

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.5840 of 2022

ORDER :

Submissions made by the learned counsel for petitioners as well as the learned Assistant Public Prosecutor have received the due consideration of the Court.

2. Seeking the Court to quash the proceedings that are pending against the petitioners/respondent Nos.2 to 5 in D.V.C.No.88 of 2022 that is pending on the file of the Court of IX Additional Metropolitan Magistrate, Kukatpally, the present Criminal Petition is filed.

3. Sans unnecessary details, respondent No.1 gave a report to the Protection Officer that she was subjected to domestic violence by her husband and other family members and therefore, she is in requirement of protection from the said domestic violence and further, she requires financial assistance. The Protection Officer thereafter submitted a domestic incident report. Consequently, proceedings against the husband of respondent No.1 and

the petitioners who are arrayed as respondent Nos.2 to 5 commenced.

4. During the course of hearing, the main grievance exhibited by the learned counsel for the petitioners is that the Court is insisting the physical attendance of the petitioners for each and every adjournment of the said Domestic Violence Case and therefore, the petitioners are facing serious hardship. The learned counsel further submitted that the petitioners are no way connected with the family affairs of respondent No.1 and her husband and only because they are distantly related to the husband of respondent No.1 they are roped into the proceedings. He further contended that the petitioners were falsely implicated by respondent No.1 with an intention to wreck vengeance against her husband. By stating so, the learned counsel sought for quashing of proceedings that are pending against the petitioners in the said Domestic Violence Case.

5. Opposing the relief sought for and submitting that only because the petitioners are unable to attend the trial Court, the entire proceedings in the said Domestic Violence

Case cannot be quashed, the learned Assistant Public Prosecutor stated that all the proceedings that would be conducted in domestic violence cases are civil in nature and hence, quashing of proceedings is undesirable.

6. The Protection of Women from Domestic Violence Act, 2005 is a legislation enacted to shield the rights of women which are enshrined and guaranteed under the Constitution of India, besides paving way to deal with the matters connected to and arising out of the family disputes in an effective and efficacious manner.

7. When the provisions contained in the said legislation i.e., The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the Act of 2005”, for brevity) are looked into, it is very clear that the proceedings that would be conducted are more civil in nature. The protection orders that would be granted under Section 18, the residence orders that would be granted under Section 19, the monetary reliefs that would be granted under Section 20, the custody orders that would be granted under Section 21 and the compensation orders that would be granted under Section 22, would be based on the

applications that would be filed by the aggrieved persons, the domestic incident reports and the defence taken by the respondents therein. All those proceedings are civil in nature. No doubt, Section 28 (1) of the Act of 2005 lays down that the proceedings shall be governed by the provisions of Code of Criminal Procedure. However, it is specifically mentioned under Section 28(2) of the Act of 2005 that the Court is empowered to lay down its own procedure for disposal of the applications filed by the aggrieved persons or the Protection Officers. May be due to the fact that the power to deal with the domestic violence cases is given to the Magistrate, the litigant public are under the impression that the proceedings initiated under the Act of 2005 are purely criminal in nature.

8. Section 2(i) of the Act of 2005 states that “Magistrate” means Judicial Magistrate of First Class or the Metropolitan Magistrate, as the case may be, exercising jurisdiction under the Code of Criminal Procedure. However, as indicated earlier, the proceedings under the Act of 2005 are more civil in nature. Section 31 of the Act of 2005 is the only provision which makes the breach

committed within the purview of the Act of 2005 punishable. As per Section 31 of the Act of 2005, breach of a protection order or an interim protection order is a punishable offence. Further, Section 31(3) of the Act of 2005 empowers the Magistrate to frame charges under Section 498-A IPC or any of the provisions of the Indian Penal Code or the Dowry Prohibition Act while framing charge for the offences punishable for breach of the protection order or interim protection order. May be due to that reason i.e., to deal with the offence committed by breaching the protection order or an interim protection order and the connected offences punishable under the Indian Penal Code and the Dowry Prohibition Act, the legislature by all its wisdom has empowered the Judicial Magistrate of First Class to deal with the matters pertaining to other provisions and for issuance of required orders as enumerated under Sections 18 to 22 of the Act of 2005. That does not mean that the entire proceedings that would be conducted by the Magistrate under the Act of 2005 are criminal in nature. Thus, when the orders that would be granted in domestic violence cases, basing on the material produced, are civil in nature, it has to be seen

how far it is justifiable on part of the parties against whom the aggrieved person or the Protection Officer has initiated proceedings to seek quash of proceedings under Section 482 Cr.P.C.

9. Law is well settled that in a petition filed under Section 482 Cr.P.C. the High Court is required to examine whether its intervention is required for prevention of abuse of law or otherwise to secure the ends of justice. It is only in extremely extraordinary cases that the Courts can exercise its jurisdiction conferred under Section 482 C.P.C. to quash the proceedings under the Protection of Women from Domestic Violence Act, 2005. Only on the sole ground that the parties arrayed as respondents by the aggrieved person face difficulty in attending the Court, the proceedings against them cannot be quashed. Therefore, this Court is of the view that the petition filed for quashing of proceedings is unsustainable.

10. The same view is expressed by the combined High Court in the case between *Gaddameedi Nagamani Vs. State*

*of Telangana*¹ Vs. *Giduthuri Kesari Kumar and Ors Vs. State of Telangana and Ors*².

11. Resultantly, the Criminal Petition is dismissed.

12. It is brought to the notice of this Court by the learned Assistant Public Prosecutor that number of Criminal Petitions are filed before the High Court seeking to quash the proceedings in domestic violence cases, only because the trial Courts are insisting the physical attendance of the respondents in those cases for each and every adjournment.

13. Therefore, before parting with the case, this Court considers it desirable to lay down certain guidelines for the Courts of Judicial Magistrate of First Class, which are empowered to deal with the domestic violence cases, to follow so that the parties would not rush to the High Court.

(1)The Courts of Judicial Magistrate of First Class which are dealing with the cases filed seeking various kinds of reliefs as laid down under Sections 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 should take

¹ 2015(2) ALD (CrI.) 764 (AP)

² 2015(2) ALD (CrI.) 470 (AP)

note of the fact that the proceedings therein are more civil in nature.

- (2)When the aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person presents an application seeking one or more reliefs that are enshrined under Sections 18 to 22 of the Protection of Women from Domestic Violence Act, 2005, upon service of notice as required under Section 13 of the said Act and upon making appearance by the opposite party i.e., respondents therein either in person or through their counsel, the Court shall not insist for their personal appearance for each and every adjournment.**
- (3)The Courts dealing with the cases under the Protection of Women from Domestic Violence Act, 2005 shall not even insist for filing an application under Section 317 Cr.P.C.**
- (4)The persons against whom the applications are filed seeking relief in domestic violence cases i.e., the respondents, however, shall appear in person if a specific direction is given for their personal appearance by the Court during the course of proceedings.**
- (5)The points enumerated above does not however apply during the course of**

proceedings that are conducted under Section 31 of the Protection of Women from Domestic Violence Act, 2005.

(6) Last but most important is that the Courts of Judicial Magistrate of First Class which are empowered to deal with the matters under the Protection of Women from Domestic Violence Act, 2005 shall make all endeavour to dispose of the applications filed for grant of various reliefs that are provided under Sections 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 within a period of sixty (60) days from the date of first hearing, as required under Section 12(5) of the said Act.

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

Dr.CHILLAKUR SUMALATHA, J

07.7.2022

Note:

1.LR copy to be marked.

2. Registry to circulate a copy of this order to all the Courts dealing with domestic violence cases in the State of Telangana.

B/o

dr

