

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.13852 of 2018

ORDER:

Heard both sides and perused the impugned order of the learned Metropolitan Sessions Judge, Hyderabad, in SR.No.14660 of 2018 which is an unnumbered appeal under Section 29 of the Domestic Violence Act maintained by the petitioners/respondents to the DVC.No.102 of 2015 in CrI.M.P.No.2286 of 2018 for recall of the witness that was dismissed by the learned IV Metropolitan Magistrate on 12.11.2018.

The observation in the impugned order which is a subject matter of the present petition, is that Section 29 of the Act provides for appeal against order made by the Magistrate is served on the aggrieved party or the respondent as the case may be whichever is later appeal lies only on an order made by Magistrate and it is only orders passed with regard to reliefs sought by aggrieved person and not for against all orders and thereby against dismissal of the application under Section 311 Cr.P.C. of recall of witness no appeal lies is the conclusion. In fact Section 29 of the Act is not restricted to order where relief granted and it is not even mentioned as interlocutory order or main order as the case may be in saying appeal lies from the order made by Magistrate and it extends to all types of orders in the absence of specifically defined what is meant by order in the Act and the Act is silent in the definition of order.

Now the contention of the learned counsel for the respondent in supporting the order of the lower Court is by drawing attention to the Sections 18 to 22 of the Act saying under those Sections a

relief can be sought and to be granted and it is only those orders being called as orders.

Said contention is not sustainable and the law is elaborately discussed and came to the conclusion even entertaining and taking of cognizance in numbering the DVC is also prone to appeal under Section 29 of the Act in **Gaddameedi Nagamani V. State of Telengana¹**.

Having regard to the above, the order of the lower Court is set aside with a direction to entertain the appeal if otherwise in order to decide on own merits.

Accordingly and in the result, this Criminal Petition is allowed.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 29.01.2019
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¹ 2015(3) ALT (Crl.) 263