

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.9678 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in D.V.C.No.397 of 2017, pending on the file of Junior Civil Judge, Repalle, Guntur District.

The 1st respondent filed petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') on various reliefs covered under Sections 18 to 21 of the Act.

The petitioner filed the petition on the ground that the 1st respondent earlier filed M.C.No.2 of 2015 under Section 125 Cr.P.C. and obtained an order of maintenance, without disclosing the maintenance awarded in M.C.No.2 of 2015 to harass the petitioners without any justifiable cause.

Filing of petition under D.V.C. Act despite obtaining order of maintenance in M.C.No.2 of 2015 is a grave and serious illegality and requested to quash the proceedings. The dispute with regard to the domestic relationship between the first petitioner and the 1st respondent is defined under Section 2(f) of the Act. This Court in ***Giduthuri Kesari Kumar and Others. v State of Telangana and Others***¹ 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.

¹ 2015 (2) ALD (Crl.) 470 (AP)

- 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."

In view of the law declared by this Court in the above judgment, this Court can exercise power under Section 482 Cr.P.C to quash the proceedings in D.V.C i.e. petition filed under Section 12 of the Act only in three circumstances.

- 1) Where there is no domestic relationship between the parties as defined under Section 2(f) of the Act;
- 2) Where the aggrieved person initiated proceedings under Section 31 of the Act for enforcement of the order passed by the Magistrate ; or
- 3) Where similar issue was decided in the earlier case against the person aggrieved.

But in the present case, except raising the contention that the maintenance granted in M.C.No.2 of 2015 by the Court below was not disclosed in the petition and suppressing the maintenance case, D.V.C. was filed.

The petitioner in this case sought various reliefs including the protection order under Section 18 of the Act, residence order under Section 19 of the Act, monetary reliefs under Section 20 of the Act and for custody orders under Section 21 of the Act. While granting monetary relief under Section 20 of the Act on an application under Sub-Section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such

relief may include, but is not limited to, (a) the loss of earnings; (b) the medical expenses; (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 Cr.P.C. or any other law for the time being in force.

Therefore, the Court is empowered to grant maintenance in addition to the maintenance already awarded under Section 125 Cr.P.C. by the Magistrate in the proceedings. In such a case claiming monetary relief under Section 20 of the Act by the petitioner after obtaining an order of maintenance under Section 125 Cr.P.C in M.C.No.2 of 2015 is only in addition to the maintenance awarded by the Magistrate under Section 20(1)(d) of the Act. As such on the ground of non disclosure of filing of maintenance case and obtaining order under Section 125 Cr.P.C., the proceedings in D.V.C cannot be quashed. However, the Magistrate shall take into consideration of maintenance awarded under Section 125 Cr.P.C and award maintenance if she is entitled to in addition to the maintenance the 1st respondent obtained in the proceedings under Section 125 Cr.P.C in terms of Section 20(1)(b) of the Act.

With the above observation, the criminal petition is dismissed.

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

M.SATYANARAYANA MURTHY,J

11.09.2018
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