

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.CrI.P. No.212 OF 2018

ORDER:

This transfer criminal petition is filed under Section 407 Cr.P.C. to withdraw D.V.C.No.169 of 2018, pending on the file of III Metropolitan Magistrate, Traffic Mobile Court, Hyderabad and transfer to the Judicial Magistrate of First Class, Palakonda or to any other Court within the jurisdictional limits of Srikakulam.

Learned counsel for the petitioners submitted that HMOP No.12 of 2013 is pending before the .Senior Civil Judge, Rajam, whereas C.C.No.236 of 2016 is pending on the file of Judicial Magistrate of First Class, Palakonda. On account of pendency of D.V.C.No.160 of 2018 before the Court at Hyderabad, it is difficult for the petitioners to appear by undertaking journey of more than 500 kms on every date of adjournment and requested to withdraw D.V.C. pending before the Court at Hyderabad and transfer to any other Court within the jurisdictional limits of Srikakulam.

The only difficulty expressed by the petitioners is that appearance before the Court at Hyderabad in D.V.C undertaking journey of more than 500 kms on every date of adjournment and two other cases pending before the Courts at Rajam and Palakonda. In an application filed under Section 12 of the Protection of Women from the Domestic Violence Act, the petitioners are not required to appear before the Court like any other calendar case, though it is tried by a Magistrate, which is civil in nature.

This Court in ***Giduthuri Kesari Kumar and Others v. State of Telangana and Others***¹ laid down certain guidelines to quash the proceedings in D.V.C. Case in paragraph 14, which are as follows:

“14) To sum up the findings:

¹ 2015 (2) ALD (CrI.) 470 (AP)

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."

In view of the law declared by this Court, the petitioner are not required to appear before the Magistrate on every date of adjournment in connection with D.V.C. Hence, the difficulty expressed by the petitioners to appear before the Court on every date of adjournment undertaking journey of more than 500 kms is not a ground to withdraw and transfer D.V.C.

In the result, the criminal petition is disposed of directing the III Metropolitan Magistrate, Traffic Mobile Court, Hyderabad to follow the guidelines issued by this Court in ***Giduthuri Kesari Kumar and Others*** referred supra and shall not insist the appearance of the petitioners, except on the dates when their personal appearance is required.

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

M.SATYANARAYANA MURTHY,J

03.10.2018
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