

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.8827 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C, petitioners/respondents 2 to 6 seek to quash the proceedings in DVC No. 5 of 2013 on the file of IV Additional Chief Metropolitan Magistrate, Visakhapatnam.

2. Heard Sri T.D. Phani Kumar, learned counsel for petitioners, Sri A.S.C. Bose, learned counsel for respondent Nos. 2 & 3 and learned Additional Public Prosecutor (AP) for respondent No. 1.

3. This Court heard the case on the maintainability of the quash petition as well as the other merits. In view of the judgment in **Giduthuri Kesari Kumar vs. State of Telangana**¹ holding that the quash petitions in DV cases cannot be generally maintainable except in exceptional cases.

4. The submission of learned counsel for petitioners is that in DVC No. 5 of 2013 the respondents 2 & 3/petitioners except making omnibus allegations against petitioners/ respondents 2 to 6 no specific overt acts are attributed against them. Further, with the similar allegations as mentioned in the complaint petition, the second respondent/petitioner No. 2 filed CC No. 1257/2011 on the file of First Additional Chief Metropolitan Magistrate, Visakhapatnam against her husband (first respondent in DVC No. 5 of 2013) and the present petitioners 1, 3 and 4 (respondents 2 to 4 in CC No. 1257/2011) under Section 498-A IPC. The learned First

¹ 2015 (2) ALD (CrI.) 470 (A.P)

Additional Chief Metropolitan Magistrate, Visakhapatnam after full-fledged trial acquitted the petitioners 1, 3 & 4 herein (A2 to A4) holding that the prosecution could not establish the ill-treatment and harassment allegedly made by A2 to A4. In that view, learned counsel would submit, the case of the petitioners squarely falls under one of the exceptions enumerated in **Giduthuri Kesari Kumar's** case (supra) and therefore, continuation of proceedings against petitioners 1, 3 & 4 would amount to abuse of process of Court.

a). Learned counsel would further submit that so far as 5th petitioner/respondent No. 6 is concerned, he is the husband of petitioner No. 4 and as the Criminal Court has already held that petitioner No. 4 is the married sister and residing elsewhere and not caused any harassment to the complainant, equally her husband i.e., 5th petitioner can be said to have not caused any harassment. Therefore, he too deserves quashment of proceedings.

b). Petitioner No. 2 is concerned, it is submitted that except some omnibus allegations no specific overt acts are mentioned in DVC against her and she is also a married sister and living separately. He would argue that the petitioner does not specifically mention that the second petitioner is residing along with the complainant and her husband in the same house to have the domestic relationship with them. On all these submissions, learned counsel sought for quashment of proceedings.

5. Learned counsel for respondents 2 & 3/petitioners opposed the petition stating that all the petitioners are residing in the same house along

with the respondents 2 & 3/petitioners and they harassed her and therefore, they are liable to answer the claims made by her in DVC No. 5 of 2013.

6. In the light of the above arguments, the point for determination is whether there are merits in the petition to allow?

POINT:

7. In **Giduthuri Kesari Kumar's** case, this Court observed thus:

“(ii) In view of the remedies which are in civil nature and enquiry is not a trial of criminal case, the quash petitions under Section 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 (i) 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 (ii) 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.”

8. Now the submission of learned counsel for petitioner is that their case would fall under the exceptions and therefore, it is maintainable and by facts the petitioners deserve quashment of the proceedings.

9. I perused the copy of the judgment in CC No. 1257 of 2011 filed by the counsel for petitioners. The said case was filed by respondent No. 2 herein against respondent No. 1 in DVC No. 5 of 2013, who is her husband and petitioners 1, 3 and 4 herein under Section 498-A IPC. The judgment shows that after full-fledged trial, the First Additional Chief Metropolitan Magistrate, Visakhapatnam held that the evidence of P.Ws 1 to 4 is not

sustainable in the eye of law with regard to the ill-treatment and harassment made by A2 to A4. Accordingly, the said Court acquitted A2 to A4/petitioners 1, 3 & 4. The allegations in CC No. 1257 of 2011 and in DVC No. 5 of 2013 are more or less similar in nature. Admittedly, no appeal is preferred against the judgment in CC No. 1257 of 2011; therefore, the acquittal recorded by the trial Court in CC No. 1257 of 2011 became final. In that view, the present DVC No. 5 of 2013 is not maintainable against petitioners 1, 3 & 4. Added to it, as rightly submitted by the leaned counsel for petitioners, except omnibus and general allegations, no specific allegations are made against petitioners 1, 3, and 4 and also against petitioners 2 and 5. It is true that the addresses of all the petitioners are given as that of respondents/petitioners 2 & 3. However, in view of the specific finding given by the Criminal Court in CC No. 1257 of 2011 that harassment could not be established, mere mentioning of the addresses of the petitioners and respondents 2 & 3 as one house will not come to the advantage of the respondents 2 & 3 to establish domestic violence.

10. In the considered view of this Court, continuation of proceedings against petitioners/respondents 2 to 6 would certainly amount to abuse of process of the Court. Therefore, the Criminal Petition is allowed and the proceedings against petitioners/respondents 2 to 6 in DVC No. 5 of 2013 on the file of IV Additional Chief Metropolitan Magistrate, Visakhapatnam, are quashed.

As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 05.07.2018
KA

