

(2014) 09 AP CK 0094

Andhra Pradesh High Court

Case No: Criminal Petition No. 5970 of 2014

T.G. Dinkar

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision: Sept. 12, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2
- Criminal Procedure Code, 1973 (CrPC) - Section 12, 125(3), 18, 19, 20
- Protection of Women From Domestic Violence Act, 2005 - Section 12, 18, 19, 20, 28

Citation: (2015) 1 ALD(Cri) 301 : (2015) 2 Crimes 512 : (2015) 3 DMC 625 : (2015) 4 RCR(Civil) 613 : (2015) 4 RCR(Criminal) 535

Hon'ble Judges: K.G. Shankar, J

Bench: Single Bench

Advocate: C.M.R. Velu, Advocate for the Appellant; A. Prabhakar Rao, Advocate for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Dr. K.G. Shankar, J.

The petitioner, who is the sole respondent in D.V.C. No. 25 of 2012 on the file of the III Additional Junior Civil Judge, Chittoor, seeks for the quashment of the same. The 2nd respondent is his wife. The 3rd respondent is the son of the petitioner and the 2nd respondent. The 2nd respondent laid case seeking for relief's of protection u/s 18 of the Protection of Women from Domestic Violence Act, 2005, (the D.V. Act, for short) and of monetary relief's u/s 20 of the D.V. Act. The petitioner claimed that the very case is not maintainable on the ground that the same is barred by limitation and consequently seeks for the quashment of D.V.C. No. 25 of 2012.

Res Judicata:

2. The 2nd respondent and the petitioner were married to on 06-8-2006. The 3rd respondent was born on 18-6-2007. It is the case of the 2nd respondent that since the time of the birth of the child, the petitioner started harassing her for dowry and other financial benefits. The 2nd respondent filed D.V.C. No. 15 of 2008 as well as M.C. No. 31 of 2008 seeking for various relief"s under the provisions of the D.V. Act and under the provisions of the Code of Criminal Procedure.

3. Sri A. Prabhakar Rao, learned counsel for the respondents 2 and 3, submitted that a compromise was struck between the petitioner and the 2nd respondent during the pendency of D.V.C. No. 15 of 2008 and M.C. No. 31 of 2008 when the petitioner agreed to take back respondents 2 and 3 into the matrimonial home subject to withdrawal of D.V.C. No. 15 of 2008 and M.C. No. 31 of 2008. It is his further case that on 20-12-2008, the 2nd respondent withdrew both the cases in terms of the oral compromise.

4. The learned counsel for the respondents 2 and 3 further submitted that after withdrawal of the cases, the respondents 2 and 3 went to Pune to join the petitioner as he was working at Pune as a Software Engineer at that time. He alleged that the petitioner refused to admit respondents 2 and 3 into the matrimonial home initially on the ground that the time was not auspicious. Allegedly, the petitioner later started demanding for additional dowry.

5. The 2nd respondent became helpless and was forced to file D.V.C. No. 3 of 2010 on the file of the IV Additional Judicial Magistrate of First Class, Chittoor. The same was later transferred to the Court of the III Additional Junior Civil Judge, Chittoor and was renumbered as D.V.C. 25 of 2012. The learned counsel for the respondents 2 and 3 pointed out that the petitioner has earlier filed a petition in Criminal Petition No. 10314 of 2011 u/s 482 Cr.P.C. for quashment of D.V.C. No. 3 of 2010 and that the same was dismissed by this Court through orders dated 02-7-2013 after hearing both sides. The learned counsel for the respondents 2 and 3 contended that the present petition is not maintainable in view of the orders dated 02-7-2013 in Crl. P. No. 10314 of 2011 which would operate as res judicata or issue estoppel.

6. Sri C.M.R. Velu, learned counsel for the petitioner, on the other hand, submitted that there is no bar for filing a 2nd petition u/s 482 Cr.P.C. He further contended that the plea of limitation had not been taken in the earlier petition and that the present petition is laid on the sole ground that D.V.C. No. 3 of 2010/D.V.C. No. 25 of 2012 is barred by limitation. He contended that in the earlier petition in Crl. P. No. 10314 of 2011, the petitioner contended that D.V.C. No. 3 of 2010 was laid by the 2nd respondent as a counterblast to the petition by the petitioner seeking for restitution of his conjugal rights.

7. In K. Chinni Krishnaiah vs. State of A.P., it was noticed that the provisions under Order II, Rule 2 C.P.C. do not apply to criminal proceedings and that a 2nd quash petition certainly would lie. The Division Bench referred to [Superintendent and](#)

[Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others](#), which declared that the principles of res judicata do not apply to criminal proceedings. Indeed, the Court proceeded on other points in deciding that case.

8. In D. Narayana Rao vs. B.V.S. Lakshmi, it was noticed that entertaining successive applications or a 2nd application for quashment is not prohibited by law albeit propriety requires that such applications shall not be entertained unless there are changed circumstances.

9. The learned counsel for the petitioner submitted that the changed circumstance in the present petition is that a new ground has been taken. As already noticed, in the earlier petition in Crl. P. No. 10314 of 2011, the petitioner urged that D.V.C. No. 3 of 2010 was a counterblast to his petition for restitution of his conjugal rights. In the present case, the only ground on which quashment is sought is that D.V.C. No. 25 of 2012 is barred by limitation.

10. The learned counsel for the petitioner contended that taking a new plea would be tantamount to changed circumstance. In MADAN LAL ANAND V/S. UNION OF INDIA, a Division Bench of the Delhi High Court had occasion to consider this question. In that case, the petitioner challenged the legality of the detention order against him passed under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act). A defence was taken that the petitioner was abusing the legal process by filing petition after petition questioning his detention. The petition in question was the 3rd petition from the petitioner. The Division Bench of the Delhi High Court observed that in matters of detention, neither the principles of res judicata nor the principles of constructive res judicata would apply if the petition is based on fresh or additional grounds and that each case has to be decided on its own merits.

11. It is submitted by the learned counsel for the petitioner that the petitioner has taken a new ground, viz., that D.V.C. No. 25 of 2012 is barred by limitation and that the petition therefore cannot be dismissed in limine on the ground that it is a repetition of the exercise which was made by the Court in Crl. P. No. 10314 of 2011. The order in Crl. P. No. 10314 of 2011 would show that the stand taken by the petitioner in that case was that D.V.C. No. 3 of 2010 was a counterblast. In the present case, D.V.C. No. 3 of 2010 which was renumbered as D.V.C. No. 25 of 2012 is questioned on the ground of limitation. Added to it, the earlier petition was argued by the petitioner himself as a party-in-person whereas he had legal assistance in the able stewardship of Sri C.M.R. Velu in this petition. In view of the fact that a new ground has been taken in the present quash petition which had not been taken earlier, I consider that it would be appropriate to entertain the present petition on merits. I accordingly dispose of this petition on merits.

MERITS:

12. The basic contention of the petitioner is that D.V.C. No. 25 of 2012 is barred by limitation. It is his case that the 2nd respondent deserted him on 07-02-2007 and laid D.V.C. No. 3 of 2010 on 06-01-2010, about 3 years after the desertion. He submitted that as the D.V.C. was filed about 3 years after the separation, the same is barred by limitation.

13. The learned counsel for the respondents 2 and 3, on the other hand, submitted that after the separation between the petitioner and the 2nd respondent and after the 2nd respondent laid D.V.C. No. 15 of 2008 and M.C. No. 31 of 2008, there was a compromise between the parties, so much so, limitation cannot commence to run from 07-02-2007. It is submitted by the learned counsel for the petitioner that there is no proof regarding the compromise alleged by the 2nd respondent. I am afraid that the question of compromise raised by the 2nd respondent is a question of fact which cannot be considered in this petition. Where the delay, if any, has been explained by the 2nd respondent which can be considered on merits only on facts, the dispute becomes a question of fact. Again, it is not proper nor is it permissible for me to go into the question of fact in this petition as the same deserves to be decided on merits after evidence by both sides. I therefore consider that whether the delay, if any, has satisfactorily been explained by the 2nd respondent shall be determined by the Trial Court and not by me.

14. The learned counsel for the respondents 2 and 3 submitted that there is no limitation for a petition under the provisions of the D.V. Act. The learned counsel for the petitioner had referred to Section 31 of the D.V. Act. Section 31 of the D.V. Act reads:

31. Penalty for breach of protection order by respondent:-

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2).

(3).

15. The learned counsel for the petitioner also referred to Section 468 Cr.P.C. It is convenient to extract the same:

468. (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

16. It is contended by the learned counsel for the petitioner that the period of limitation is one year if the offence is punishable with imprisonment for a term not exceeding one year. Reading Section 31 of the D.V. Act with Section 468(2) Cr.P.C., it is submitted by the learned counsel for the petitioner that where the punishment is for a maximum period of one year, the period of limitation is one year u/s 468 Cr.P.C. and that as the petition was laid about 3 years after the desertion, the same is barred by limitation.

17. In *Inderjit Singh Grewal v. State of Punjab*, the Supreme Court held that the provisions u/s 468 Cr.P.C. would apply to the Protection of Women from Domestic Violence Act, 2005. In that case, there was a decree of divorce between the wife and husband granted on an application by both parties seeking for divorce by mutual consent. When the wife again tried to invoke the provisions of the D.V. Act, the Court intervened. In the present case, the matrimonial relationship between the petitioner and the 2nd respondent has not been snapped. Added to it, it is the contention of the petitioner that he filed a petition for restitution of conjugal rights seeking for the company of the 2nd respondent. The petitioner therefore cannot equate himself with a former husband who obtained divorce from a competent Civil Court on an application by both parties for grant of divorce by mutual consent. Further, the Supreme Court considered that the provisions of Section 468 Cr.P.C. that the complaint could be filed within one year from the date of the incident was justified in view of Sections 28 and 32 of the D.V. Act read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006.

18. The learned counsel for the respondents 2 and 3 submitted that the incident referred to in Section 31 of the D.V. Act is breach of protection order and not a prayer for protection order. He further submitted that proceedings u/s 12 of the D.V. Act do not have any element of criminality, so much so, Section 468 Cr.P.C. has no application. In *Mohd. Akber Yaseen v. Rizwana Sulthana*, the Court observed that there is no criminality in a petition under Sections 12 and 18 to 23 of the D.V. Act.

19. In *Valisetti Chandra Rekha v. State of A.P.*, it was noticed that a person suffering an order under the D.V. Act could not be punished for violation of the protection orders passed u/s 18 of the D.V. Act or residence orders passed u/s 19 of the D.V. Act and held that for filing of a case u/s 12 of the D.V. Act, there cannot be any

limitation.

20. Section 468 Cr.P.C. provides limitation. However, Section 31(1) of the D.V. Act contemplates punishment in the event of a breach of the protection order. Section 31 of the D.V. Act does not come into play till a protection order is passed and till the same is breached. In the present case, the 2nd respondent is seeking for various relief's contemplated by the D.V. Act. Assuming that those relief's are granted to the 2nd respondent, in the event they are violated, the 2nd respondent would be entitled to invoke Section 31 of the D.V. Act within one year from the date of the violation. The provision u/s 31(1) of the D.V. Act is similar to the provision u/s 125(3) Cr.P.C. Consequently, the petitioner cannot claim that D.V.C. No. 25 of 2012 is barred by limitation on the ground that the 2nd respondent deserted him nearly 3 years prior to the filing of D.V.C. No. 3 of 2010/D.V.C. No. 25 of 2012 and that the same therefore is barred by limitation.

21. The learned counsel for the respondents 2 and 3 contended that the trial of D.V.C. No. 25 of 2012 has already concluded and that the 2nd respondent in fact had advanced her arguments. He submitted that it would be unjust for the petitioner now to approach the High Court and seek for the quashment.

22. The learned counsel for the petitioner placed reliance upon *Pepsi Foods Ltd. v. Special Judicial Magistrate*, where it was held that an accused may approach the High Court u/s 482 Cr.P.C. at any stage of the proceedings. However, when the petitioner had opportunity to approach the High Court through a petition u/s 482 Cr.P.C. and has utilized the same through a petition in Crl. P. No. 10315 of 2011, approaching this Court again through the present petition after the completion of the trial in the D.V.C. would be abuse of the process of law. As already noticed, the question of delay in approaching the Trial Court and other circumstances are questions of fact which deserve the attention of the Trial Court and not in a petition u/s 482 Cr.P.C. Where the trial has already concluded in the D.V.C. and where the 2nd respondent has already advanced her arguments before the Trial Court, I consider that there is no justification in the petitioner approaching this Court and seeking for the quashment of D.V.C. No. 25 of 2012. It would be appropriate for the petitioner to go before the Trial Court, submit his arguments and seek for an order from the Trial Court. In this background, I see no grounds to quash D.V.C. No. 25 of 2012 on the file of the III Additional Junior Civil Judge, Chittoor.

23. This criminal petition, accordingly, is dismissed. The learned III Additional Junior Civil Judge, Chittoor is requested to dispose of D.V.C. No. 25 of 2012 expeditiously, preferably within two months from the date of receipt of a copy of this order, after according an opportunity to both sides to advance further arguments. The miscellaneous petitions, if any, pending in this petition shall stand closed.