

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL PETITION No.8604 OF 2012

ORDER:

This is an application under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the petitioners-respondents 5 to 8 in D.V.C.No.11 of 2012, on the file of the learned VII Metropolitan Magistrate, Cyberabad at Hayathnagar, Hyderabad, requesting to quash the proceedings against them in the said D.V.Case.

2. I have heard the submissions of the learned counsel for the petitioners, the learned counsel for the 2nd respondent/complainant and the learned Additional Public Prosecutor representing the 1st respondent/State. I have carefully perused the material record.

2. (a) The 2nd respondent herein is the petitioner in the DV Case. The petitioners herein are the respondents 5 to 8 in the DV Case. The parties shall hereinafter be referred to as petitioners and the 2nd respondent as they are arraigned in this criminal petition.

3. Now, the points for determination are -

- i) **Whether the petitioners have made out valid and sufficient grounds for quashing the proceedings against them in D.V. Case No.11 of 2012 on the file of learned VII Metropolitan Magistrate, Cyberabad at Hayathnagar, Hyderabad?**
- ii) **Whether the uncontroverted allegations made in the complaint of the 2nd respondent do not disclose even a prima facie case against the petitioners?**
- iii) **Whether the application of the 2nd respondent**

should not have been entertained by the learned Magistrate against the petitioners (respondents 5 to 8) without discussing the domestic and legal relationship of the petitioners with the 2nd respondent?

4. POINTS:

4. (a) The substance of the petition, which was presented by the 2nd respondent to the Protection Officer, in brief, is this:

“The respondents 1 to 4 in the DV Case, who are not parties to the present criminal petition, are the husband, parents-in-law and the brother-in-law of the 2nd respondent herein. The petitioners herein are the respondents 5 to 8 in the DV Case. Under the lawful wedlock, the 2nd respondent has given birth to a male child by name Puneet. Since 02.11.2009, on which date the Reception was arranged, troubles had started between the spouses as the marriage was not liked by the 2nd respondent’s Parents-in-law as it is a love marriage and no dowry was given as expected by them. Further, on 03.11.2009, her husband had arranged a dinner for the family, friends and others in a restaurant. During the dinner party, the 2nd respondent was made to sit separately from all the family members and, her husband did not talk to her despite her request that she was feeling lonely. She was abused very badly in the presence of all the persons, who had attended that dinner party. Her parents-in-law stated to her that she had absconded from her parents’ house and married their son without any dowry. Her husband and parents-in-law, who all are residing in the same house, started harassing her and her parents-in-law used to ask her to bring dowry or else to take divorce so that their son can re-marry and get a good amount of dowry. As the 2nd respondent could not bring the dowry as demanded, on 22.04.2010, they all had abused her and her parents in

filthy language and also removed her Mangal Sutram and Mettelu and had driven her out of the house stating that she should enter the house only with the dowry amount of Rs.5,00,000/-. Therefore, she had left her matrimonial home and made a complaint before the Women Police Station, Begumpet. Her parents-in-law, husband and brother-in-law were called by the said police on the next day i.e., 23.04.2010 for counselling. At that counselling they had admitted their mistakes and had promised to treat the 2nd respondent well without indulging in any such acts of harassment. On such assurance, the 2nd respondent lead conjugal life with her husband at Kummariguda, Secunderabad. However, her husband had again started harassing her; and, for not bringing dowry, subjected her to both physical and mental torture by making sarcastic remarks against her and her parents. Therefore, after staying in the house with her husband for few days, the 2nd respondent had returned to her parents' house. Even at the time when the boy was born, her husband and parents-in-law did not come to see the child. When she was with her husband and was weak during pregnancy, they did not care to even take her to a hospital. After she went to her parents' house and when her husband took her to the hospital, it was revealed that she was pregnant and she was advised to take bed rest. During the period from 14.05.2011 to 05.11.2011 her husband took a separate residence for both of them in Venkatagiri. However, being under the influence of his parents and others and being instigated by them he had continued the harassment and subjected the 2nd respondent/complainant to both mental and physical torture. On one occasion her husband tried to throttle her with an intention to kill her. When his parents asked him to give divorce to the 2nd respondent so that he can re-marry and get good amount of dowry, he had stated that he is a diabetic and nobody else will come forward to marry him. Thus, suppressing the fact that he is a diabetic, he had married the 2nd respondent and had continued the

torture for brining dowry being instigated by his parents and relatives, whose names are mentioned at the foot of the complaint. At the time of marriage of the brother-in-law of the 2nd respondent, dowry was paid. Therefore, they became greedier. In the 2nd week of November, 2011, the husband of the 2nd respondent had shifted the residence from Venkatagiri to Manikonda on the premise that he is going to Bangalore/Mumbai on office trips. Thus, he had left the 2nd respondent alone and later did not join her. Therefore, she was forced to come back to her parents' house and had started staying with them since 22.02.2012. It has come to her notice that her husband has filed a divorce case in O.P. No.73 of 2012 on the file of the Family Court, Secunderabad, with false allegations. She is resisting the said petition.

The 2nd respondent's husband is earning Rs.70,000/- per month by working in a multi national company and is still neglecting to maintain her and her son. She is now living at the mercy of her parents."

Pleading so, in her petition, the 2nd respondent had claimed the following reliefs:-

- 1) Protection orders for her and her child, and also to her parents and other family members.**
- 2) Maintenance @ Rs.30,000/- per month for her and her child.**
- 3) Payment of rent @ Rs.5,000/- per month as she wanted to live in a rented house.**
- 4) Direction to the respondents to pay an amount of Rs.5,00,000/- as compensation towards loss of earnings and for the mental and physical harassment meted out by them to her.**
- 5) To continue to have the custody of the child with her only.**

Pursuant to the said complaint, the D.V. Case was taken on file against all the respondents therein including the petitioners herein.

4. (b) Now, the petitioners herein, who are respondents 5 to 8 in the DV Case, are seeking to quash proceedings against them in the said DV Case by *inter alia* contending as under:

“The petitioners are strangers to the family of the 2nd respondent and her husband. On receipt of summons in the D.V. Case, the petitioners had entered their appearance and are contesting the case. The complaint given by the 2nd respondent does not disclose commission of any domestic violence as defined in Section 2(g) read with Section 3 of the Protection of Women from Domestic Violence Act, 2005 (‘the Act’, for short). The petitioners do not come within the definition of ‘domestic relationship’ as defined in Section 2(f) of the Act. They are not related by consanguinity, marriage or through a relationship in the nature of marriage. They are also not the family members living together as joint family. The contents of the petition of the 2nd respondent do not disclose any acts of so called domestic violence committed by the petitioners herein. The learned Magistrate had failed to apply his mind and had mechanically issued the summons ignoring the fact that the petitioners do not come within the purview of the provisions of the Act. It would be a mental torture for the petitioners to face the trial, which is un-necessary in the DV Case. Hence, the continuation of the proceedings in the DV Case against the petitioners is nothing but an abuse of process of law and the court.”

4. (c) At the time of hearing, the learned counsel for the petitioners had submitted that the petitioners are distantly related to the husband of the second respondent. He had also submitted that the relationship of the petitioners is not even stated in the petition of the 2nd respondent. He had further submitted that absolutely no *overt acts* or

acts of domestic violence are attributed to the petitioners herein and that a reading of the entire complaint also disclose no case much less a *prima facie* case against the petitioners and that therefore, taking into consideration the uncontroverted averments in the petition of the 2nd respondent the proceedings in the DV Case against the petitioners are liable to be quashed.

4. (d) On the other hand, the learned counsel for the 2nd respondent had submitted that at the foot of the petition, while giving the particulars of the husband and others, the names of the petitioners are shown at serial nos.5 to 8 of the petition and that the averments in the petition disclose that the petitioners had committed the offence.

4. (e) In the light of the contentions and rival contentions, I have gone through the contents of the petition carefully. Apart from the allegations against the husband, parents-in-law and the brother-in-law the only allegations made against the relatives are as follows: 'However, being under the influence of his parents and others and being instigated by them he had continued the harassment and subjected the complainant to both mental and physical torture.' 'Thus, suppressing the said fact, he had married the 2nd respondent and had continued the torture for bringing dowry being instigated by his parents and relatives, whose names are mentioned at the foot of said complaint.' Thus, apart from the averments against the husband, the parents-in-law and the brother-in-law, the above averments were only made in the petition. The said averments are omnibus in nature. In one of the said averments the words employed are - 'under the influence of his parents and others and being instigated by them'. Who are the said others mentioned in the above statement is not stated in the petition. In the second averment, it is stated to the effect that suppressing that the husband of the 2nd respondent is a diabetic, he had married her and 'continued the torture for bringing dowry being instigated by his parents

and relatives whose names are mentioned at the foot of the said complaint'. As already noted, the precise relationship of the petitioners with the husband of the 2nd respondent is not even pleaded in the petition of the 2nd respondent. The averments, which are emphasised supra, are omnibus and vague allegations without any details. Therefore, even on a plain consideration of all the uncontroverted averments made in the petition of the 2nd respondent, it is obvious that the same do not disclose a prima facie case against the present petitioners. On this ground alone, the DV Case against the petitioners is liable to be quashed.

4. (f) Coming next to the contention that the learned Magistrate ought not to have taken the case on file against the present petitioners for the reason that the petitioners have no 'domestic relationship' and that they have never shared the household or lived together in a shared household with the 2nd respondent and her husband, it is necessary to refer to the relevant provisions. Under Section 12 of the Act, an aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act.

Section 2 (a) defines 'aggrieved person' and it reads as follows:

2 (a) 'aggrieved person' means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent'.

The above definition makes a reference to 'domestic relationship' between the aggrieved woman and the respondent in the DV case'. The definition also makes a reference to 'domestic violence'.

'Domestic relationship' which is defined in Section 2(f) reads as under:

2 (f) 'domestic relationship' means a relationship between two persons who live or have, at any point of time,

lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family'

Thus, Section 2 (f) of the Act dealing with 'domestic relationship' refers to 'shared household'; and, 'shared household' as defined in Section 2(s) reads as follows:

2 (s) 'shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared house-hold.'

Section 2 (q) defines 'respondent' as follows:

2 (q) 'respondent' means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner'

'Domestic violence' which is defined in Section 2(g) reads as under:

2 (g) 'domestic violence' has the same meaning as assigned to it in Section 3.'

Section 3 of the Act defines 'domestic violence' and the said provision reads as follows:

3. Definition of domestic violence:- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the

aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

Thus, Section 3 of the Act also in the introductory part makes a reference to the word ‘respondent’.

4. (g) A plain and analytical reading and a harmonious consideration of all the provisions of the Act, particularly, the above definitions brings to the fore the following aspects: A person can be arraigned as a respondent in a DV case provided he is or has been in a domestic relationship with the aggrieved person. The proviso to Section 2(q) says that an aggrieved wife may also file a complaint against the relation of a husband. A plain reading of the said definition would make it manifest that any person who can be arraigned as a respondent must be a person who is or has been in domestic relationship with the aggrieved person and must have subjected the aggrieved person to any act of domestic violence. Unless the said requirements are fulfilled a person cannot be arraigned as a respondent in a DV Case. Coming to the aspect of ‘domestic relationship’, the domestic relationship means a relationship between two persons who either are living together or had at any point of time lived together in a ‘shared household’ when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The definition of shared household is already extracted supra.

4. (h) Therefore, in the well-considered view of this Court, for a person to be made a respondent in a DV case filed by an

aggrieved woman, such respondent, must have a domestic relationship with the aggrieved person and must have been living or must have lived together in a shared household along with the aggrieved person when they are related by consanguinity marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Therefore, when any person who is so related who has been not living or had not lived together at any point of time with the aggrieved person in a shared household and who has/had no domestic relationship cannot be made a respondent to a case filed by the woman under the provisions of the Act.

4. (i) To put it in other words, in order to make a person as a respondent in a DV case filed under section 12 of the Act, there must be a domestic relationship either in present or in the past between the aggrieved person and the respondent. In any case the domestic relationship must be in existence at the relevant time when aggrieved person has been subjected to any act of domestic violence by the respondent. It is noticeable from the provisions that a 'domestic relationship' arises between the aggrieved person and another in case when either they are living together or have at any point of time lived together in a shared house hold and when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The aggrieved person and the respondent need not be living together in a shared household at the time of the filing of the case/petition and it would be sufficient if they had lived together at any point of time in the past, when the alleged acts/omissions/conduct complained of had taken place.

4. (j) Reverting to the facts of the case, all the petitioners are residents of Prakasam District whereas the 2nd

respondent is a resident of Hyderabad. Her husband, parents in law and brother-in-law are stated to be residents of Secunderabad. There is no averment in the petition of the 2nd respondent and no material is also placed on record to show that the petitioners are having or had any domestic relationship with the 2nd respondent. It is not pleaded or shown by any material brought on record that the petitioners and the 2nd respondent are living together or had lived together at any point of time in a shared household and are having or had a domestic relationship with the 2nd respondent. Further, after the proceedings in Crime No.204 of 2010 were quashed by this Court, by orders dated 04.10.2012, the present DV case was filed by the 2nd respondent. The law is well settled that in a matrimonial case like the present case, when only a casual reference is made to the relatives of the husband and there is absence of specific allegations of active involvement in the matter and when the allegations made are omnibus and vague in nature and when the uncontroverted allegations made in the complaint/DV case do not disclose even a *prima facie* case, the continuation of the proceedings against such relatives of the husband would be an abuse of judicial process. The above view of this Court finds support from the ratio in the decision in **Geeta Mehrotra v. State of U.P.**^[1]. Therefore, this case is an evidently fit case to quash the proceedings to prevent abuse of process of court and secure the ends of justice.

5. Viewed thus, this Court finds that the petitioners have made out valid and sufficient grounds to quash the proceedings against them in the D.V.C.No.11 of 2012 on the file of VII Metropolitan Magistrate, Cyberabad at Hayatnagar. The points are accordingly answered in favour of the petitioners.

6. In the result, the criminal petition is allowed and the proceedings against the petitioners/respondents 5 to 8 in D.V.C.No.11 of

2012, on the file of learned VII Metropolitan Magistrate, Cyberabad at Hayathnagar, Hyderabad are quashed.

Miscellaneous petitions pending, if any, in this petition shall stand closed.

M.SEETHARAMA MURTI, J

Date: 19.01.2015

Note: LR Copy to be marked.

(B/o)

Vjl

[\[1\]](#) (2012) 10 Supreme Court Cases 741