

**THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

**CIVIL REVISION PETITION No.882 of 2023**

**ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners, challenging the inaction on the part of the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class at Yellandu, in disposing of CrI.M.P.No.645 of 2022 in DVC No.8 of 2021, pending on its file.

2. Heard the submissions of learned counsel for the petitioners, learned counsel for the Respondent/complainant and perused the record.
  
3. The Respondent herein/complainant has filed the subject DVC No.8 of 2021 before the Court below, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "DVC Act") seeking reliefs under Sections 18, 20, 21 of DVC Act and other reliefs. The petitioners herein, who are husband, his parents and his paternal uncle were arrayed as Respondents in the said DVC. In the said DVC, the petitioners herein filed the subject CrI.M.P.No.645 of 2022 under Order XIV Rule 2 read with Section 151 of C.P.C. requesting the Court below to decide the issues mentioned therein as preliminary issues and dismiss the DVC.

Alleging that the Court below is insisting the petitioners herein to proceed with the trial of the case without disposing of the subject CrI.M.P.No.645 of 2022 at the first instance, this Civil Revision Petition is filed seeking a direction to the Court below to dispose of the subject CrI.M.P.No.645 of 2022 before proceeding further in the subject DVC.

**4.** Learned counsel for the petitioners would submit that since the proceedings under the DVC Act are predominantly civil in nature, the Court below is required to decide the subject CrI.M.P.No.645 of 2022 filed under Order XIV Rule 2 of C.P.C. at the first instance and then proceed further with the matter. The inaction on the part of the Court below in disposing of the subject CrI.M.P.No.645 of 2022 at the first instance is illegal and arbitrary. If the Preliminary Objection Petition is decided, the same will have bearing over the main DVC. If the Court below proceeds further with the matter without deciding the subject CrI.M.P.No.645 of 2022, the very purpose of filing the subject application would be defeated and ultimately prayed to direct the Court below to dispose of the subject CrI.M.P.No.645 of 2022 at the first instance before proceeding further with the subject DVC.

5. *Per contra*, the learned counsel for the respondent/complainant strongly opposed the Civil Revision Petition. His first contention is that the subject CrI.M.P.No.645 of 2022 filed before the Court below under Order XIV Rule 2 of C.P.C. is not maintainable. His second contention is that such a direction is to the Court below to dispose of the subject CrI.M.P.No.645 of 2022 at the first instance cannot be given by this Court by exercising jurisdiction under Article 227 of the Constitution of India and the only remedy available to the petitioners is to file a writ petition seeking such a direction, that too under Article 227 of the Constitution of India.

6. Refuting the said submission of the learned counsel for the Respondent/complainant, learned counsel for the petitioners would submit that no writ petition can be moved under Article 227 of the Constitution of India nor can a writ to be issued under Article 227 of the Constitution of India and that a petition filed under Article 227 of the Constitution of India cannot be called a writ petition and that this Court has got ample power of superintendence to direct the Court which is subordinate to it, to exercise the jurisdiction which vests with it. In support of this contention, the learned counsel for the petitioners relied on a decision of the Hon'ble Supreme Court in **Shalini Shyam Shetty & Another Vs.**

**Rajendra Shankar Patil**<sup>1</sup> also a judgment of the Hon'ble Madras High Court in **Arun Danial and others Vs. Suganya and others**<sup>2</sup>

7. Contrary to this, learned counsel for the Respondent/complainant would submit that the High Court can intervene under Article 227 of the Constitution of India only when it is established that the Court or Tribunal subordinate to it has been guilty of the grave dereliction of duty and flagrant abuse of power, which has resulted in grave injustice to any party. He would also submit that if a statute has conferred a power to do an Act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of act in any other manner than that which has been prescribed and the principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. It is also his contention that the Court cannot read anything into a statutory provision which is plain and unambiguous; a statute is an edict of the legislature; while interpreting a provision, the Court only interprets the law and cannot legislate it; if a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. In support of his

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<sup>1</sup> (2010) 8 SCC 329

<sup>2</sup> Decided on 17.11.2022 in CrI.OP.SR.Nos.31852 of 2022 and batch

contentions learned counsel for the respondent/complainant had relied on the following decisions.

- (1) **Union of India and others Vs. Dhanwanti Devi and others**<sup>3</sup>
- (2) **Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and another**<sup>4</sup>
- (3) **Pradip J.Mehta Vs. Commissioner of Income Tax, Ahmedabad**<sup>5</sup>
- (4) **State of Uttar Pradesh Vs. Singhara Singh and others**<sup>6</sup>
- (5) **Ouseph Mathai and others Vs. M.Abdul Khadir**<sup>7</sup>

Various other submissions were also made touching the scope of Articles 226 and 227 of the Constitution of India by the learned counsel for the respondent/complainant.

**8.** Much has been argued by the learned counsel for the respondent/complainant touching various aspects, which are not relevant for deciding this Civil Revision petition. Learned counsel for the respondent/complainant also went to the extent of arguing on interpretation of statutes. This Court has patiently gave audience to him. First of all, there is no impugned order before this Court. The petitioners are only seeking a direction to the Court below to dispose of the application filed by them under Order XIV Rule 2 of C.P.C. before proceeding further in the subject DVC,

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<sup>3</sup> (1996) 6 Supreme Court Cases 44

<sup>4</sup> (2004) 9 Supreme Court Cases 686

<sup>5</sup> (2008) 14 Supreme Court Cases 283

<sup>6</sup> AIR 1964 SC 358

<sup>7</sup> (2002) 1 Supreme Court Cases 319

by exercising power of superintendence under Article 227 of the Constitution of India.

**9.** The exercise of power by this Court under Article 227 of the Constitution of India is no more *res integra*. The power of superintendence of High Court under Article 227 of the Constitution of India may be exercised in case occasioning grave injustice or failure of justice, such as, when the Court of Tribunal subordinate to it has (i) assumed jurisdiction which it does not have, (ii) failed to exercise the jurisdiction which it does have, such failure occasioning in failure of justice, and (iii) the jurisdiction, though available, is being exercised in a manner which tantamount to overstepping the limits of jurisdiction. This is the unambiguous and settled legal position, which need not to be discussed in detail.

**10.** Learned counsel for the respondent/complainant contended that the remedy available to the petitioners in the instant case is to file writ petition seeking the relief, that too under Article 227 of the Constitution of India. I do not see any merit in the said submission. A petition under Article 226 of Constitution of India is different from a petition under Article 227 of the Constitution of India. The mode of exercise of power by the High Court under

these two Articles is also different. While Article 226 gives High Courts the power to issue instructions, orders and writs to any person or authority, including the Government, Article 227 gives High Courts the power of superintendence over all Courts and Tribunals in the territory over which they have Jurisdiction. In any event, a petition under Article 227 of Constitution of India cannot be called a writ petition.

**11.** In **Shalini Shyam Shetty's** case (1 supra) relied by the learned counsel for the petitioners, the Hon'ble Supreme Court had extensively dealt with the scope and intent of Articles 226 and 227 of the Constitution of India. The relevant paragraphs of the said judgment extracted hereinbelow.

32. No writ petition can be moved under Article 227 of the Constitution nor can a writ be issued under Article 227 of the Constitution. Therefore, a petition filed under Article 227 of the Constitution cannot be called a writ petition. This is clearly the Constitutional position. No rule of any High Court can amend or alter this clear Constitutional scheme. In fact the rules of Bombay High Court have not done that and proceedings under Articles 226 and 227 have been separately dealt with under the said rules.

41. In paragraph 14 page 217 of Waryam Singh (supra) this Court neatly formulated the ambit of High Court's power under Article 227 in the following words:

"This power of superintendence conferred by article 227 is, as pointed out by Harries C.J., in 'Dalmia Jain Airways Ltd. V. Sukumar Mukherjee', AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

43. In stating the aforesaid principles, Chief Justice Harries relied on what was said by Chief Justice George Rankin in Manmatha Nath Biswas vs. Emperor reported in AIR 1933 Calcutta 132. At page 134, the learned Chief Justice held: "...superintendence is not a legal fiction whereby a High Court Judge is vested with omnipotence but is as

Norman, J. had said a term having a legal force and signification. The general superintendence which this Court has over all jurisdiction subject to appeal is a duty to keep them within a bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner. It does not involved responsibility for the correctness of their decisions, either in fact or law.

45. The learned judge considered the power of the High Court under Article 227 to be plenary and unfettered but at the same time, in paragraph 15 at page 792 of the report, the learned judge held that High Court should be cautious in its exercise. It was made clear, and rightly so, that the power of superintendence is not to be exercised unless there has been (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals. The learned Judge clarified if only there is a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice, power of superintendence can be exercised. This is a discretionary power to be exercised by Court and cannot be claimed as a matter of right by a party.

48. The subsequent Constitution Bench decision of this Court on Article 227 of the Constitution, rendered in the case of State of Gujarat etc. vs. Vakhatsinghji Vajesinghji Vaghela (dead) his legal representatives and others reported in AIR 1968 SC 1481 also expressed identical views. Justice Bachawat speaking for the unanimous Constitution Bench opined that the power under Article 227 cannot be fettered by State Legislature but this supervisory jurisdiction is meant to keep the subordinate tribunal within the limits of their authority and to ensure that they obey law.

52. To the same effect is the judgment rendered in the case of Laxmikant Revchand Bhojwani and another vs. Pratapsingh Mohansingh Pardeshi reported in (1995) 6 SCC 576. In paragraph 9, page 579 of the report, this Court clearly reminded the High Court that under Article 227 that it cannot be assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principle of law and justice (see page 579-580 of the report)

55. In paragraph 38, sub-paragraph (4) at page 595 of the report, the following principles have been laid down in Surya Dev Rai (supra) and they are set out:

"38 (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or



grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction."

56. Sub-paras(5), (7) and (8) of para 38 are also on the same lines and extracted below: "(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. (6) xxx xxx(7) The power to issue a writ of certiorari and supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

**12.** Thus it is clear that the jurisdiction under Article 227 of the Constitution of India is not original nor is it appellate. The jurisdiction of superintendence under Article 227 of the Constitution of India is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 of Constitution of India are separate and distinct and operate in different fields. Jurisdiction under Article 226 of Constitution of India is normally exercised where a party is affected, but the power under Article 227 of Constitution of India can be exercised by the High Court *suo motu*, as a custodian of

justice. In fact, the power under Article 226 of Constitution of India is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. On the other hand, jurisdiction under Article 227 of Constitution of India is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases, where there is infringement of fundamental rights, the relief under Article 226 of Constitution of India can be claimed *ex debito iusticia* or as a matter of right. But in case where the High Court exercise its jurisdiction under Article 227 of Constitution of India, such exercise is entirely discretionary and no person can claim it as a matter of right.

**13.** This being the settled legal position, the contention of the learned counsel for the respondent/complainant that this Civil Revision Petition is not maintainable before this Court under Article 227 of Constitution of India and the only remedy available to the petitioners is to file a writ petition, that too under Article 227 of Constitution of India, do not merit consideration. Viewed thus, discussing the decisions relied upon by the learned counsel for the respondent/complainant referred *supra* would be mere academic.


**14.** In the instance case, as observed *supra*, it is not proper on the part of the Court below to insist the petitioners herein to proceed with the cross-examination of the respondent/complainant, without disposing of the subject CrI.M.P.No.645 of 2022 in DVC No.8 of 2021, at the first instance, in accordance with law. Therefore, this Court is of the considered opinion that it is a fit case to direct the Court below to dispose of the subject application in CrI.M.P.No.645 of 2022 in DVC No.8 of 2021 filed under Order XIV Rule 2 of C.P.C., in strict accordance with law, before proceeding further with the matter, which course would sub-serve the ends of justice.

**15.** Accordingly, the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Yellandu, is directed to dispose of the subject CrI.M.P.No.645 of 2022 in DVC No.8 of 2021 filed by the petitioners herein under Order XIV Rule 2 of C.P.C., in strict accordance with law, before proceeding further with the matter, within a period of four (4) weeks from the date of receipt of a copy of this order. It is made clear that no opinion is expressed with regard to the merits of the subject CrI.M.P.No.645 of 2022 and it is for the Court below to dispose of the same, in accordance with law.

16. With the above observation/direction, this Civil Revision Petition is disposed of. There shall be no order as to costs.

Miscellaneous applications, if any, pending in this Civil Revision Petition, shall stand closed.

//TRUE COPY//

Sd/-N.SRIHARI  
ASSISTANT REGISTRAR  
/   
SECTION OFFICER

To,

1. The Principal Junior Civil Judge-cum-Judicial First Class Magistrate, Yellandu, Bhadrachari Kothagudem District.
2. One CC to Sri Srinivas Polavarapu, Advocate [OPUC]
3. One CC to Sri B Akash Kumar, Advocate [OPUC]
4. Two CD Copies  
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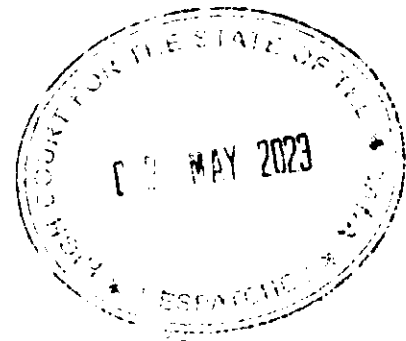
CHR

HIGH COURT

DATED: 17/04/2023

ORDER

CRP.No.882 of 2023



DISPOSING OF THE CRP  
WITHOUT COSTS

⑥ CHR  
03/05/23