DVC and they have been residing at Guntur whereas the petitioner in DVC on account of her job resided at Vijayawada for sometime and later herself and 1st respondent stayed at Hyderabad and therefore the parents have nothing to do with the marital affairs of 1st respondent. Similarly, petitioners 4 and 5 are residing in the State of Gujarat and therefore they too have nothing to do with the matrimonial affairs of their brother. Learned counsel would further submit that with the same allegations as contained in DVC, the petitioner in DVC lodged Crime No.382/2011 with police of Chandanagar for the offence under Section 498A IPC and therefore

charge sheet was filed which was taken cognizance and registered as C.C.No.1938 of 2011 by the IX Metropolitan Magistrate, Kukatpally at Miyapur. The present petitioners 2 to 5 filed CrI.P.No.1686 of 2012 under Section 482 Cr.P.C. to quash C.C.No.1938 of 2011 and after enquiry this Court allowed the petition on 02.11.2012 and quashed the proceedings against them. Since the petitioners 2 to 5 were acquitted in C.C.No.1938 of 2011, the present DVC No.76 of 2012 is not maintainable against them on the same facts. So far as 1st petitioner is concerned, learned counsel argued, he never caused any domestic violence against 1st respondent and she filed a false case against him.

6) Learned APP opposed the petition.

7) A perusal of the record shows that earlier the 1st respondent herein lodged report with the police of Chandanagar PS which was registered as Cr.No.382 of 2011 against the present petitioners for the offence under Section 498A IPC. The record further shows that the present petitioners/R2 to R5 who are A2 to A5 in the said case filed CrI.P.No.1686 of 2012 under Section 482 Cr.P.C. and this Court having found that A2 to A5 were residing separately and there is no *prima facie* case against them and continuation of proceedings against them would amount to abuse of process of court, quashed the proceedings in C.C.No.1938 of 2011 against A2 to A5. Needless to emphasize that the facts in C.C.No.1938 of 2011 are similar to DVC No.76 of 2012. As the criminal proceedings in C.C.No.1938 of 2011 are quashed against the present petitioners 2 to 5, the said fact can be taken as an exceptional

circumstance to quash the proceedings against them in the instant petition also. Sofaras 1st petitioner is concerned, there is a *prima facie* material against him and most of the reliefs are sought against him. In that view, proceedings cannot be quashed sofaras 1st petitioner is concerned.

8) In the result, this Criminal Petition is partly allowed and proceedings in DVC No.76 of 2012 on the file of IV Additional Chief Metropolitan Magistrate, Vijayawada are quashed sofaras petitioners 2 to 5 are concerned. However, proceedings in the aforesaid DVC shall continue against the 1st petitioner.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 23.10.2018
Murthy

U. DURGA PRASAD RAO, J

