

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No.17815 of 2022

ORDER:

This Writ Petition is filed questioning the inaction of respondent No.5 in registering the crime pursuant to the complaint made by the petitioner on 06-04-2022 against the unofficial respondent Nos.6 and 7.

2. Mr. Nazir Ahmed Khan, learned counsel for the petitioner, submits that the petitioner is residing in the 1st floor along with his family in his premises bearing No.8-3-668/1/10, situated at Jai Prakash Nagar Colony, Sringer Colony, Hyderabad, and in the ground floor, his mother and brother are residing and there are not in good terms with him. He submits that the petitioner has let out the 2nd floor and pent house to respondent Nos.6 and 7 on monthly rent of Rs.27,000/- and they have also entered into a separate rental agreement for amenities with his daughter and they are paying rent regularly. He submits that respondent Nos.6 and 7 are running 'KVR Ladies Hostel' in the said premises without obtaining any license from the competent authority. Learned counsel submits that in the meanwhile, the unofficial respondent Nos.6 and 7 have colluded with his brother and mother and entered into tenancy with them and stopped paying the admitted rents to the petitioner and also failed to vacate the aforesaid premises let out to them, thereby cheated the petitioner and his daughter and hence, the petitioner has lodged a complaint before respondent No.5 on

06-04-2022, but no action has been taken by registering the crime against the unofficial respondent Nos.6 and 7. Learned counsel submits that the in-charge of the police station is bound to register the FIR in terms of Section 154 Cr.P.C. when the allegations in the complaint give rise to a cognizable offence. It is also stated that the duty of the police officer has to register a case and carry out proper investigation into the matter and ascertain the cause behind the complaint. Learned counsel submits that the inaction of the respondent police is highly arbitrary and illegal. Hence, the petitioner has come up before this Court by filing a Writ Petition.

3. Learned Assistant Government Pleader for Home Sri S. Ramamohana Rao submits that he will get instructions in this matter and file a detailed counter.

4. Though there are no fetters in entertaining a writ petition under Article 226 of the Constitution of India, whenever a person complains of violation of his fundamental right or statutory right, one of the self imposed restraint is when there is statutorily engrafted adequate and efficacious alternative remedy available to such person to redress his grievance the court do not entertain the writ petition but relegate the party to avail such remedy before invoking extraordinary jurisdiction of this Court.

Bhimidipati Annapoorna Bhavani v. Land Acquisition Officer, Yeluru Reservoir Project, Peddapuram, East Godavari District, A.P. and others¹

5. The Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.” (emphasis supplied)

Commissioner of Income Tax v. Chhabil Dass Agarwal²

6. Despite wide powers conferred by Article 226 of the Constitution, while passing any order, the Courts must bear in mind

¹ 2005(3) ALD 233(LB)

² (2014) 1 SCC 603

certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise.

State of West Bengal v. Committee for Protection of Democratic Rights³

7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the *vires* of an Act and is challenged.

Harbanslal Sahnia v. Indian Oil Corpn. Ltd.⁴

8. Generally, this Court is not entertaining the Writ Petitions filed questioning the registration or non-registration of the complaint / FIR, as, as rightly pointed out by the learned Assistant Government Pleader, the Coordinate Bench of this Court in Writ Petition No. 38397

³ (2010) 3 SCC 571

⁴ (2003) 2 Supreme Court Cases 107

of 2019 and batch, dated 08.03.2019 has categorically observed that in the case of non-registering the complaint, the remedy for the affected person is to file a private complaint.

9. The writ remedy is no doubt an extraordinary remedy and in every case just because a case is made out on action / inaction of an authority vested with power, the Writ court will not entertain the writ petition and the affected party has to avail the remedy available under law. In *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*⁵, the Hon'ble Apex Court has observed that under Article 226 of the Constitution, the High Court having regard to the facts and circumstances has discretion to entertain or not to entertain a writ petition but the High Court has imposed certain restrictions one of which is that if an effective alternative remedy is available, the High court would not normally exercise the jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies; namely where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged.

10. In the light of the law laid down by this Court and the Apex Court referred to *supra*, when there is a statutorily-engrafted

⁵ (1998) 8 SCC 1

adequate and efficacious alternative remedy available to the person, who complains, to redress his grievance, the Court do not entertain the writ petition but relegate the party to avail such remedy before invoking extraordinary jurisdiction of this Court. In this case, the effective alternative remedy available to the petitioner is to file a private complaint under Section 200 Cr.P.C., which is an effective alternative remedy, but not a Writ Petition invoking Article 226 of the Constitution of India. Therefore, this Court finds no reason to entertain this Writ Petition.

11. The Writ Petition is accordingly, disposed of giving liberty to the petitioners to avail appropriate remedy available to them under law. There shall be no order as to costs.

12. The Miscellaneous Applications, if any shall stand automatically closed.

LALITHA KANNEGANTI, J

8th April, 2022

sj

