

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.7618 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in D.V.C.No.27 of 2017, pending on the file of Judicial Magistrate of First Class, Parkal, Warangal District, registered for the offence punishable under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V.Act').

The 2nd respondent filed D.V.C claiming various reliefs i.e. permanent alimony of Rs.16,00,000/-, return of dowry amount of Rs.2,50,000/- and damages of Rs.10,00,000/- under various heads making serious allegations against the opposite party.

The only contention before this Court is that the petitioners are respondents 7 and 8 in D.V.C, and that they are sister and brother of the 3rd respondent, who is the husband of the 2nd respondent and that the petitioners are wife and husband and they are living separately at different places.

Learned counsel for the petitioners, during arguments, placed judgment of this Court in **Giduthuri Kesari Kumar and Others. V State of Telangana and Others**¹ and contended that as there was no subsistence of domestic relationship as defined under Section 2(f) of the D.V. Act, the Court can entertain application under Section 482 Cr.P.C. and quash the proceedings by exercising inherent jurisdiction that conferred on the High Court. Learned counsel also drawn the attention of this Court to the cause title of the application filed before the Court below to substantiate his contention that the petitioners are living at different places.

¹ 2015 (2) ALD (Crl.) 470 (AP)

In **Giduthuri Kesari Kumar's** case referred supra this Court laid down certain guidelines to quash the proceedings in D.V.C. Case in paragraph 14, which are 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 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.

As per the judgment relied on by learned counsel for the petitioners, the proceedings under D.V. Act are mostly quasi civil in nature. The jurisdiction is vested with the Magistrate and the Magistrate can pass exparte order and set aside the order under the provisions of the Act also. The 1st petitioner by name Smt G.Bhavani, wife of the 2nd petitioner by name G.Mahesh, who are arrayed as respondents 7 and 8 are only sister-in-law and her husband. Section 2(f) of the D.V. Act reads as follows:

‘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 1st petitioner is the sister-in-law of the 2nd respondent, by marriage with the brother of the 1st petitioner, the 2nd respondent can proceed against her and whether the petitioners are living together or separately, which is to be decided during enquiry. Therefore, based on the allegations that there was no subsistence of domestic relationship between the petitioners and the 2nd respondent at this stage, the proceedings cannot be quashed. However, the Magistrate is directed to follow the guidelines issued by this Court in **Giduthuri Kesari Kumar's** case referred supra.

With the above direction, the criminal petition is disposed of at the stage of admission.

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

23.07.2018
kvrm



M.SATYANARAYANA MURTHY,J