

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Crl.P.No.13188 of 2013

Between:

1. Challa Sivakumar and two others

Appellants

AND

1. Challa Anita and two others

.... Respondents

DATE OF JUDGMENT PRONOUNCED: **24.10.2018**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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1. Whether Reporters of Local Newspapers may be allowed to see the judgments? Yes / No
 2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes / No
 3. Whether Their Lordship wish to see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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Between:

1. Challa Sivakumar and two others

Appellants

AND

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.... Respondents

! Counsel for petitioners : Sri V.Narayan Reddy

^ Counsel for Respondent Nos.1 and 2: Sri M.Venkata Narayana

Counsel for Respondent No.3 : Addl.Public Prosecutor (AP)

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> Head Note:

? Cases referred:

1. 2015 (2) ALD (CrI.) 470 (AP)
2. 2012(1) ALD (CrI.) 496 (SC)
3. 2013(1) ALD (CrI.) 147 (AP)
4. (2014) 10 SCC 736



HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.13188 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioners/ respondents 1 to 3 seek to quash the proceedings against them in D.V.C.No.6 of 2013 on the file of Judicial Magistrate of First Class, Sullurpet, SPSR Nellore District.

2a) Petitioners 2 and 3/respondents 2 and 3 are parents of the 1st petitioner/respondent No.1.

b) Respondent No.1 herein, who is the wife of 1st petitioner, filed DVC No.6 of 2013 alleging that her marriage with 1st petitioner was performed on 02.12.2009 at Sullurpet; during marriage, her parents agreed to give Rs.6 lakhs cash to the 2nd petitioner towards dowry and Rs.80,000/- to the 1st petitioner for purchase of gold ornaments; some time they lived happily and out of wedlock, they were blessed with a male child on 29.08.2010; after the birth of child, 1st petitioner came to her parental house and beat her unnecessarily; while so, in January, 2011 separate family was put up at Chennai and the expenses were borne by her father; in April 2011, 1st petitioner raised an issue and picked up quarrel with her family members and abused her in filthy language; when her parents came to Chennai for celebrating 1st birthday day function, 1st petitioner abused her and her mother in vulgar and un-parliamentary language and beat her black and blue; on coming to know of the same, her father took her and children to Sullurpet in September, 2011; when the elders intervened and mediated

the matter on 21.06.2012; the 1st petitioner agreed to return the dowry amount of Rs.6 lakhs and to pay lump sum amount of Rs.3 lakhs towards maintenance and demanded for dissolution of marriage; contrary to same, he issued lawyer notice dated 04.07.2012 with all false allegations and sought for restitution of conjugal rights which was suitably replied; to avoid paying the agreed amount of Rs.9 lakhs, he filed HMOP No.71/2012 before Senior Civil Judge, Gudur for dissolution of marriage and the same is pending for disposal; she also filed HMOP No.92/2012 for the same relief, wherein the 1st petitioner remained *ex parte* and the Court after enquiry granted decree of divorce on 18.12.2012; thereafter she filed the present DVC against petitioners/respondents for various reliefs mentioned in the petition.

Hence, the instant quash petition.

3) Heard arguments of Sri V. Narayana Reddy, learned counsel for petitioners; Sri M. Venkata Narayana, learned counsel for respondents 1 & 2 and learned Additional Public Prosecutor for the State (Andhra Pradesh).

4) I heard both the learned counsel about the maintainability of DVC 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

¹ 2015 (2) ALD (CrL.) 470 (AP)

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.

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 the averments in DVC petition as false and not maintainable, learned counsel for petitioners mainly contended that the 1st respondent/complainant always resided with her parents only. Though a separate family was setup at Chennai on 25.01.2011, the 1st respondent left the 1st petitioner in February, 2011 and went away to her parental house. She used to visit Chennai once in a month and stayed for a week and leave to her parents. Finally she left the matrimonial home in February, 2011 and she never came back. Thus she stayed in Chennai hardly for two months in her entire matrimonial life. Therefore, the 1st

petitioner got issued legal notice on 04.07.2011 requesting her to come and join his society to lead happy marital life. Instead of joining him, the 1st respondent filed HMOP No.92/2012 on the file of Senior Civil Judge, Gudur and obtained decree of divorce and thereafter she filed the DVC with all false allegations as if the petitioners ill-treated her and necked her and her child out of matrimonial home. The petitioners 2 and 3 are living separately at Vidyanagar, Kota Mandal, SPSR Nellore District, which is faraway from Chennai and therefore, they never lived along with her son and 1st respondent under one roof and hence DVC is not maintainable against them. So far as 1st petitioner is concerned, the case is not maintainable against him either because already a divorce decree was granted on 18.12.2012 and thereafter she has been living with her parents and hence no domestic relationship exists between her and petitioners within the ambit of Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (for short "DV Act") as on the date of filing of DVC No.6/2018 i.e, 25.07.2013. Hence the continuation of proceedings in DVC No.6/2018 against petitioners would amount to abuse of process of the Court. He placed reliance on the following decisions:

- i) ***Inderjit Singh Grewal v. State of Punjab and another***²
- ii) ***Medi Koteswara Prasad v. Medi Manemma and others***³

Learned counsel thus prayed to allow the petition.

- 6) Per contra, learned counsel for 1st respondent would argue that all the acts of domestic violence were committed by the petitioners during the subsistence of the marriage as the 1st petitioner within one year after the

² 2012(1) ALD (CrI.) 496 (SC)

³ 2013(1) ALD (CrI.) 147 (AP)

marriage showed abhorrence against the 1st respondent and her child without any plausible reason and left them to the mercy of parents of the 1st petitioner and when the elders tried to compromise the issue, he curtly stated before them that he wanted a divorce and agreed to pay Rs.9,00,000/- to the 1st respondent and her child. However, without taking his wife and child to his fold or paying the amount as agreed before the elders, surprisingly, issued a lawyer notice dated 04.07.2012 with all false allegations and sought for restitution of conjugal rights, contrary to his declaration before mediators that he wanted only a divorce. Learned counsel further submitted that the 1st respondent gave a suitable reply notice dated 11.07.2012. To avoid payment of the agreed amount of Rs.9,00,000/-, the 1st petitioner filed HMOP No.71/2012 seeking dissolution of marriage. In those circumstances, having no other go, the 1st respondent was also constrained to file HMOP No.92/2012 and the 1st petitioner remained *ex parte* and the Court after enquiry granted decree of divorce on 18.12.2012. Learned counsel would further argue that the said divorce decree is not an obstacle for the 1st respondent to file petition under Section 12 of DV Act for the domestic violence committed by the petitioners during the subsistence of the marriage. He thus prayed to dismiss the petition.

7) The point for determination is:

*“Whether there exist any exceptional circumstances as envisaged in the judgment of this Court in **Giduthuri Kesari Kumar**’s case (1 supra) to entertain the present petition?*

8) **POINT:** As extracted supra, in *Giduthuri Kesari Kumar*'s case (1 supra), this Court observed that in view of the remedies enlisted in the D.V Act, which are civil in nature and enquiry is not a trial of criminal case, the quash petitions under Section 482 Cr.P.C are not generally maintainable except 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 the respondents or a competent Court has already acquitted the respondents of the allegations which are identical to the ones levelled in the Domestic Violence case etc.

a) Now the petitioners seek to project the lack of domestic relationship between the parties as an exceptional ground for seeking quashment of the proceedings. Their case is that the 1st respondent herself obtained decree of divorce against 1st petitioner from the Court of Senior Civil Judge, Gudur, in HMOP No.92/2012 on 18.12.2012 and thereafter she filed the D.V case and therefore, the said case is not maintainable as the domestic relationship is no longer in existence. In *Medi Koteswara Prasad*'s case (3 supra), a learned Single Judge of this Court no doubt held that by virtue of the dissolution of the marriage between the parties, the 1st petitioner cannot be termed as an "aggrieved person" as defined in Section 2(a) of the D.V. Act. Learned Judge further observed that what is significant is that only concerned woman, who is or has been in domestic relationship with the respondent, who is alleged to have been subjected to any act of domestic violence by the respondent can alone be termed as aggrieved person who can file the complaint for relevant reliefs under different

provisions of the D.V.Act. Learned Judge ultimately quashed the proceedings against the petitioners therein. In *Inderjit Singh Grewal's* case (2 supra), Hon'ble Apex Court held that petition under Section 12 of D.V. Act is not maintainable because parties were already divorced. We will presently see that the said decision was rendered in a different context.

b) Basing on the above rulings, the petitioners implored to quash the proceedings. I am afraid, the request of the petitioners cannot be conceded in view of the subsequent decision of Apex Court in *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and another*⁴. One of the questions engaged in that case was, whether a divorced woman can seek for reliefs against her ex-husband under Sections 18 to 23 of the Domestic Violence Act, 2005. The Sessions Court and High Court of Bombay having considered the fact that the marriage between the parties was dissolved by Khula divorce on 09.05.2008, held the domestic relationship between the parties was severed by the date of filing of DVC on 28.09.2009 and therefore, the said D.V case was not maintainable. However, Hon'ble Apex Court on a threadbare analysis of the different provisions of the D.V.Act, has come to a different conclusion. Elucidating Section 2(a) which defines the term "*aggrieved person*", Supreme Court observed that apart from the woman, who is in a domestic relationship, any woman, who has been in a domestic relationship with the respondent, if alleges to have been subjected to act of domestic violence by the respondent, comes within the meaning of aggrieved person. Similarly,

⁴ (2014) 10 SCC 736

analyzing Section 2(f), which deals with the term “domestic relationship”, the Apex Court held that a person aggrieved (wife herein), who at any point of time has lived together with husband in a shared household is also covered by the meaning of domestic relationship.

c) In the same lines, the Apex Court extrapolated the term “shared household” defined under Section 2(s) and observed that if the aggrieved person, at any stage has lived in a domestic relationship with the respondent in a house, the person aggrieved can claim a shared household. The Apex Court also happened to analyse Section 3, which defines the term “domestic violence”. It held that apart from “physical abuse”, “sexual abuse” and “verbal and emotional abuse”, the “economical abuse” also constitute domestic violence. Ultimately, the Apex Court held thus:

***“Para 30:** An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.”*

It should be noted, in the process, the Apex Court also discussed its earlier judgment in ***Inderjit Singh Grewal***’s case (2 supra) and observed thus:

***“Para 28:** In Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] the appellant Inderjit Singh and Respondent 2 of the said case got married on 23-9-1998. The parties to the marriage could not pull on well together and decided to get divorce and,*

therefore, filed a case for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955. After recording the statement in the said case, the proceedings were adjourned for a period of more than six months to enable them to ponder over the issue. The parties again appeared before the Court on second motion and on the basis of their statement, the District Judge, Ludhiana vide judgment and order dated 20-3-2008 allowed the petition and dissolved their marriage. After dissolution of marriage, the wife filed a complaint before the Senior Superintendent of Police, Ludhiana against Inderjit Singh under the provisions of the Domestic Violence Act alleging that the decree of divorce obtained by them was a sham transaction. It was further alleged that even after getting divorce both of them had been living together as husband and wife. In the said case, the Superintendent of Police, City I conducted the full-fledged inquiry and reported that the parties had been living separately after the dissolution of the marriage. Hence, no case was made out against Inderjit Singh. In this context, this Court held that Section 12 “application to Magistrate” under the Domestic Violence Act challenging the said divorce was not maintainable and in the interest of justice and to stop the abuse of process of court, the petition under Section 482 CrPC was allowed. The law laid down in the said case is not applicable for the purpose of determination of the present case”

In view of the subsequent judgment of the Apex Court categorically holding that domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent and petition under D.V. Act is maintainable, the judgment in **Medi Koteswara Prasad**’s case (3 supra) is no longer a good law and the judgment in **Inderjit Singh Grewal**’s case (2 supra) is also not applicable.

9) The instant case is concerned, it is the categorical plea of the 1st respondent that during the subsistence of the marital tie between herself

and 1st petitioner, all the petitioners have subjected her to domestic violence and they necked her and her child out of matrimonial home and therefore, she took shelter in her parental home and the efforts made by the elders did not fructify and though the 1st petitioner wanted divorce on the promise of paying Rs.9,00,000/- but betrayed her and hence she was constrained to file divorce application and obtained decree and later filed D.V case to obtain the reliefs. In view of the judgment in *Juveria Abdul Majid Patni*'s case (4 supra), the subsequent decree of divorce will not interdict her from filing the D.V case in respect of the act of domestic violence allegedly caused by the petitioners. Therefore, the plea of non-existence of domestic relationship at present cannot be taken as an exception to entertain the quash petition.

10) In the result, this Criminal Petition is dismissed with the observation that the petitioners shall appear before the Trial Court and vindicate their defence. The Trial Court is directed to decide the case on merits uninfluenced by the observations made in this order.

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

U. DURGA PRASAD RAO, J

Date: 24.10.2018

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