

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.6994 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in D.V.C.No.11 of 2017, pending on the file of I Additional Junior Civil Judge, Macherla, Guntur District against the petitioners/R3 and R4.

The 2nd respondent filed petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') claiming various reliefs covering reliefs under Sections 18 to 20 alleging that the petitioners 1 and 2, who are cousin and his wife of mother-in-law of the 2nd respondent, living together in Plot No.B.F.2, at Sai Charan Residency bearing Door No.4-106/1, Bavineni Vari Street, Penamaluru, Krishna District, Vijayawada DMC and thereby there is a domestic relationship between the petitioners and the 2nd respondent.

The present petition is filed by the petitioners/respondents 3 and 4 before the Magistrate on the ground that there was no domestic relationship between them and the 2nd respondent as defined under Section 2(f) of the Act as the 1st petitioner is the cousin of mother-in-law of the 2nd respondent and 2nd petitioner is the wife of the 1st petitioner, who are living separately at door No.6-4/1, Kanuru, Vijayawada Rural, Krishna District and the question of their subjecting the 2nd respondent to domestic violence as defined under Section 10 of the Act does not arise.

During hearing learned counsel for the petitioners reiterated the contentions raised in the petition and whereas learned counsel for the respondents supported the application filed before the Magistrate under Section 12 of the Act on the ground that the petitioners are also living with the respondents 1 and 2 before the Magistrate, who are mother-in-law and

father-in-law of the 2nd respondent and when they are living together they deemed to be members of the family living under one roof to create domestic relationship as defined under Section 2(f) of the Act. Therefore, the petitioners are also liable to be proceeded for the reliefs claimed in the petition, being members of the family living along with respondents 1 and 2 before the Magistrate under one roof.

In Form No. I, under Section 9(B) and 37(2) of the Act i.e. domestic incident report, the relationship of the 2nd respondent with the respondents before the Magistrate is also specified in Column No.3. As per the details mentioned in Column No.3, the 1st petitioner herein, Thummala Venkata Kutumba Rao is the cousin of the 1st respondent – Kondapalli Batchu Ratnakumari before the Magistrate and the 2nd petitioner herein – Tummla Syamala is the wife of the 1st petitioner herein. But their address is shown as resident of 4-106/1, Plot No.B.F.2, Bavinenivari Street, Penamaluru, Krishna District.

The contention of the petitioners is that there was no domestic relationship as defined under Section 2(f) of the Act between them and the 2nd respondent. To maintain the application filed under Section 12 of the Act, there must be domestic relationship between the parties. There is no dispute that respondents 1 and 2 before the Magistrate are mother-in-law and father-in-law of the 2nd respondent herein and so far as these petitioners, who are respondents 3 and 4 before the Magistrate are remotely related i.e. 1st petitioner is the cousin of the 1st respondent before the Magistrate and 2nd petitioner is the wife of the 1st petitioner. At this stage, it is relevant to advert to domestic relationship as defined under Section 2(f) of the Act, which reads as follows:

(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or

through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

The contention of the 2nd respondent is that the petitioners lived under the same roof in a shared household, thereby creates domestic relation with her. On close scrutiny of Section 2(f) of the Act, the relationship must be between two persons in the nature of marriage i.e. live in relationship, or are family members living together as a joint family. But here, it is an undisputed fact that the 1st petitioner is cousin of the 1st respondent-mother-in-law of the 2nd respondent before the Magistrate and that the 2nd petitioner is the wife of the 1st petitioner, the question of living together as members of the joint family does not arise and they are not members of the joint family under Hindu Law. Mere living together for few days or years would not confer any right to claim as a member of the joint family. Even if the contention of the 2nd respondent is accepted that the petitioners are living along with respondents 1 and 2 before the Magistrate would not create any domestic relationship between the 2nd respondent and the petitioners herein as members of the same family and lived as members of the joint family. Therefore, initiation of proceedings against the petitioners under Section 12 of the Act by the 2nd respondent is an abuse of process of law. It is settled law in ***Giduthuri Kesari Kumar and Ors. v. State of Telangana and Others.***¹, wherein it was held as follows:

- 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 exparte 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.
 - 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

¹ 2015 (2) ALD (CrL.) 470 (AP)

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 view of the law declared by this Court, this Court can interfere with the proceedings under the Act exercising power under Section 482 Cr.P.C. only in three circumstances as stated above. One among those circumstances is that when there is no domestic relationship between the applicant and the respondents in a petition filed under Section 12 of the Act. In the present case, the petitioners are cousin and wife of cousin of respondent No.1 before the Magistrate, who is mother-in-law of the 2nd respondent.

The basis for bringing the petitioners within the definition of domestic relationship is that they are residing in one house at Sai Charan Residency, Door No.4-196/1, Plot No.B.F.2, Bavinenivari Street, Penamaluru, Krishna District. To substantiate the contention that they are living separately in premises bearing No.3-5-106/6/1R, Plot No.20R, Medical Society, Tirumalagiri, Kukatpally, Hyderabad and produced Photostat copy of the registered sale deed dated 22.05.2017. The property was sold to third parties, but while deciding the petition under Section 482 Cr.P.C., the defence set up by the 2nd respondent, in view of the limitations prescribed in **Mrs Dhanalakshmi vs. R. Prasanna Kumar & Others**² and in **Umesh Kumar v. State of Andhra Pradesh and another**³ is not relevant. Even assuming for a moment that the petitioners are living together with respondents 1 and 2 before the Magistrate in one house, they are not the members of the joint family and they are not living together in

² AIR 1990 SC 494

³ 2013 (10) SCC 591

the capacity of the members of the joint family. Therefore, such living together would not create any domestic relationship as defined under Section 2(f) of the Act and this Court can quash the proceedings under Section 482 Cr.P.C. applying the principles laid down in ***Giduthuri Kesari Kumar and Others*** case referred supra. Consequently, I find that it is a fit case to quash the proceedings against the petitioners as there exist no domestic relationship between the petitioners and the 2nd respondent, *prima facie*.

In the result, the criminal petition is allowed quashing the proceedings in D.V.C.No.11 of 2017 pending on the file of I Additional Junior Civil Judge, Macherla, Guntur District against the petitioners/respondents 3 and 4.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

27.09.2018
kvrm

M.SATYANARAYANA MURTHY,J