



2022:TSHC:1049

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE SEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION Nos: 6786 AND 6787 OF 2021

CRIMINAL PETITION NO: 6786 OF 2021

Between:

U.Sri Haritha, W/o. R.N.S.Sandilya, D/o.U.Seshagiri Rao, Aged about 27 years, Occ. currently un-employee, R/o. Flat No.98, Block No.7, APIIC Colony (Panchavati Enclave), OPP. Radhika Theatre, Under GHMC, Kapra Circle, ECIL Post, Hyderabad - 500 062.

...Petitioner/Complainant

AND

1. R.N.S.Sandilya, S/o.R.Siva Rama Krishna Rao, Aged 33 years, Occ. Service Presently working at USA, represented by his mother Respondent No.2
2. R.Saroja, W/o. R.Sivaramakrishna Rao, Aged 59 years, Occ. Housewife, R/o.24-6/40, Vishnupuri Colony, Malkajigiri, Hyderabad-47.
3. R.Sivarama Krishna Rao, Aged 69 years Occ. Ret Government Employee, R/o.24-6/40, Vishnupuri Colony, Malkajigiri, Hyderabad-47.
4. State of Telangana, represented by its Public Prosecutor, High Court, Hyderabad.

...Respondents/Respondents

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the order passed by the Court of II Additional Junior Civil Judge – cum- XIX Additional Metropolitan Magistrate, Cyberabad, at Malkajigiri, Medchal Malkajigiri District in CrI.M.P.No.2139 of 2019 dated 20.05.2021 in DVC No.7 of 2018 and to allow the CrI.M.P.No.2139 of 2019.

I.A. NO: 1 OF 2021

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant stay of all further proceedings in DVC No.7 of 2018 on the file of II Additional Junior Civil Judge – cum- XIX Additional Metropolitan Magistrate, Cyberabad, at Malkajigiri, Medchal Malkajigiri District.

**I.A. NO: 2 OF 2021**

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to extend the stay in IA No.1 of 2021 in CrI.P No.6786 of 2021 passed on 25/10/2021.

I.A. NO: 3 OF 2021

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to extend the stay in IA No.1 of 2021 in CrI.P No.6786 of 2021 passed on 25/10/2021.

I.A. NO: 4 OF 2021

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to extend the stay in IA.No. 01 of 2021 in CRL.P.No. 6786 of 2021 passed on 25.10.2021.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri Vedula Srinivas, Senior Counsel representing for M/s Vedula Chitralekha, Advocate for the Petitioner and of M/s M. Bhaskara Lakshmi, Senior Counsel representing for Sri Rama Krishna, Advocate for the Respondent Nos.1 to 3 and the Public Prosecutor on behalf of the Respondent No.4.

CRIMINAL PETITION NO: 6787 OF 2021**Between:**

U.Sri Haritha, W/o. R.N.S.Sandilya, D/o.U.Seshagiri Rao, Aged about 27 years, Occ. currently un-employee, R/o. Flat No.98, Block No.7, APIIC Colony (Panchavati Enclave), OPP. Radhika Theatre, Under GHMC, Kapra Circle, ECIL Post, Hyderabad - 500 062.

...Petitioner/Complainant**AND**

1. R.N.S.Sandilya S/o.R.Siva Rama Krishna Rao, Aged 33 years, Occ. Service Presently working at USA, represented by his mother Respondent No.2
2. R.Saroja, W/o. R.Sivaramakrishna Rao, Aged 59 years, Occ. Housewife, R/o.24-6/40, Vishnupuri Colony, Malkajgiri, Hyderabad-47.
3. R.Sivarama Krishna Rao, Aged 69 years Occ. Ret Government Employee, R/o.24-6/40, Vishnupuri Colony, Malkajgiri, Hyderabad-47.
4. State of Telangana, represented by its Public Prosecutor, High Court, Hyderabad.

...Respondents/Respondents



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Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the order passed by the Court of II Additional Junior Civil Judge- cum- XIX Additional Metropolitan Magistrate, Cyberabad, at Malkajigiri, Medchal Malkajigiri District in Crl.M.P.No.2140 of 2019 dated 06/03/2021 in DVC No.7 of 2018 and to allow the Crl.M.P.No.2140 of 2019.

I.A. NO: 1 OF 2021

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant stay of all further proceedings in DVC No.7 of 2018 on the file of II Additional Junior Civil Judge- cum- XIX Additional Metropolitan Magistrate, Cyberabad, at Malkajigiri, Medchal Malkajigiri District.

I.A. NO: 2 OF 2021

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to extend the stay in I.A. No. 1 of 2021 in CRL.P. No.6787 of 2021 passed on 25-10-2021.

I.A. NO: 3 OF 2021

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to extend the stay in I.A.No.1 of 2021 in Crl.P.No.6787 of 2021 passed on 25-10-2021.

I.A. NO: 4 OF 2021

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to extend the stay in I.A. No.1 of 2021 in Crl.P. No. 6787 of 2021 passed on 25/10/2021.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri Vedula Srinivas, Senior Counsel representing for M/s Vedula Chitrakleha, Advocate for the Petitioner and of M/s M. Bhaskara Lakshmi, Senior Counsel representing for Sri Rama Krishna, Advocate for the Respondent Nos.1 to 3 and the Public Prosecutor on behalf of the Respondent No.4.

The Court made the following: COMMON ORDER

**HON'BLE SRI JUSTICE K. LAKSHMAN****CRIMINAL PETITION Nos.6786 AND 6787 OF 2021****COMMON ORDER:**

Crl.P. No. 686 of 2021 is filed to quash the order dated 20.05.2021 in Crl M.P. No.2139 of 2019 in D.V.C. No.7 of 2018 passed by the learned II Additional Junior Civil Judge - cum - XIX Additional Metropolitan Magistrate, Cyberabad at Malkajgiri, whereas Crl.P. No.7687 of 2021 is filed to quash the order dated 06.03.2021 in Crl.M.P. No.2140 of 2019 in D.V.C. No.7 of 2018 passed by the very same Court.

2. Heard Mr. Vedula Srinivas, learned Senior Counsel representing Mrs Vedula Chitralkha, learned counsel for the petitioner and Mrs. M. Bhaskara Lakshmi, learned senior counsel representing Mr. M. Ramakrishna, learned counsel for the respondent Nos.1 to 3 and learned Assistant Public Prosecutor for respondent No.4.

3. The petitioner herein had filed an application under Section - 12 read with 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (for short 'Act, 2005') seeking certain reliefs.

4. In the said D.V.C., the petitioner herein had filed a petition vide Crl.M.P. No.2139 of 2021 under Section - 294 of Cr.P.C., to receive documents through PW.1 in order to get them marked on her behalf. She had also filed another petition vide Crl.M.P. No.2140 of 2019 under Section - 311 of Cr.P.C., to set aside the order eschewing the evidence of



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PW.1 and reopen petitioner's evidence by recalling her for further chief examination for marking of documents and cross-examination.

5. Vide order dated 06.03.2021, the learned Magistrate has dismissed Crl.M.P. No.2140 of 2019 filed under Section - 311 of Cr.P.C. whereas, Crl.M.P. No.2139 of 2021 filed under Section - 294 Cr.P.C. was dismissed vide order dated 20.03.2021.

6. The petitioner herein had filed the above said two petitions on the following grounds:

- i. That there are two cases of which, divorce case filed by the husband of petitioner and maintenance case filed by her and both the said cases are pending. During pendency of the said cases, the husband of the petitioner got divorce *ex parte* from Supreme Court of New Jersey Family Court, USA behind her back.
- ii. The respondents including her husband did not bother about the health and living of petitioner.
- iii. During the stay at matrimonial house, the petitioner used to chat with her brother, PW.3 and narrated her pathetic situation.
- iv. The family members of the petitioner supported her after necked out from her matrimonial house on 02.04.2015
- v. The respondents did not provide any help for her survival after leaving the matrimonial house.
- vi. In fact, PW.3, brother of petitioner, used to help her financially by sending amounts on different occasions to her account.



- vii. The petitioner exchanged WhatsApp chat, SMS and calls from her phone to her brother on many occasions, more particularly, on 01.03.2015, 29.03.2015, 30.03.2015, 31.03.2015 and 01.04.2015 respectively
- viii. The petitioner filed her chief-examination affidavit dated 12.09.2018 through Indian Embassy through her SPA due to her difficulty in attending personally as she is staying in USA on student Visa, she cannot come to India due to Visa issue and employment problems. Despite reporting the same, her evidence was eschewed.
- ix. In view of the above, she intends to produce the documents, such as Student ID Card, WhatsApp chats between the petitioner and respondent, Email communication between her and her brother in proof of transfer of amounts to her account; and Emails regarding threats given by the respondent to her etc.
7. The respondents herein opposed the aforesaid petitions on the ground that the petitioner herein has filed the above DVC through her father by appointing him as a Special Power of Attorney Holder. Though she was in India, she failed to give her evidence and, therefore, her evidence was eschewed. The petitioner, who stayed with respondent No.1 for 25 days, tried to drag on the proceedings and harass respondent Nos.1 to 3. The Court below has dismissed both the petitions on the ground that they have filed the same with a delay of 385 days and that there are no satisfactory grounds explained by the petitioner. Despite



giving ample opportunity, the petitioner herein failed to file the same. Feeling aggrieved by the said orders, the petitioner filed the present petitions.

8. Referring to the docket proceedings, Mr. Vedula Srinivas, learned senior counsel, would submit that there is no delay on the part of the petitioner herein, and the matter underwent several adjournments for various reasons including filing of counter by respondent Nos.1 to 3 etc. The Court below without considering the said fact dismissed the said applications erroneously.

9. On the other hand, Mrs. M. Bhaskar Lakshmi, learned senior counsel, would submit that the above DVC 7 of 2018 underwent 74 adjournments and the petitioner came back to India in the year 2021 itself. Even then, she failed to appear before the Court below to give evidence. Respondent Nos.2 and 3, the parents of respondent No.1, are aged about 73 and 63 years respectively, and because of the delay tactics adopted by the petitioner, they are suffering physically and mentally. There is delay of 385 days. Thus, considering all the said aspects, the Court below has rightly dismissed both the petitioners and there is no error in it.

10. Perusal of the record would reveal that the marriage of the petitioner with respondent No.1 was performed on 11.02.2015. Thereafter, respondent No.1 left to USA. Even the petitioner herein had also left to USA. Matrimonial disputes arose between them. The petitioner herein had filed the above DVC against the respondents



seeking several reliefs. The evidence affidavit of the petitioner herein as PW.1 was filed. It is also not in dispute that the petitioner herein has appointed her father as her Special Power of Attorney Holder and there was delay in filing her chief-examination affidavit. PW.1 was recalled twice. Both respondent No.1 and the petitioner are staying in USA.

11. In the affidavit filed in support of the both the petitions, the petitioner herein has specifically mentioned that she has filed her affidavit in-chief examination on 12.09.2018 through her Special Power of Attorney Holder. She could not attend the Court below since she was staying in USA on Student VISA. She cannot come to India due to Visa Issue and employment problems. It is also specifically mentioned that even as on the date of filing of both the petitions, she was on student Visa and, therefore, she is not in a position to visit India and the said fact was specifically mentioned in the above said two applications filed in DVC. Her evidence was eschewed on 14.11.2018 on the ground that she was not present. Her non-appearance is neither wanton, nor willful.

13. Though the matter underwent several adjournments, the docket proceedings would reveal that same are on different grounds. Mrs. Bhaskara Lakshmi, learned senior counsel appearing on behalf of respondent Nos.1 to 3 would submit that the above DVC underwent 74 adjournments. Due to the same, respondent Nos.2 and 3, the aged parents of respondent No.1 are subjected to mental harassment.



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14. Before appreciating the facts of the case on hand, it is apt to reproduce the provisions of Sections - 294 and 311 of Cr.P.C. which are as under:

“294. No formal proof of certain documents.

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion, require such signature to be proved.”

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

15. This Court in **Jeslina Ghei v. State of Andhra Pradesh**¹ held that there is no prohibition contained anywhere preventing such person whose evidence is previously eschewed from being recalled or re-examined, especially when such evidence is found to be essential for just decision of the case. It was further held that that if the petitioner makes out a case and if the Court comes to a conclusion that recalling of a witness is essential for the purpose of coming to a just decision, the Court has to allow the said application.

¹ 2008 (1) ALD (Crl) 227



16. In **Swapan Kumar Chatterjee v. Central Bureau of Investigation**², the Apex Court held that power conferred under Section 311 of Cr.P.C. should be invoked by the Court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The Court has wide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under the said provision shall not be exercised if the Court is of the view that the application has been filed as an abuse of the process of law. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier is not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the Court should not encourage the filing of successive applications for recall of a witness under the said provision.

17. Thus, the power under Section - 311 of Cr.P.C. is wide and it has to be exercised by the Court below with great caution and circumspection. The Court is having wide power to recall a witness for the purpose of re-examination. There is no prohibition to file an application under Section - 311 of Cr.P.C. even after eschewing the evidence of a witness. While dealing with an application filed under Section - 311 of Cr.P.C., the Court has to satisfy itself whether evidence

². (2019) 14 SCC 328



sought to produce and the witness sought to recall is essential for the purpose of coming to a just conclusion. Other factors are irrelevant.

18. In view of the above said authoritative principle laid down by this Court and the Apex Court, in the present case, as discussed above, the petitioner herein has specifically mentioned the reasons for her non-appearance. It is not in dispute that she was in USA at that particular point of time on student Visa. She has Visa issues and employment problems. Therefore, she has not appeared before the Court below. Some of the docket proceedings would reveal the said fact. It is relevant to note that the Court below has passed docket order dated 14.11.2018 in D.V.C. No.7 of 2018 to the effect that the petitioner is absent. Respondent Nos.2 and 3 are present. CrI.M.P. No.1751 of 2018 is dismissed as not maintainable. PW.1 is not present despite conditional order in CrI.M.P. No.1334 of 2018 and CrI.M.P. No.1712 of 2018. Hence, the evidence of PW.1 is eschewed. For petitioner's further evidence, call on 28.11.2018. The said order of the Court below is erroneous and the Court below having numbered and passed an order cannot eschew the evidence of PW.1.

19. Mrs. Bhaskara Lakshmi, learned senior counsel has drawn the attention of this Court towards the order passed in Tr.C.M.P. No.885 of 2017, wherein it was observed that the father of the petitioner appears to be an experienced litigant in prosecuting the proceedings.



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20. Therefore, this Court is of the considered view that in a matter like this, more particularly, the fact that the disputes between the petitioner and respondent No.2 are matrimonial in nature, an opportunity has to be given to the petitioner herein to reopen her evidence. But, the Court below failed to appreciate the same and also the specific reasons mentioned by the petitioner in the petitions. Thus, the Court below erred in dismissing both the petitions on the ground that there are no reasons mentioned as to why she has to be recalled with a delay of 385 days. The Court below further erred in observing that the petitioner is only a confused person and she was never ready before him to cause herself. In view of the same, this Court is of the opinion that the impugned orders are not on valid and proper reasons and, therefore, the same have to be set aside.

21. Both these Criminal Petitions are allowed and the impugned orders dated 20.05.2021 and 06.03.2021 in Crl.M.P. No.2139 of 2019 and Crl.M.P. No.2140 of 2019, respectively in D.V.C. No.7 of 2018 passed by the learned II Additional Junior Civil Judge - cum - XIX Additional Metropolitan Magistrate, Cyberabad at Malkajgiri, are hereby set aside, and Crl.M.P. Nos.2139 and 2140 of 2019 are allowed permitting the petitioner herein to lead her evidence.

22. However, it is also relevant to note that as per Section - 12 (5) of the Act, the Court below has to dispose of the DVC within sixty (60) days from the date of first hearing. Instead of doing so, the Court below adjourned the said petitions several times. Admittedly, the DVC is of the year 2018. In view of the same, the Court below is directed to dispose of



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the very DVC itself as expeditiously as possibly, preferably within a period of sixty (60) days from the date of receipt of a copy of this order.

As a sequel, miscellaneous petitions, if any, pending in the criminal petitions shall stand closed.

Sd/-K.ONESIM
ASSISTANT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To

1. The II Additional Junior Civil Judge – cum- XIX Additional Metropolitan Magistrate, Cyberabad, at Malkajigiri,
2. Two CCs to the Public Prosecutor, High Court for the State of Telangana, at Hyderabad [OUT]
3. One CC to M/s Vedula Chitralekha, Advocate [OPUC]
4. One CC to Sri Rama Krishna Mallojhala, Advocate [OPUC]
5. Two CD Copies
MMK 6. one SPAGE COPY



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HIGH COURT

DATED:07/01/2022



COMMON ORDER

CRLP.Nos.6786 and 6787 of 2021

Allowing the both Criminal Petitions

(P3) VW
31/1/22