

THE HON'BLE JUSTICE SRI GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 15796 of 2013

ORDER :

This petition is filed under Section 482 Cr.P.C., seeking to quash the proceedings in D.V.C. No. 2/2013, on the file of the Judicial First Class Magistrate, Atmakur, Mahaboobnagar District by the petitioner / respondent No.4 on the complaint of 2nd respondent.

2. The brief facts of the case are that the petitioner is the maternal uncle of the 2nd respondent. The allegation in the complaint is that the petitioner is harassing the 2nd respondent physically and mentally by demanding additional dowry of Rs.2 lakhs and 5 tholas of gold.

3. It is the case of the petitioner that the prosecution of the petitioner is abuse of process of law.

4. Heard the arguments of the learned counsel for the 2nd respondent and learned public prosecutor. No arguments have been advanced on behalf of the petitioner.

5. The learned counsel for the 2nd respondent submitted that in the light of the judgment rendered by this Court in Criminal Petition No. 7289/2015 and the Batch in the case of **Giduthuri Kesari Kumar and Ors. Vs. State of Telangana and Ors.**, the proceedings under D.V.C. Act cannot be quashed under Section 482 of Cr.P.C., as the proceedings under D.V.C Act are civil in nature. In the above case in para 10, this Court has observed as under :

“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 circumstance require that he can insist the presence of the parties even by adopting coercive measures.

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.

In that view, when the present Criminal Petitions are perused, except Crl.P.No. 7289 of 2014, the other petitions are filed with the plea that there is no domestic violence and the petitioners were unnecessarily roped in the case. Hence, they are held not maintainable and accordingly dismissed. In Crl.P.No. 7289 of 2014, the ground for quashment of proceedings is that the earlier CC No. 554/2010 for the offence under Section 498-A IPC with similar allegations was acquitted. Hence, the said petition is taken up for hearing. Criminal Petition Nos 16576, 16607, 16608 of 2014; 76,99,226, 311, 388, 395, and 476 of 2015 are dismissed.”

6. Placing reliance on the above decision, it is submitted that the remedies under D.V.C Act are civil remedies. If there is no domestic violence and there is no domestic relationship, in such cases only proceedings can be quashed.

7. However, in the light of the facts and circumstances of this petition, taking into consideration the allegations, keep the attract the provisions of the Domestic Violence Act, the petitioners are not entitled for quashing the proceedings. In the light of the judgment in **C.B.I vs A.Ravishankar Prasad & Ors**¹ wherein a leading case in

¹ 2009 (6) SCC 351

State of Haryana v. Bhajan Lal² was referred in respect of the guidelines formulated for exercise of provisions under section 482 Cr.P.C., the Hon'ble Supreme Court held that :

“ (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

² 1992 Supp.(1) SCC 335)

8. Keeping in view the guidelines, wherein the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, in such cases proceedings can be quashed. If there are *prima facie* allegations or averments, *prima facie*, constitute any offence in such cases proceedings cannot be quashed.

9. In the light of the allegations mentioned in this petition that there is no safety to the 2nd respondent in the hands of the petitioners and there is danger to her life and that her husband and her relatives are trying to harm her and they are resorting to emotional abuse and also economical abuse towards her by not providing monetary help and not providing maintenance, she was deprived of her share in the house hold. Keeping in view the allegations / averments mentioned in the petition and in the light of the decisions referred above, this Court is of the considered view that this is not a fit case to quash the proceedings against the petitioner. However, since this Court has already granted interim stay of all further proceedings in the case, the appearance of the petitioner is dispensed with during trial, except on the occasions insisted by the trial court.

10. With the above observations the petition is disposed of accordingly. The interim stay granted earlier shall stand vacated. On the sequel, Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

GUDISEVA SHYAM PRASAD,J

Dated: 3rd April, 2018

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THE HON'BLE JUSTICE SRI GUDISEVA SHYAM PRASAD



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