

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 19981 of 2016

ORDER :

The present Writ Petition came to be filed seeking the following prayer:

“... to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus; directing the 3rd respondent herein not to evict the petitioner from his lands Ac.4.05 in Sy. No.267/1 and Ac.3.00 in Sy. No.270/1 of Mangapathi-devipeta Village, Koyyalagudem Mandal, West Godavari District, basing on the baseless statements of irresponsible LWs in his Final Report in FIR No.274 of 2014 dt. 30.03.2015 “there is no land to the complainant(Petitioner herein) in Mangapathidevipeta Village of Koyyalagudem Mandal” keeping in mind that he is a party respondent in W.P. No.27435 of 1998 and W.P. No.7477 of 2009, wherein the Tahsildar, Koyyalagudem Mandal, was directed suitably by this Hon’ble Court and pass..”

2. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Home for the State of Andhra Pradesh appearing for the respondents.

3. The issue as to the scope and invocation of a writ under Article 226 of the Constitution of India came up for consideration before the Apex Court in ***Radhey Shyam and another v. Chhabi Nath and others***^[1]. In the said case, the Apex Court observed as under:

“Judicial orders of the civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution.

Jurisdiction and scope of Article 227 is different from Article 226.”

In ***Rajeev Kumar v. State of U.P. and others***^[2], a Division Bench of Allahabad High Court held as under:

“We are of the opinion that since the petitioners have got an efficacious speedy statutory remedy under Section 482 Cr.P.C. or even challenging the summoning order under Section 397 (1) read with Section 401 (1) Cr.P.C. that we should not exercise our extraordinary power under Article 226 of the Constitution of India. We do not mean to say that we do not possess such a power but what we impress upon is that Section 482 Cr.P.C. along with Section 397 (1) read with Section 401 (1) Cr.P.C. are not included in the statute book as ornamental sections to eschew at the convenience of a litigant. Merely because alternative remedy is not a bar in exercise of our power under Article 226 of the Constitution of the India does not mean that we should decide all criminal matters including those cases where charge sheet has been submitted by the police by exercising our writ power more so when the accused bases his edifice of argument mostly on the defence papers of eschewing prosecution evidences altogether. If such an exercise is permitted, the whole procedure for trial will be left at the mercy of the accused, which will be a self defeating unjustified exercise of power. Writ power has been given to the High Courts to prevent abuse to the process of Court in suitable cases where it is required most and not in cases which are based on half materials of disputed questions of facts. It is an equitable remedy and should be exercised when the person claiming such equitable reliefs comes with clean hands.”

In view of the judgments referred to above, the issue as to whether this court, while sitting under Writ Petition

under Article 226 of the Constitution of India, can direct disposal of an application pending before a competent criminal court, is no longer *res integra*. As the Code of Criminal Procedure, 1973 (Cr.P.C.) provides a remedy for redressal of grievance of the petitioner, this Court is of the view that it would be appropriate if the petitioner invokes the remedy available under the Cr.P.C.

4. Accordingly, the writ petition is dismissed giving liberty to the petitioner to avail the remedies available under the Cr.P.C.. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

C.PRAVEEN KUMAR, J

22.06.2016

DRK

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[\[1\]](#) (2015) 5 SCC 423

[\[2\]](#) (2009) CrI.L.J. 142