

Andhra High Court

THE HONOURABLE Dr. JUSTICE G. YETHIRAJULU

Criminal Petition No.5900 of 2006

10-04-2007

Mohammad Maqeenuddin Ahmed and 10 others

Vs

1. The State of Andhra Pradesh, rep.by its Public Prosecutor, High Court of A.P., Hyderabad.
2. Mohd. Raheem Khan

Counsel for petitioners: Mr.Ch. Janardhan Reddy

Counsel for respondent No.1: Public Prosecutor

Counsel for respondent No.2: C. Nagender

:ORDER:

This Criminal Petition has been filed under Section 482 of Cr.P.C. by the respondents in Domestic Violence Case (DVC) No.01 of 2006 on the file of the Additional Judicial Magistrate of First Class, Nizamabad to quash the proceedings against them in the said case.

The second respondent herein is the father of the aggrieved person and father-in-law of the first petitioner herein. He filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short the Act) read with Rule 6 (1) of the Protection of Women from Domestic Violence Rules, 2006. The learned Magistrate took cognizance of the case and issued summons to the petitioners.

The petitioners filed the present petition to quash the proceedings by contending that the first petitioner filed O.S.No.112 of 2004 for restitution of the conjugal rights against the daughter of the second respondent and the same is pending for trial. **The first petitioner is ready to take back the daughter of the second respondent and he is not sending his daughter along with the first petitioner.**

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**The daughter of the second respondent filed Maintenance Case No.2 of 2005 before the Additional Judicial Magistrate of First Class, Nizamabad seeking maintenance and the Court granted interim maintenance of Rs.1,000/- per month and during the course of examination, she admitted that there is no demand of dowry by the first petitioner.**

**The second respondent also filed a private complaint against the petitioners and five others under Section 498-A IPC and the same is numbered as C.C.No.885 of 2005 before the Additional Judicial Magistrate of First Class, Nizamabad.** The learned Magistrate taken the present case on file without taking into consideration of pendency of the case between the parties and other circumstances.

**The daughter of the second respondent is separately living since May 2004 and from then onwards, the first petitioner has not seen her in anywhere except in the Court. Therefore, there is no cause of action to file the present case.** The petitioners 2 to 11 are living separate from 03.09.2004 and after partition they are no way concerned with the happenings between the first petitioner and the daughter of the second respondent. Therefore, the proceedings are liable to be quashed against the petitioners.

In the present case, the petitioner/the second respondent herein sought for the following reliefs.

The petitioner on behalf his daughter requested the Court to pass an order awarding a sum of Rs.65,000/- towards medical expenses incurred during the period of second child in the hospital and Rs.35,000/- towards medical expenses to the first child and Rs.1,000/- for the maintenance and expenditure of the petitioners daughter and also Rs.3,000/- for his daughter and her children per month towards maintenance.

In the petition, the petitioner mentioned that her daughter lived with the first respondent/first petitioner herein for one year, as a result of which she gave birth to a male child.

The petitioner has given all the customary jahez articles to the first respondent, which is still in his custody. After the birth of the child, the health of the petitioners daughter deteriorated. But the first respondent was insisting the petitioners daughter to come to his house immediately after cradle ceremony. Therefore, the differences arose between them and the petitioners daughter joined the company of the first respondent against the medical advice and when she joined the first respondent, her position was like a maidservant. The first respondent started demanding of Rs.2,00,000/-. During pendency of the maintenance proceedings, the petitioners daughter gave birth to a female child. Despite informing the said information to the first respondent, he did not give the cash for medical expenses and the respondents 2 to 10 abetted the first respondent to disown his liability and responsibility towards

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petitioners daughter. At the time of the first delivery also, the first respondent did not send any money for medical expenses or to take care of the health and safety of the petitioners daughter, which amounts to physical abuse. When there was a miscarriage of pregnancy to the daughter of the petitioner, the first respondent has not paid to any amount towards medical expenses. When the petitioners daughter is away for marital life from the first respondent on account of his conduct, insisting for marital life by the first respondent amounts to harassing the petitioners daughter and harming her health. Therefore, the first respondent is liable to maintain his daughter. It is further mentioned that the first respondent is frequently calling the petitioners daughter on telephone and humiliating and insulting her of not having a male child and he was demanding to bring Rs.3.00 or 4.00 lakhs if she wants to join his company and also threatening that the first respondent will dispose of all jahez articles and his share of the property denying the right to the children. Hence, the present petition.

Section 20 of the Act provides for monetary reliefs, which reads as follows:

20. Monetary reliefs:- (1) While disposing of an application under sub-section

(1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

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(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

Under Section 22 of the Act also, compensation can be awarded. From the prayer portion of the petition, it is revealed that the reliefs were sought against the first respondent/first petitioner herein only. From the body of the petition also, no specific allegations were made against the respondents 2 to 11/petitioners 2 to 11 herein except mentioning that at their instance, the first petitioner was demanding money and that he was not providing money for medical expenses and disowned the liability being abetted by petitioners 2 to 10. Since no relief is claimed against petitioners 2 to 11, it is unnecessary to continue the proceedings against them and continuation of the proceedings against them amounts to abuse of process of law. Therefore, I am inclined to quash the proceedings against the petitioners 2 to 11.

So far as the first petitioner is concerned, the entire claim is against him. Since there are allegations in the petition that he neglected to pay medical expenses and also neglected to maintain her and her children, I am not inclined to quash the proceedings against him.

In the result, the Criminal Petition in respect of the first petitioner is dismissed and the Criminal Petition in respect of petitioners 2 to 11 is allowed by quashing the proceedings against them in Domestic Violence Case (DVC) No.01 of 2006 on the file of the Additional Judicial Magistrate of First Class, Nizamabad for the alleged offences.

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