

HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.10637 OF 2013

ORDER :

This Criminal Petition is filed under section 482 of Cr.P.C., seeking to quash the proceedings in DVC.No. 19 of 2013 on the file of the Court I-Additional Judicial Magistrate of First Class, Manchriyal, Adilabad district by the petitioners 1 to 5, who are respondents 2 to 6 in the above DVC.

2. The first respondent herein is the defacto-complainant. Basing on her complaint, a domestic violence case is registered as DVC.No. 19 of 2013 against the petitioners/respondents 1 to 6.

3. The main allegation against the respondents 1 to 6 is that they have harassed her for additional dowry and ill-treated her.

4. Heard the arguments of the learned counsel for the petitioners and the learned Public Prosecutor for the second respondent-State.

5. The learned counsel for the petitioners submits that the allegations against the petitioners 1 to 5/A-2 to A-6 are omnibus in nature. There are no specific allegations against them with regard to physical or mental harassment alleged to have made out by them, therefore, sought for quashing the proceedings against them.

6. The learned counsel for the petitioners placing reliance on the judgment of this Court in **GIDUTHURI KESARI KUMAR AND ORS. V/s. STATE OF TELANGANA AND ORS.**, vide Crl.P.Nos. 7289 of 2014 and batch, it is clearly held in para No.10 of the said judgment, which is as follows :

10) *So, a study of statement of objects and reasons would show that though the domestic violence against women was addressed to some extent by the penal law under Section 498A, the same was not addressed by the civil law it was felt. Hence, Protection of Women from Domestic Violence Act was brought into force w.e.f. 26.10.2006. The reliefs sought to be provided under this enactment, as we will presently see are therefore predominantly civil in nature in tune with the object of the Act. In the line, Section 18 provides Protection order against domestic violence; Section 19 intended to grant Residence order; Section 20 confers Monetary reliefs; Section 21 grants Custody order relating to the custody of the children and Section 22 confer compensation and damages to the victim of domestic violence. So these remedies are purely civil in nature and it is important to note none of the several forms of the domestic violence committed by the respondents under these sections is referred as an offence and respondents as offenders. It is only when an order is passed under any of the aforesaid sections and the breach of protection order is caused by them, such breach will be termed as an offence under Section 31 of the D.V. Act and the same is categorized as cognizable and non-bailable under Section 32 of the D.V. Act. That is what held in **Velisetti Chandra Rekha's** case (1 supra). In the subsequent judgments also similar view was expressed as below:*

i) *In **Gundu Chandrasekhar vs. The State of Andhra Pradesh**^{1[5]}, a learned judge of this High Court observed thus:*

“None of the reliefs claimed in D.V.C. No.8 of 2011 by the 2nd respondent can be called crimes. Though, the Act empowers a Magistrate to entertain the complaint of an aggrieved person under Section 12 of the Act and makes it incumbent on the Magistrate to make enquiry of the same under the Code of Criminal Procedure, 1973, reliefs under Sections 18 to 22 of the Act are in the nature of civil reliefs only. It is only violation of order of the Magistrate which becomes an offence under Section 31 of the Act and which attracts penalty for breach of protection order by any of the respondents. Similarly Section 33 of the Act provides for penalty for discharging duty by Protection Officer. Except under Sections 31 and 33 of the Act which occur in Chapter V, all the reliefs claimed under Chapter IV of the Act are not offences and enquiry of rights of the aggrieved person

^{1[5]} 2012 (2) ALD 910

under Sections 18 to 22 of the Act cannot be termed as trial of a criminal case.” (Emphasis supplied)

ii) In **Mohit Yadav and another vs. State of Andhra Pradesh**^{2[6]}, a learned judge of this High Court observed thus:

“Para 22: If a statute does not provide an offender liable to any penalty (conviction or sentence) in favour of the state, it can be said that legislation will be classified as remedial statute. Remedial statutes are known as welfare, beneficent or social justice oriented legislations. A remedial statute receives a liberal construction. In case of remedial statutes, doubt is resolved in favour of the class of persons for whose benefit the statute is enacted. Whenever a legislation prescribes a duty or penalty for breach of it, it must be understood that the duty is prescribed in the interest of the community or some part of it and the penalties prescribed as a sanction for its purpose. None of the provisions of the Domestic Violence Act, 2005 has direct penal consequences. (Emphasis supplied)

Para 23: Under Section 31 of the Domestic Violence Act, 2005, breach of protection order, or of an interim protection order, by the Respondent shall be an offence under the Act. Therefore, all other orders passed under Sections 17,18,19,20 and 22 of the Domestic Violence Act, 2005 have no penal consequences, even if the Respondent committed breach of the order, except as provided under Section 31 of the Act.” (Emphasis supplied)

Therefore, it is clear that the proceedings conducted till passing of the orders under Section 18 to 22 are only civil in nature to provide a civil remedy. Thus it is a civil complaint packed with a criminal wrapper.

7. Having considered the contention of the learned counsel for the petitioners and the learned Public Prosecutor and in the light of the judgment of this court referred supra, two aspects have to be considered in this case. Firstly, whether the criminal petition under section 482 Cr.P.C. is maintainable in a case of Domestic Violence registered against the petitioners 1 to 5. Secondly, whether

^{2[6]} 2010(1)ALT (Cri) 105

there are prima facie allegations against the petitioners 1 to 5 in the complaint to attract the provisions under the Domestic Violence Act.

8. The main object of Domestic Violence Act is to give protection to the victim immediately and in the event of no complaint with the orders of Domestic Violence penal provisions are made under section 31 of the Act. The proceedings under section 18 to 22 are civil in nature as held by this Court in the aforesaid judgment. To implement the reliefs, the Court can resort to the provisions under section 31 of the Act for maintainability of its order. It is to be seen whether the petition is maintainable under section 482 of Cr.P.C. or not ?

9. In the light of the judgment of this Court in exceptional cases a quash petition can be maintained as held in para no.10 of the judgment referred to above. As far as the facts of this case are concerned, it is to be seen whether there are allegations against the petitioners to attract the provisions under Domestic Violence Act. Section 3 of the Act, deals with the definition “Domestic Violence”, which reads as hereunder :

Section 3 of domestic violence Act. – For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I. – For the purposes of this section, –

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes –

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes –

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Explanation II. – For the purpose of determining whether

any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

It is clearly laid down about the various aspects of domestic violence; like physical abuse, sexual abuse etc. If the averments in the complaint attract any of these provisions then it constitutes domestic violence. If any of the ingredients of section 3 or 4 are present in the complaint in the form of averment, in such cases quash may not be entertained in the light of the judgment rendered by the Hon'ble Supreme Court in **C.B.I. V/s. A. RAVI SHANKER PRASAD** ³.

10. On consideration of the facts of this case, there are no merits for consideration of this criminal petition, as it cannot be concluded that there is no prima facie case against the petitioners in the light of the averments made in the complaint. However, in the light of the judgment referred above, this Court is of the considered view that the petitioners may approach the trial court and seek appropriate remedies before it under section 29 of the Act by way of appeal to the Sessions Court. However, since the petitioners are already granted interim stay during pendency of this case, the presence of the petitioners/respondents 2 to 6 before trial court is dispensed with except on the date of receiving of judgment.

11. With the above observations, this Criminal Petition is disposed of accordingly.

³) 2009 [6] SCC-351

12. As a sequel, miscellaneous petitions if any, pending in this Criminal
Petition stands vacated.

JUSTICE GUDISEVA SHYAM PRASAD.

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HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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