

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.9399 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in D.V.C.No.124 of 2017, pending on the file of III Metropolitan Magistrate, Hyderabad on the ground that the 2nd respondent left the company of the petitioner in the year 2014 though the marriage was performed on 25.10.2012 and that the marriage was not consummated since then they are living separately, but filed petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act') claiming various reliefs under Sections 18 to 21 of the Act.

When the petitioner and the 2nd respondent are not living together, the criminal petition is liable to be quashed and requested to pass appropriate order exercising power under Section 482 Cr.P.C.

Learned counsel for the petitioner reiterated the contentions urged in the petition while drawing the attention of this Court that the complaint was lodged with the police for the offence punishable under Section 498-A IPC was not registered and that too they are living separately for the most more than four years from the date of filing the petition and thereby the proceedings against the petitioner cannot be continued and requested to quash the proceedings.

Undisputedly, the relationship between the petitioner and the 2nd respondent is husband and wife and the relationship is in existence as defined under Section 2(f) of the Act. Mere living separately for the last many years is not a ground to quash the proceedings as held by this Court

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 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.”

But in the present case, none of the grounds are raised and therefore, I find no grounds to quash the proceedings at this stage. However, the Magistrate is directed to follow the guidelines prescribed in **Giduturi Kesari Kumar and others’s** referred supra.

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

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

M.SATYANARAYANA MURTHY,J

05.09.2018
kvrn

¹ 2015 (2) ALD (CrL.) 470 (AP)