

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.1138 OF 2013

ORDER:

In this petition, filed under Section 482 of Code of Criminal Procedure (CrPC), the petitioner/respondent seeks to quash the proceedings against him in D.V.C.No.2 of 2012 in the Court of the Chief Metropolitan Magistrate, Visakhapatnam.

The said D.V. Case is filed by the second respondent/complainant, who is the widowed daughter of the petitioner. Her case is that the petitioner and her mother got divorced on 26.06.2006 without her knowledge and thereafter, she got married on 05.09.2008 with one Ayyagari Subrahmanyam of Ankapalli by raising loans to a tune of Rs.4,00,000/- for huge interest. Out of their wedlock, a son was born to her on 18.06.2009 and he was named as 'Nagendra'. Her husband died of cancer on 29.12.2010 at Anakapalli and thereafter, herself and her son became destitutes. Her further case is that the petitioner herein being the father, liable to pay the arrears of maintenance to her from 01.01.1998 till her marriage on 05.09.2008 to a tune of Rs.5,00,000/-. Hence, she filed D.V. Case under Section 12 of the Protection of Women from Domestic Violence Act, 2015 (**the Act, for short**) seeking a Protection Order prohibiting the petitioner/respondent from causing violence to the complainant and her relations including her child; requiring the petitioner/respondent to execute a bond that he would not cause domestic violence and direct him to pay an amount of Rs.2,00,000/- towards compensation for mental agony caused to her; requiring the petitioner/respondent to pay an amount of Rs.10,000/- per mensem to her towards arrears of maintenance from 01.01.1998 when the petitioner/respondent left her and refused and neglected to provide maintenance to her till the date of her marriage and direct him to pay an

amount of Rs.5,00,000/- towards expenses incurred for her marriage with interest @ 24% per annum. Hence, the instant petition by the petitioner/respondent.

In view of the decision of this Court in **Giduthuri Kesari Kumar vs. State of Telangana**¹ holding that quash petition is not maintainable against the complaint made under the Act, unless the petitioner's case falls under the exceptions enumerated in the said decision, the matter is heard with regard to the maintainability of the petition and also the other aspects.

Insofar as the domestic relationship between the complainant and the petitioner/respondent is concerned, learned counsel for the petitioner/respondent fairly admitted that the complainant is the daughter of the petitioner/respondent and their relationship would not be severed though he took divorce with his wife. His main objection against the D.V. Case is that after the death of the husband of the complainant, the complainant ought to have claimed maintenance and other reliefs against her in-laws, but not against the petitioner/respondent. However, on instructions, the learned counsel would submit that since the complainant is the daughter of the petitioner/respondent, out of sympathy, the petitioner/respondent may make some provision for the complainant and her son, but under law, he cannot be compelled to do so.

It is seen that since this Court at the threshold, is considering the maintainability of the petition in the light of the decision in **Giduthuri Kesari Kumar** (supra), it has to be seen whether the petition is maintainable or not. Since the domestic relationship is not in dispute and the case of the petitioner/respondent is not falling within the exceptions mentioned in the aforesaid decision, it can be said that the quash petition is not maintainable. Therefore, the petitioner/respondent can appear

¹ 2015 (2) ALD (CrI) 470 (AP)

before the trial Court and defend his case with the defence pleas that are available to him under law. So far as the offer made by the learned counsel for the petitioner is concerned, he can put forth the said offer before the trial Court for consideration.

With these observations, the criminal petition is dismissed. Consequently, miscellaneous petitions pending, if any, shall stand closed. No costs.

U.DURGA PRASAD RAO, J

26.06.2018
pln

