

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CRIMINAL PETITION No.769 of 2014

ORDER :

This criminal petition is filed seeking to quash the proceedings in DVC.No.206 of 2013 on the file of IV Metropolitan Magistrate, Hyderabad, which was filed against the petitioners herein, seeking relief under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter be referred to as 'the Act').

2. Heard learned counsel for petitioners and the learned Assistant Public Prosecutor Sri S.Ganesh, appearing for the 1st respondent/State and also the counsel for the 2nd respondent. Perused the record.

3. Section 12 of the Act provides that an aggrieved person or a protection officer or any other person on behalf of the aggrieved person, may present an application to the Magistrate seeking one or more reliefs under the said Act. Accordingly, respondent No.2 has filed the DVC against the petitioners herein.

4. During the course of arguments, it is brought to the notice of this Court by the learned Assistant Public Prosecutor that the quash petition is not maintainable against the proceedings in DVC cases in view of the judgment of this Court in **Giduthuri Kesari Kumar & others v. State of Telangana & others**¹, wherein, their Lordships have held at para 10 as under:

“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

¹ 2015 (2) ALD (Crl.) 470 (A.P.)

Section 32 of the D.V. Act. That is what held in Velisetti Chandra Rekhas case (1 supra). In the subsequent judgments also similar view was expressed as below:

i) In Gundu Chandrasekhar vs. The State of Andhra Pradesh, 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 under Sections 18 to 22 of the Act cannot be termed as trial of a criminal case. (Emphasis supplied)

ii) In Mohit Yadam and another vs. State of Andhra Pradesh , 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 comfit packed with a criminal wrapper.”

5. As far as the procedure is concerned, no doubt, one has to approach the Court of Judicial First Class Magistrate for the reliefs under Sections 18 to 22 of the Act, and as per Section 12 of the Act, an application seeking one or more reliefs under the Act has to be submitted to the Magistrate. Section 28 of the Act speaks about the procedure to be followed in deciding such applications. In the present case, the reliefs sought against the petitioners herein are under Sections 18 to 22 of the Act in the petition filed under

Section 12 of the Act, which does not come under criminal trial. However, the petitioners are seeking quashment of the proceedings contending that they are unnecessarily roped into, which is an abuse of the process of the Court. In this connection, it is appropriate to refer to para 14 of the aforesaid judgment, wherein, their Lordships have held as under:

“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 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.”

The aforesaid judgment is squarely applicable to the facts of the present case. Since the present petition is filed seeking to quash the proceedings under the Domestic Violence Act, it is not maintainable.

6. The criminal petition is accordingly dismissed.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 20.02.2023

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