

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 6262 of 2013

ORDER:

This criminal petition is filed under Section 482 Cr.P.C., to quash the proceedings in DVC No.7 of 2013 on the file of I Additional Judicial Magistrate of First Class, at Kothagudem, Khammam District (for short, 'the trial Court').

2. Brief facts of the case are that the 1st respondent herein is the wife of 1st respondent in the DVC No.7 of 2013. The 1st respondent herein-defacto complainant filed an application before the trial Court under Section 13 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the DVC Act') seeking reliefs under Sections 18, 19, 20 and 22 of the Act. It is averred in the complainant that she and the 1st respondent were living together under one roof as wife and husband. It is also averred that her first husband died, and the first wife of the 1st respondent had deserted him, and both herself and the 1st respondent have children from their previous marriage. Respondents 2 and 3 are the children of 1st respondent through his first wife. It is alleged by the defacto complainant that after her marriage with the 1st respondent, respondents 2 and 3, who are the petitioners herein, were also living in the same

house along with her. It is alleged that she had rendered selfless service to the 1st respondent and also to the petitioners, and that she brought up the petitioners with love and affection. It is also alleged that after the marriage of respondent No.3 (the 2nd petitioner herein), her husband and the petitioners herein started neglecting her, and showed discrimination by not permitting her to have food along with them, not caring for her and used to abuse and pick up quarrel on one pretext or the other for not bringing dowry. It is also alleged that on 16.02.2013, respondents 1 to 3 have abused and beat her and necked her out of the house along with her belongings. Therefore, she filed the complaint before the Magistrate seeking protection under the DVC Act, and the said complaint was taken on file as DVC No.7 of 2013

Seeking to quash the proceedings in DVC No.7 of 2013, the respondents 2 and 3 filed the present criminal petition.

3. No representation on behalf of the petitioners. Heard the arguments of learned counsel for respondent No.1, and the learned Public Prosecutor.

4. Learned counsel for respondent No.1 submits that the petitioners are not entitled to quash of proceedings in a case filed under the DVC Act, in the light of the judgment

rendered by this Court in **GIDUTHURI KESARI KUMAR AND ORS. V/s. STATE OF TELANGANA AND ORS¹**, wherein it was clearly held that the proceedings under section 18 to 22 are in the nature of civil reliefs, therefore, the petition for quashing the proceedings under section 482 Cr.P.C., is not maintainable. In the said judgment this Court held at para No.10 as under:

10) *So, a study of statement of objects and reasons would show that though the domestic violence against women was addressed to some extent by the penal law under Section 498A, the same was not addressed by the civil law it was felt. Hence, Protection of Women from Domestic Violence Act was brought into force w.e.f. 26.10.2006. The reliefs sought to be provided under this enactment, as we will presently see are therefore predominantly civil in nature in tune with the object of the Act. In the line, Section 18 provides Protection order against domestic violence; Section 19 intended to grant Residence order; Section 20 confers Monetary reliefs; Section 21 grants Custody order relating to the custody of the children and Section 22 confer compensation and damages to the victim of domestic violence. So these remedies are purely civil in nature and it is important to note none of the several forms of the domestic violence committed by the respondents under these sections is referred as an offence and respondents as offenders. It is only when an order is passed under any of the aforesaid sections and the breach of protection order is caused by them, such breach will be termed as an offence under Section 31 of the D.V. Act and the same is categorized as cognizable and non-bailable under Section 32 of the D.V. Act. That is what held in Velisetti Chandra Rekha's case (1 supra). In the subsequent judgments also similar view was expressed as below:*

i) In Gundu Chandrasekhar vs. The State of Andhra Pradesh^{2[5]}, a learned judge of this High Court observed thus:

"None of the reliefs claimed in D.V.C. No.8 of 2011 by the 2nd respondent can be called crimes. Though, the Act empowers a Magistrate to entertain the complaint of an aggrieved person under Section 12 of the Act and makes it incumbent on the Magistrate to make enquiry of the same under the Code of Criminal Procedure, 1973, reliefs under Sections 18 to 22 of the Act are in the nature of civil reliefs only. It is only violation of order of the Magistrate which becomes an offence under Section 31 of the Act and which attracts penalty for breach of protection order by any of the respondents.

¹ Crl.P.Nos.7289 of 2014 and batch

^{2[5]} 2012 (2) ALD 910

Similarly Section 33 of the Act provides for penalty for discharging duty by Protection Officer. Except under Sections 31 and 33 of the Act which occur in Chapter V, all the reliefs claimed under Chapter IV of the Act are not offences and enquiry of rights of the aggrieved person under Sections 18 to 22 of the Act cannot be termed as trial of a criminal case." (Emphasis supplied)

ii) In Mohit Yadav and another vs. State of Andhra Pradesh^{3[6]}, a learned judge of this High Court observed thus:

"Para 22: If a statute does not provide an offender liable to any penalty (conviction or sentence) in favour of the state, it can be said that legislation will be classified as remedial statute. Remedial statutes are known as welfare, beneficent or social justice oriented legislations. A remedial statute receives a liberal construction. In case of remedial statutes, doubt is resolved in favour of the class of persons for whose benefit the statute is enacted. Whenever a legislation prescribes a duty or penalty for breach of it, it must be understood that the duty is prescribed in the interest of the community or some part of it and the penalties prescribed as a sanction for its purpose. None of the provisions of the Domestic Violence Act, 2005 has direct penal consequences. (Emphasis supplied)

Para 23: Under Section 31 of the Domestic Violence Act, 2005, breach of protection order, or of an interim protection order, by the Respondent shall be an offence under the Act. Therefore, all other orders passed under Sections 17,18,19,20 and 22 of the Domestic Violence Act, 2005 have no penal consequences, even if the Respondent committed breach of the order, except as provided under Section 31 of the Act." (Emphasis supplied)

Therefore, it is clear that the proceedings conducted till passing of the orders under Section 18 to 22 are only civil in nature to provide a civil remedy. Thus it is a civil complaint packed with a criminal wrapper.

5. On consideration of the rival submissions and in the light of the judgment stated supra, it is also pertinent to see whether the allegations made in the complaint prima facie constitute any offence.

^{3[6]} 2010(1)ALT (Cri) 105

6. In the light of the judgment of the Hon'ble Supreme Court in **C.B.I. V/s. A. RAVI SHANKER PRASAD**⁴ reported in, certain guidelines rendered in **STATE OF HARYANA V/S. BHAJANLAL**⁵ case have been referred. The scope of Section 482 Cr.P.C is limited and this Court can exercise its inherent jurisdiction only to give effect to the orders passed under the Code to prevent abuse of process of the Court and to secure the ends of justice. Keeping in mind, the Apex Court in **BHAJANLAL** laid down the following seven guidelines, which are as follows :

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

⁴ 2009 [6] SCC-351

⁵ 1992 Supp(1) SCC 335

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. As per guidelines 2 and 3, when the allegations made in FIR or complaint if taken on its face value would not *prima facie* constitute commission of any offence, the Court can exercise its inherent power under Section 482 Cr.P.C. to quash the proceedings.

8. Similarly as per Guideline No.3, the allegations made in the complaint are improper to the ordinary circumstances of a common man, the Court may exercise its inherent jurisdiction and quash the proceedings.

9. It is to be seen even if the averments taken at their face value are accepted in their entirety do not *prima facie* constitute offence or make out a case against the accused, in such cases the accused is entitled for quashing of the proceedings.

10. The case of the petitioners is that the private complaint filed by the 1st respondent do not contain the ingredients attracting provisions under the DVC Act and, therefore, the petitioners/accused are entitled to quash of

proceedings. According to the petitioners, the allegations levelled against the petitioners in the complaint are false and baseless and concocted for the purpose of filing a case under the DVC Act. Whether the allegations made against the petitioners are false and baseless is a question of fact that cannot be decided by this Court exercising jurisdiction under Section 482 Cr.P.C.

11. In the light of the decisions referred above and in view of the submissions made by the learned counsel for the petitioners, this Court is of the considered view that it is not a fit case for quashing the proceedings against the petitioners. The petitioners may approach the trial court and seek appropriate remedies available under Domestic Violence Act. The petitioners have already been granted interim stay and it is appropriate to dispense with their presence during the trial. Therefore, the presence of the petitioners is dispensed during the trial and except on the occasions, which are insisted by the trial court.

12. With the above observations, this Criminal Petition is disposed of accordingly. Miscellaneous petitions, if any, pending in this Criminal Petition stands closed.

GUDISEVA SHYAM PRASAD, J

03rd April, 2018
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