

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9875 OF 2018

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") to quash the proceedings in D.V.C.No. 2 of 2018 on the file of the Court of learned Special Judicial Magistrate of I Class, Nellore (for short, 'the Court below').

2. Learned counsel for the petitioners, after arguing for sometime, has requested this Court to direct the Court below to follow the guidelines formulated by this Court in "***Giduthuri Kesari Kumar and others Vs. State of Telangana and others***¹".

3. In ***Giduthuri Kesari Kumar*** (*supra*), this Court laid down certain guidelines to quash the proceedings in D.V.C. 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 *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.

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

¹ 2015 (2) ALD (CrI.) 470 (AP)

them or a competent Court has already acquitted them of the allegations which are identical to the ones levelled 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.”

4. Acceding to the request of learned counsel for the petitioners, without touching the merits of the case, I deem it appropriate to direct the Court below to follow the guidelines prescribed in ***Giduthuri Kesari Kumar*** (*supra*). Accordingly, the Court below is directed to adhere to the guidelines formulated by this Court in ***Giduthuri Kesari Kumar*** (*supra*).

5. With the above direction, the criminal petition is disposed of. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 20-09-2018.
JSK

M.SATYANARAYANA MURTHY, J.

