

THE HON'BLE JUSTICE SRI GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.10334 of 2013

ORDER :

This petition is filed under Section 482 Cr.P.C., seeking to quash the proceedings in D.V.C. No.18/2013, on the file of the I Additional Judicial Magistrate of I Class at Kothagudem, by the petitioners/ respondent Nos.4 to 6 on the complaint of 2nd respondent.

2. The brief facts of the case are that the petitioners/ respondents 4 to 6 are brother-in-law, sister-in-law and sister of mother-in-law of the 2nd respondent respectively. The allegation against the petitioners is that they have caused domestic violence.

3. Heard the arguments of the learned counsel for the petitioners and learned public prosecutor.

4. In the light of the judgment rendered by this Court in **Giduthuri Kesari Kumar and Ors. Vs. State of Telangana and Ors.¹**, the proceedings under D.V.C. Act cannot be quashed under Section 482 of Cr.P.C., as the proceedings under D.V.C Act are civil in nature. In the above case in para 10, this Court has observed as under :

“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 *ex parte* order with the material available. It is only in the exceptional cases where the Magistrate feels that the circumstance requires that he can insist the presence of the parties even by adopting coercive measures.

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

¹ CrI.P. No.7289 of 2015 & Batch of this Court

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 that view, when the present Criminal Petitions are perused, except CrI.P.No. 7289 of 2014, the other petitions are filed with the plea that there is no domestic violence and the petitioners were unnecessarily roped in the case. Hence, they are held not maintainable and accordingly dismissed. In CrI.P.No. 7289 of 2014, the ground for quashment of proceedings is that the earlier CC No. 554/2010 for the offence under Section 498-A IPC with similar allegations was acquitted. Hence, the said petition is taken up for hearing. Criminal Petition Nos 16576, 16607, 16608 of 2014; 76,99,226, 311, 388, 395, and 476 of 2015 are dismissed.”

5. In the light of the judgment in **C.B.I vs A.Ravishankar Prasad & Ors**², the Supreme Court referred to a leading case in **State of Haryana v. Bhajan Lal**³ wherein some guidelines have been formulated for exercising provisions under Section 482 Cr.P.C. The guidelines in **Bhajan Lal** (supra) 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

² 2009 (6) SCC 351

³ 1992 Supp.(1) SCC 335)

just conclusion that there is sufficient ground for proceeding against the accused.

(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”

6. In the light of the above decisions, it is obvious that the reliefs in domestic violence cases are of civil reliefs. Unless the reliefs granted are violated, the provisions under Section 31 of DVC Act do not attract. Therefore, the quash petition is not maintainable in the light of the above decisions.

7. Hence, the Criminal Petition is dismissed with a direction to the trial Court to dispense with the presence of the petitioners during trial except on the occasions whenever their presence is required.

8. Consequently, miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

GUDISEVA SHYAM PRASAD,J

Dated:09.04.2018
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