

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.10983 OF 2018

ORDER:

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') is filed by the petitioners - respondent Nos.2 and 3 viz., Shaik Mahaboob Sabri and Smt. Fathimunnisa, respectively, to quash the proceedings against them in D.V.C. No.107 of 2018, pending on the file of III Metropolitan Magistrate, Hyderabad.

2. The petitioners herein are respondent Nos.2 and 3 in the aforesaid D.V.C., whereas respondent No.1 is the aggrieved person under the Protection of Women from Domestic Violence Act, 2005 (for short 'Act, 2005').

3. Respondent No.2 filed an application under Section 12 of the Act, 2005, wherein she claimed various reliefs including residence order under Section 19 of the Act, 2005, and one of the sub-clauses in the relief claimed is to 'remove himself from the shared household'. The main contention of the petitioners before this Court is that such a relief cannot be granted in an application filed under Section 12 of the Act, 2005 and section 19 of the same Act. Learned counsel for the petitioners, Sri S.M. Rafee, fairly conceded that the petitioners are ready to face trial, but requested to quash the proceedings to the extent of relief claimed under Section 19 of the Act, 2005 viz., for removal of petitioners from the shared household.

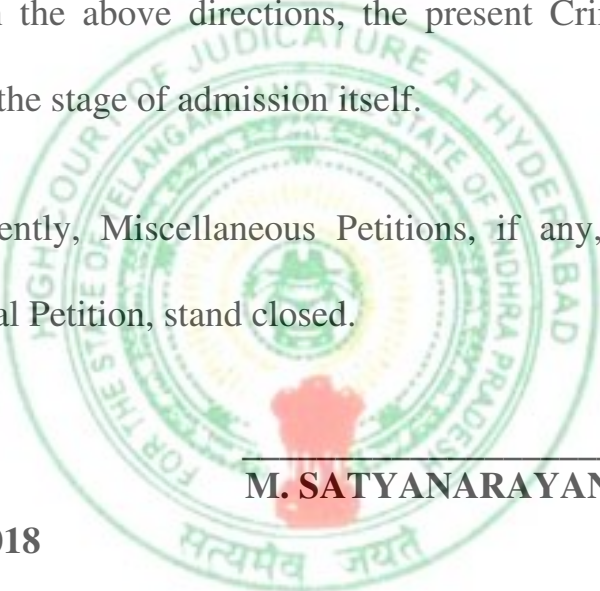
4. In view of the submission made by Sri S.M. Rafee, learned counsel for the petitioners, the petitioners have no objection to face the trial. But, if for any reason, the relief claimed in the application to the extent indicated above is granted, it amounts to granting pre-trial order, and time and again this Court in various judgments including the judgment in **Giduthuri Kesari Kumar v. State of Telangana**¹, laid down certain guidelines to be followed by the Courts in applications filed under Section 12 of the Act, 2005. According to the guidelines, the proceedings under the Act, 2005 are quasi-civil in nature and the Court can exercise inherent jurisdiction and quash the proceedings only in three circumstances, which are; (1) where there is no subsisting domestic relationship as defined under Section 2 (f) of the Act, 2005; (2) where an order can be passed in an application filed under Section 31 for enforcement of the protection/residence order; and (3) where any earlier complaint was filed based on the same allegations which ended in acquittal. Therefore, the decision of this Court is confined to three circumstances to exercise power under Section 482 of the Code to quash the proceedings in an application filed under Section 12 of the Act, 2005. But, the relief claimed in the present petition is to quash the proceedings in the aforesaid DVC to the extent indicated above, and such relief is beyond the guidelines issued by this Court in **Giduthuri Kesari Kumar**, and when the petitioners are ready to face the trial, if they are successful in proving that there was no subsisting domestic relationship as defined under Section 2 (f) of the Act, 2005 or that she

¹ 2015 (2) ALD (CrI.) 470 (AP)

never resided in the house along with the petitioners and the member of joint family, she is disentitled to claim such relief. But, at this stage, such relief cannot be granted. However, it is left open to the petitioners to raise such contention during trial or inquiry, and on raising such contention, I am sure that the Magistrate will answer such questions and grant appropriate relief in accordance with law. Further, the Magistrate is directed to follow the guidelines issued by this Court in **Giduthuri Kesari Kumar** referred supra.

5. With the above directions, the present Criminal Petition is disposed of, at the stage of admission itself.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition, stand closed.



M. SATYANARAYANA MURTHY, J

October 12, 2018

Mgr