

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 3302 of 2011

ORDER:

This criminal petition is filed under Section 482 Cr.P.C., to quash the proceedings in DVC No.1 of 2011 on the file of Junior Civil Judge-cum-Judicial Magistrate of First Class, Mylavaram, Krishna District (for short, 'the trial Court').

2. The facts of the case, in brief, are as under:

The 2nd respondent-defacto complainant is the wife of petitioner No.1. Petitioner Nos.2 and 3 are the parents, and petitioner Nos.4 and 5 are sisters of petitioner No.1. Marriage of 2nd respondent with petitioner No.1 was performed on 21.04.2007 at Kotamma Temple, Vuyyuru village. At the time of marriage, the parents of 2nd respondent have presented cash of Rs.50,000/- and five sovereigns of Gold towards pasupu kumkuma. Petitioner No.1 got addicted to vices of drinking, gambling and womanizing, and started harassing the 2nd respondent for more dowry, on the instigation of petitioner Nos.2 to 5. It is alleged that the 2nd respondent was forced to sign on a blank non-judicial stamp paper of Rs.50/- denomination and, in the month of June, 2010, the petitioners sent the 2nd respondents to her paternal house by threatening her with dire consequences if she does not

bring more dowry. Unable to bear the harassment in the hands of the petitioners, the 2nd respondent lodged a complaint against the petitioners seeking protection under Sections 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the DVC Act'). That being so, the 1st petitioner-husband and the 2nd respondent-wife, intending to resolve their disputes at the instance of elders, entered into an agreement wherein the 1st petitioner gave Rs.15,000/- and a Gold ring and Mangalasutram to the 2nd respondent on 01.03.2008, towards full and final settlement by agreeing to live separately. It was also agreed that they shall not file any case against each other or their relatives. The parents of the 2nd respondent and the petitioner Nos.1 to 3 have signed the agreement. Thereafter, they have submitted a letter to the Sub-Inspector of Police, II Town Police Station, Vijayawada City, about their mutual agreement before the elders, to lead separate lives.

It is the grievance of the petitioners that the 2nd respondent has suppressed these facts and filed a false case against them in DVC No.1 of 2011 before the trial Court alleging offences under the DVC Act. Therefore, the petitioners filed the present criminal petition seeking quash of the proceedings in DVC No.1 of 2011 before the trial Court.

3. Heard Sri Gangadhar Chamarty, learned counsel for the petitioners, and the learned Additional Public Prosecutor (A.P.)

4. Learned counsel for the petitioners submits that the 2nd respondent and the 1st petitioner, with an intention to lead separate lives, at the instance of elders, have entered into a mutual agreement whereunder the 1st petitioner paid an amount of Rs.15,000/-, Gold ring and Mangalasutram towards full and final settlement to the 2nd respondent. It is further submitted that the parents of the 2nd respondent have also signed on the agreement. Learned counsel further submits that in the light of the agreement, the parties are living separately and, therefore, the question of petitioners committing domestic violence on the 2nd respondent does not arise and hence sought for quashing of proceedings in DVC No.1 of 2011.

5. Per contra, the learned Additional Public Prosecutor, by placing reliance in Criminal Petition No.7289 of 2015 dated 16.02.2015, and Criminal Petition No.2237 of 2015, dated 17.07.2015 of this Court, submits that a petition filed under Section 482 Cr.P.C. seeking quash of proceedings in a case registered under the DVC Act, is not maintainable. Learned Additional Public Prosecutor further submits that the petitioners filed an agreement between the parties, drafted on a non-judicial

stamp paper, in proof of their contention that the parties are living separately by virtue of the agreement. The terms and conditions in the said agreement read as under:

"1) The 1st party had paid Rs.15,000/- and gold ring to the 2nd party towards her future life and full and final settlement of her claim and also agreed to give back the "Nallapusalasutramulu" to the 2nd party.

2) From today onwards each of us have no claim against each other and decided to live independently.

3) From the date of this agreement the 2nd party, their representatives or any others have no claim against the 1st party or his estates.

4) Under any circumstances if the 2nd party, their representatives cannot raise any claim if they did so it is agreed to face civil and criminal proceedings initiated by the 1st party making the 2nd party responsible.

5) It is agreed that the 2nd party have no right to claim maintenance damages against the estates of the 1st party."

6. Drawing the attention of the Court to the agreement, the learned Additional Public Prosecutor submitted that the agreement is not a registered document and it has no evidentiary value. It is further submitted that a divorce cannot be by way of entering into agreements between parties, and the said agreement is not a decree of divorce granted by the competent Court under Section 13 or 13(B) of the Hindu Marriage Act, 1955. Therefore, the learned Additional Public Prosecutor submits that the agreement submitted by the learned counsel for the petitioners cannot be taken into consideration for proof of their living separately. It is further submitted that since the domestic violence

case in DVC No.1 of 2011 is pending before the trial Court, the petitioners may be directed to approach the trial Court and seek appropriate remedy, in accordance with law.

7. In view of the submissions made by both the learned counsel, this Court is of the considered opinion that there are no valid grounds to quash the proceedings against the petitioners in DVC No.1 of 2011 before the trial Court and the criminal petition is liable to be dismissed.

8. Accordingly, the criminal petition is dismissed. The petitioners are granted liberty to approach the trial Court and file petition for dispensing with their presence and, on such filing, the trial Court shall consider the same, in accordance with law. Interim order granted by this Court on 15.04.2011, shall stand vacated. Miscellaneous petitions, if any pending in this criminal petition, shall also stand dismissed.

GUDISEVA SHYAM PRASAD, J

20th March, 2018

SSP / KSM

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



CRIMINAL PETITION No. 3302 of 2011

20th March, 2018

SSP