
(2022) 09 TEL CK 0014
In the Telangana High Court
Case No : Writ Petition No. 34114 Of 2022

Bongani Rajesham

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 01-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 200

Citation : (2022) 09 TEL CK 0014

Hon'ble Judges : Lalitha Kanneganti, J

Bench : Single Bench

Advocate : Koppula Sravan Kumar

Final Decision : Disposed Of

Judgement

1. This Writ Petition is filed seeking the following relief:

" to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus to declare the inaction of the respondent No. 3 herein taking action against the 4th respondent and his sons, pursuant to the written complaint dated 01.01.2022 followed by personal visits, as being illegal, arbitrary, unjust and unconstitutional and consequently, direct the respondent No.3 herein to forthwith act upon the complaint dt. 01.02.2022 and take action in accordance with law, and to grant such other relief or reliefs....."

2. Sri K. Sravan Kumar, learned counsel for the petitioner submits that though the petitioner has given a written complaint dated 01.01.2022 to the 3rd respondent to take action against the 4th respondent and his sons, no action has been initiated by the police so far.

3. Sri A. Manoj Kumar, learned Assistant Government Pleader for Home submits that he will file a counter-affidavit.

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 others* 2005(3) ALD 233(LB),

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or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal* case [AIR 1964 SC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 Agarwal (2014) 1 SCC 603

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

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* (2003) 2 Supreme Court Cases 107.

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 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* (1998) 8 SCC 1, 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 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 petitioner to avail appropriate remedy available to him under law. There shall be no order as to costs.

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