

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 15934 of 2016

ORDER:

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Heard learned counsel for the petitioners, Government Pleader for Home and Government Pleader for Women Development and Child Welfare. With the consent of all the parties, the writ petition is taken up for disposal at the admission stage itself.

The present writ petition came to be filed with the following prayer:

“Issue a writ of mandamus declaring the action of the third respondent in filing the complaint in D.V.C.No.2 of 2015 on the file of the Additional Judicial First Class Magistrate, Sullurpet, SPSR, Nellore District, as illegal, arbitrary and violative of the provisions of the Domestic Violence Act and quash the same.”

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 and as the Criminal Procedure Code provides a remedy for challenging the proceedings initiated under the Protection of Women from Domestic Violence Act, 2005, this Court is of the view that it would be appropriate if the petitioner invokes the remedy available under Cr.P.C.

Accordingly, the writ petition is dismissed giving liberty to the petitioner to avail the remedies available under Criminal Procedure Code. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

06.06.2016
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[\[1\]](#) (2015) 5 SCC 423

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