*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

Criminal Petition Nos.7289, 16576, 16607, 16608 of 2014;

76, 99, 226, 311, 388, 395 and 476 of 2015

% 16.02.2015

% Crl.P.No.16576 of 2014:

Between:

Giduthuri Kesari Kumar
and others … Petitioners

AND

State of Telangana
Rep. by Public Prosecutor
and another. ….
Respondents

! Counsel for Petitioners : Sri G. Abdul Khader

^ Counsel for Respondent No.1 : Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

1) 2010 (2) ALD (Crl.) 689 (AP)
2) (2011) 12 SCC 588
3) (2013) 4 SCC 176
4) 2013 (2) ALD (Crl.) 341(AP)
5) 2012 (2) ALD 910
6) 2010(1)ALT (Cri) 105

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COMMON ORDER:

All these Criminal Petitions are filed under Section 482 of

Code of Criminal Procedure (Cr.P.C.) seeking to quash the proceedings in respect of Domestic Violence Cases (DVCs.).

2) This Court entertained a doubt regarding maintainability of these quash petitions in view of judgment of this Court in the case of ***Velisetti Chandra Rekha and another v. The State of A.P. and another***[1] and hence, heard learned counsel for petitioners and learned Public Prosecutor.

3) In the above decision, in a similar petition filed to quash the proceedings in DV case, a learned single Judge of this High Court has observed thus:

> *"Para 2: The petitioners cannot be punished for any offence under the Act. Only on violating the Protection Orders passed under Section 18 of the Act and Residence Orders under Section 19 of the Act, the Magistrate can proceed under Section 31 of the Act and can summon the violators to show cause why penalty for breach of the protection should not be imposed on them. Further as per Section 32 of the Act, the offence under Sub-section (1) of Section 31 of the Act shall be a cognizable and non-bailable one. Before passing any orders, summons have to be served on the respondents and they can either appear before the court or can be represented by an Advocate for passing appropriate orders under Section 18 or 19 of the Act. In view of the same, issuing of summons and non-bailable warrants for their presence, is not at all warranted, at the stage of passing of the protection orders or residence orders by the concerned Magistrate. On issuing such Non-bailable warrants on the presumption that they have committed the offence under the Act, the petitioners approached this Court for quashment of the proceedings.*
>
> *Para 3: Since the resident orders can be passed against all the respondents, preventing them from interfering with the possession of the aggrieved*

*person in the Domestic Violence Case, mere impleadment of the petitioners in the Domestic Violence Case, does not give raise to a criminal offence to quash the proceedings at the initial stage."(**Emphasis supplied**)*

4) So, precisely the observation of the learned Judge is that orders passed under Sections 18 to 22 of Protection of Women from Domestic Violence Act, 2005 (for short "D.V Act") are in the nature of civil reliefs and none of the orders treat the concerned respondent as an offender and it is only the violation of the order passed under Sections 18 and 19 is treated as an offence under Sections 31 and 32 of DV Act and therefore, mere impleadment of a person as a party respondent in a Domestic Violence Case, does not give rise to a criminal offence to quash the proceedings at the initial stage.

5) In the light of above observations, this Court preferred a preliminary hearing on the maintainability of the above quash petitions.

6) Learned counsel for petitioners argued that though reliefs under Sections 18 to 22 of DV Act are in the nature of civil reliefs but several provisions under DV Act particularly Sections 2 (i), 12, 28 etc. would reveal that the reliefs under aforesaid sections shall be dealt with by the Judicial Magistrate of First Class and the adjudication of the proceedings under Sections 12, 18 to 23 and 31 is governed by the provisions of Cr.P.C. and the concerned Magistrate Courts are treating the proceedings under DV Act as criminal case and if the parties

failed to turn up for any reason, issuing NBWs. against them which causes any amount of hardship to the parties most of whom are unnecessarily roped in cases without their connivance and complicity in the case and further, they are not responsible and answerable to the reliefs sought for by the petitioner. In this legal and factual scenario, they argued, continuation of the proceedings against the petitioners will be abuse of process of the Court only which can be obviated by this Court under its inherent powers conferred by Section 482 Cr.P.C. They submitted that the observations in ***Velisetti Chandra Rekha***'s case (1 supra) can be confined to that particular case and in fact in some other cases, under suitable circumstances, the proceedings in D.V. cases were quashed by this Court and Supreme Court as well. They relied upon the following decisions:

1. ***Inderjit Singh Grewal vs. State of Punjab***[2]
2. ***Ashish Dixit vs. State of Uttar Pradesh***[3]
3. ***Markapuram Siva Rao and others vs. State of Andhra Pradesh***[4]

They submitted that their petitions are maintainable and may be decided on merits.

7) Per contra, learned Public Prosecutor submitted that in view of judgment in ***Velisetti Chandra Rekha***'s case (1 supra) the present petitions are not maintainable. Of course, he fairly conceded that subsequent to the above judgment, in another judgment in ***Markapuram Siva Rao***'s case(4 supra) a learned

Judge has quashed the proceedings in DV case.

8) In the light of above arguments, the nature of the proceedings under D.V. Act is relevant to decide the issue.

9) When the statement of objects and reasons of D.V.Act is perused, it was felt by the law framers the phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the Indian Penal Code but civil law does not however address this phenomenon in its entirety. It was with this observation the Legislature proposed to enact the Domestic Violence Act keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law (Emphasis Supplied) which is intended to protect the women from being a victim of domestic violence and to prevent the occurrence of domestic violence in the society.

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

ii) I n ***Mohit Yadam and another vs. State of Andhra Pradesh***[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 comfit packed with a criminal wrapper.

11) Then the procedure is concerned, no doubt the above

reliefs are to be provided by a Judicial First Class Magistrate. As rightly submitted by learned counsel for petitioners, under Section 12 of D.V. Act, an application seeking one or more of the reliefs under this Act has to be submitted to the Magistrate. Under Section 2(i) 'Magistrate' means Judicial Magistrate of First Class or as the case may be, Metropolitan Magistrate exercising jurisdiction under the Code of Criminal Procedure in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence as alleged to have taken place. It is also true that Sec.28 speaks of the procedure to be followed in adjudicating the applications. It reads thus:

> *Section 28. Procedure:-*
>
> *(1) Save as otherwise provided in this Act, all proceedings under Sections 12,18,19,20,21,22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).*
>
> *(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23."*

12) A close perusal of Section 28 would show that though as per this Section the proceedings under Sec.12, 18 to 23 and offences under Sec. 31 are governed by the Code of Criminal Procedure, 1973, that is not an inscrutable rule inasmuch as Sec.28(1) is having a saving clause and also subject to sub-section(2). When we analyse the limitations of Section 28(1) with reference to the civil nature of the remedies provided under Sec.18 to 22 and saving provisions under Sec.13 and 23, we

can understand that for conducting enquiry, the Court need not insist for personal attendance of the parties for each adjournment like in criminal cases. It is because, Sec.13 lays down that the Magistrate shall issue a notice of the date of hearing fixed under Sec.12 to the Protection Officer for serving on the respondent. So for securing the appearance of respondent, at the first instance, the Magistrate need not, nay shall not issue warrant. Even if the respondents failed to turn up after receiving notice and file their counter affidavit if any, the Magistrate need not take coercive steps for securing their presence and on the other hand he can treat them as “Non-contesting respondents” and pass an exparte order by virtue of the power conferred on him under Sec.23 of the D.V.Act. So during the enquiry under Sec.12 and till an order is passed under Sec.18 to 23, the Magistrate need not insist the presence of parties for each adjournment and take coercive steps due to their absence. It is only under exceptional circumstances, if the Magistrate feels required, he may issue warrants for securing the presence of the concerned party. Such a judicial flexibility to lay down own procedure is conferred on the Magistrate under Sec.28(2) of the D.V. Act. By following this procedure, learned Magistrate can obviate the presence of the respondents, some of whom in most of the cases are unnecessarily roped in, throughout the enquiry.

13) The next aspect is having regard to the fact that the reliefs provided under Section 18 to 22 are civil reliefs and enquiry under Sec. 12 of D.V. Act is not a trial of a criminal case, whether the respondents can seek for quashment of the proceedings that

they were unnecessarily roped in and thereby continuation of the proceedings amounts to abuse of process of Court etc., pleas. In my considered view, having regard to the facts that the scheme of the Act which provide civil reliefs and the Magistrate can lay his own procedure by not taking coercive steps in general course and the enquiry being not the trial of a criminal offence, the respondents cannot rush with 482 Cr.P.C petitions seeking quashment of the proceedings on the ground that they were unnecessarily roped in. They can establish their non-involvement in the matter and non-answerability to the reliefs claimed by participating in the enquiry. 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.

We can find such instances in the decisions cited by the petitioners.

i) In ***Inderjit Singh Grewal***'s case (2 supra), the complainant and her husband took divorce by mutual consent before the District Judge, Ludhiana under Section 13-B of Hindu Marriage Act and later it appears, she filed a complaint before the Magistrate under D.V Act on the allegation that herself and her

husband obtained decree of divorce by playing fraud upon the Court and now her husband causes domestic violence to her. She independently filed a civil suit in the Court of Judge, Senior Division, Ludhiana seeking declaration that the decree of divorce was null and void as it was obtained by fraud. In this scenario, Hon'ble Apex Court held that when she was a party to the fraud, she cannot take advantage of it and in any event, the Magistrate Court in criminal proceedings cannot declare the decree of Civil Court as null and void and thus held that the continuation of proceedings amounts to travesty of justice and quashed.

ii) In ***Ashish Dixit***'s case (3 supra), the complainant appeared to have filed the petition under D.V. Act not only against husband and parents-in-law but also against some sundry persons including the tenant of the house whose name was not known to her. In such circumstances proceedings were quashed.

iii) In ***Markapuram Siva Rao***'s case (4 supra), the facts were that earlier case under Section 498-A and 506 IPC and Sections 3 and 4 of Dowry Prohibition Act were ended in acquittal against other accused except the husband and subsequently with identical allegations, the wife filed a petition under D.V. Act against all of them. It was held that such petition would amount to abuse of process of Court and quashed the proceedings against the petitioners.

Therefore, except in exceptional circumstances stated supra, the quash petitions are not maintainable on a simple ground that the respondents are unnecessarily roped in the case

without their fault.

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 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.

13) In that view, when the present Criminal Petitions are perused, except Crl.P.No.7289 of 2014, the other petitions are

filed with the plea that there is no domestic violence and the petitioners were unnecessarily roped in the case. Hence they are held not maintainable and accordingly dismissed. In Crl.P.No.7289 of 2014, the ground for quashment of proceedings is that the earlier C.C.No.554 of 2010 for the offence under Section 498-A IPC with similar allegations was acquitted. Hence, the said petition is taken up for hearing. Criminal Petition Nos.16576, 16607, 16608 of 2014; 76, 99, 226, 311, 388, 395 and 476 of 2015 are dismissed.

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

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U. DURGA PRASAD RAO, J

Date: 16.02.2015

Murthy / scs

Note:

(1) L.R Copy has to be marked.

(2) Registry is directed to send copy of this order to all the Principal District Judges to circulate to the Magistrates.

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[1] 2010 (2) ALD (Crl.) 689 (AP)

[2] (2011) 12 SCC 588

[3] (2013) 4 SCC 176

[4] 2013 (2) ALD (Crl.) 341(AP)

[5] 2012 (2) ALD 910

[6] 2010(1)ALT (Cri) 105