

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.9403 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioners/A2 to A4 seek to quash the proceedings against them in D.V.C.No.18 of 2012 filed by respondents 2 and 3 which is pending on the file of II Additional Judicial First Class Magistrate, Khammam.

2) The factual matrix of the case is thus:

a) The 1st complainant is the wife of A1; petitioners 1 to 3/A2 to A4 are mother and brothers of A1.

b) The 1st complainant filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 stating that marriage between her and 1st respondent was performed on 18.11.2010 at Rajiv Gruhakalpa, Khammam as per Hindu rites and customs; at the time of marriage, the parents of complainant No.1 gave Rs.4 lakhs towards dowry, gold and silver ornaments and other household articles worth Rs.1 lakh; some time they led happy marital life and thereafter respondents started harassing her for additional dowry; respondent No.1 used to behave in a cruel manner with the 1st petitioner and insulted her before others and did not show love and affection; he addicted to alcohol and used to come home in the late hours in a drunken state and quarrelling with her and abused her in filthy language and habituated to all vices.

c) Basing on the said petition, the learned Magistrate took cognizance of the same and registered as DVC No.18 of 2012.

3) Heard arguments of Sri P.V.V.Gopalakrishna Murthy, learned counsel for petitioners and Sri G.L.Narasimha Rao, learned counsel for respondent Nos.2 and 3 and learned Additional Public Prosecutor (TS) for respondent No.1.

4) Learned counsel for petitioners would argue that the main allegations are against the 1st respondent in DVC who is the husband of 1st petitioner therein and the reliefs like maintenance, provision for alternative accommodation, compensation etc. are all claimed against 1st respondent and therefore, the petitioners herein who are the mother and brothers of 1st respondent in DVC, have nothing to do with the case and continuation of the proceedings against them would amount to abuse of process of court and therefore the proceedings may be quashed against them.

5) Per contra, learned counsel for respondents 2 and 3/complainants argued that apart from 1st respondent the other respondents in DVC also harassed the 1st petitioner and drove her away from the matrimonial home and therefore, their presence is also required in DVC.

6) I heard both the learned counsel about the maintainability of DVC. It should be noted that in ***Giduthuri Kesari Kumar and others vs. State of Telangana and others***¹, this Court has observed thus:

¹ 2015 (2) ALD (CrI.) 470 (AP)

“Para—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 circumstances 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 above ruling, I gave my anxious consideration to know whether there exist any exceptional circumstances to entertain the quash petition.

7) A close scrutiny of the petition averments in DVC No.18 of 2012 would show that the main allegations and reliefs are concentrated against the 1st respondent in DVC who is the husband of the 1st petitioner and father of the 2nd petitioner therein. The petitioners therein sought maintenance, provision for alternative accommodation and compensation against the 1st respondent. The alleged harassment is

mainly attributed to 1st respondent. It is averred that some time after marriage the 1st respondent started harassing her for additional dowry and he used to behave in cruel manner with petitioner No.1 and insulted her and did not show love and affection towards the petitioners. He was addicted to alcohol and used to come home late in nights and started quarrelling with the complainant and abused her in filthy language and beat her. In the month of June, 2011, it is alleged that, 1st respondent drove her from the matrimonial home and ever since both the petitioners are taking shelter in the parental home of petitioner No.1. Therefore, as stated supra, the averments touching the domestic violence are aimed at 1st respondent. Only a stray allegation is made that respondent No.2, who is the mother of respondent No.1, is suffering with AIDS and she used to threaten petitioner No.1 that if she did not fulfill the demand for additional dowry, she would transmit her aids disease to petitioner No.1. It is quite incomprehensible as to how the 2nd respondent can transmit her disease to petitioner No.1 even assuming for a moment that 2nd respondent had such disease. So, at the outset, no reliable allegations of domestic violation are made against petitioners/A2 to A4 and therefore, continuation of the proceedings against them can be said to be abuse of process of court. Therefore, in the considered view of this Court, the facts of this case can be treated as one of the exceptional circumstances as envisaged in *Giduthuri Kesari Kumar*'s case (1 supra) to quash the proceedings.

8) In the result, Criminal Petition is allowed and proceedings against the petitioners/A2 to A4 in D.V.C.No.18 of 2012 on the file of II Additional Judicial First Class Magistrate, Khammam are quashed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 11.10.2018
Murthy

