

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.14110 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioners/respondents 2 to 5 seek to quash the proceedings against them in D.V.C.No.10 of 2013 on the file of IV Additional Judicial First Class Magistrate, Warangal registered for the offence under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short “DV Act”).

2) The factual matrix of the case is thus:

a) The 1st applicant in DVC is the wife and applicants 2 to 3 therein are minor daughters of 1st respondent. Respondents 2 and 3 are parents and respondents 4 and 5 are married sister and brother of 1st respondent. The instant quash petition is filed at the instance of respondents 2 to 5.

b) The 1st applicant filed a petition under Section 12 of DV Act stating that marriage between her and 1st respondent was performed on 29.10.2001 at Khammam as per Hindu rites and customs; after marriage they lived in Madhya Pradesh; some time they led happy marital life and during their wedlock they blessed with two daughters and thereafter the 1st respondent was transferred from Madhya Pradesh to Visakhapatnam; since marriage the respondents subjected her to domestic violence for additional dowry and tried to eliminate her and her children; while so, 1st respondent filed O.P.No.295 of 2013 on the file of Family Judge,

Visakhapatnam for judicial separation; having come to know the transfer of OP proceedings from Visakhapatnam to Warangal, respondents threatened to give consent for divorce with dire consequences; 1st complainant filed O.P.No.137 of 2013 on the file of Family Court, Warangal for restitution of conjugal rights and also filed a petition for maintenance.

c) Basing on the said petition, the learned Magistrate took cognizance of the same and registered as DVC No.10 of 2013.

3) Heard arguments of Sri K.Suresh Reddy, learned counsel for petitioners and Sri D.Bhaskar Reddy, learned counsel for respondent Nos.1 to 3 and learned Additional Public Prosecutor (TS) for respondent No.4.

4) Petitioners' case is that they hail from very respectable family and 1st petitioner is a retired Chief Telegraphic Inspector, Railway Department, Visakhapatnam, 2nd petitioner is a retired Stenographer in Visakhapatnam Post Trust, 3rd petitioner is their married daughter and she is leading her independent married life whereas 4th petitioner is the elder son of petitioners 1 and 2 who is working as DGM, Central Bank of India, Mumbai. Thus, petitioners 1 to 4 herein ever resided along with 1st respondent and 1st applicant in DVC so as to cause any domestic violence.

5) I heard both the learned counsel about the maintainability of DVC.

It should be noted that in ***Giduthuri Kesari Kumar and others vs. State of Telangana and others***¹, this Court has 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 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.

¹ 2015 (2) ALD (CrL.) 470 (AP)

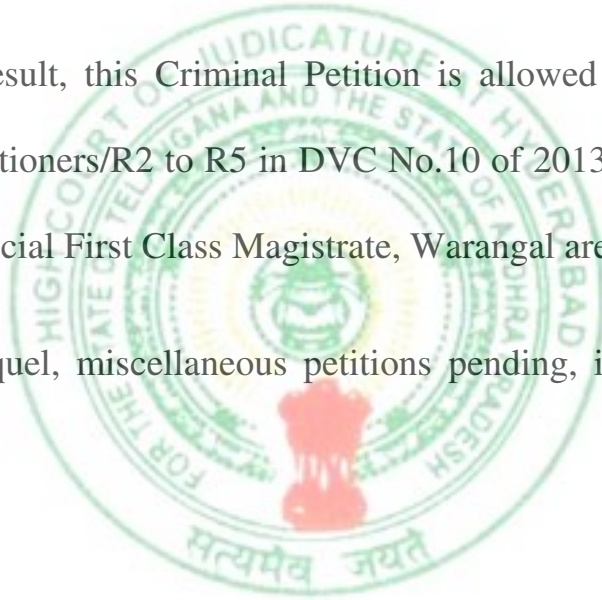
6) It must be noted that both the parties have made allegations and counter allegations against each other which, in my considered view, are not germane to determine the existence of exceptional circumstances to entertain the petition.

7) Suffice to discuss the point whether the present petitioners who are respondents 2 to 5 in DVC, are in any way responsible for the reliefs claimed by the applicants. In their application, the applicants claimed shared residential accommodation against respondent No.1 in D.No.1-67-27, Sector 11, MVP Colony, Opposite VUDA Park, Government Building, Visakhapatnam under Section 17 of DV Act. Thus, they have not sought for any relief against other respondents in DVC except stating that they too caused domestic violence against her. It should be noted that claimants have not sought for any relief under Section 18 of DV Act seeking protection order against the respondents from committing any act of domestic violence as narrated in the aforesaid section. Therefore, the allegations and counter allegations touching the aspect of domestic violence are not germane for consideration. So far as the relief of shared accommodation is concerned, the applicants have not made any specific averment in their application that all the respondents are residing under one roof in which they are seeking shared accommodation. According to the petitioners/respondents 2 to 5, petitioners/R2 and R3 are residing in MIG-16, MVP Colony, Visakhapatnam and petitioner/R4 who is their married daughter is residing at Seethamma Dhara, Visakhapatnam with her family whereas petitioner/R5 who is their elder son is working as

DGM, Central Bank of India, Mumbai and they are not residing with 1st respondent. This fact is not controverted and as already stated supra, the applicants have not made any specific averment that all the respondents in DVC are residing under one roof. Therefore, the presence of petitioners/R2 to R5 will not help decide the application and on the other hand, continuation of the proceedings against them, in the considered view of this Court, would amount to abuse of process of Court. Therefore, treating these facts as exceptional circumstances, the proceedings can be quashed so far as petitioners/R2 to R5 are concerned.

8) In the result, this Criminal Petition is allowed and proceedings against the petitioners/R2 to R5 in DVC No.10 of 2013 on the file of IV Additional Judicial First Class Magistrate, Warangal are quashed.

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



U. DURGA PRASAD RAO, J

Date: 23.10.2018
Murthy