

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No. 19680 OF 2022

ORDER:

This Writ Petition is filed questioning the action of Respondents 2 to 4 in referring Crime No. 325 of 2021 dated 26.08.2021 registered against Respondents 5 and 6 as 'civil in nature'.

2. Sri M. Sateesh, learned counsel for the petitioner submits that the petitioner is working as Correspondent of EMM VOC Junior College and Respondents 5 and 6 who are co-brothers of the petitioner have illegally registered the land in Survey Nos. 612 and 613, in an extent of 900 square yards in the name of Kathula Shivrani without the petitioner's knowledge by doing a double registration. It is stated that the petitioner made a complaint on 26.08.2021 and it is registered as Crime No. 325 of 2021 for the offences under Sections 420 and 34 IPC. but the police without investigating the matter and without filing the charge sheet, have issued a notice under Section 91 Cr.P.C. It is stated that the police have not taken any action against Respondents 5 and 6 as they have political support. It is stated that earlier the petitioner filed Writ Petition No. 11319 of 2022 and this Court passed orders on 04.03.2022 observing that 'since investigation in the subject crime was completed and

final report was filed before the Court concerned referring the case as civil in nature, the request of the petitioner cannot be acceded to, if the petitioner is aggrieved by the final report filed in the subject crime, it is open to the petitioner to work out the remedies available under law. With the above observations, this Writ Petition is disposed of.' Learned counsel submits that without conducting proper investigation, the police have closed the case, hence, he is seeking a direction to the police under Section 173(8) Cr.P.C. to conduct re-investigation of the said crime where the culprits have trespassed into the lands and trying to snatch away the property. He submits that the official respondents have failed to act on the same.

3. Learned Assistant Government Pleader for Home Sri S. Rammohan Rao submits that police have conducted thorough investigation and filed the final report. He submits that once the final report is filed, the petitioner has an effective alternative remedy and he cannot come before this court.

4. It is an admitted fact that already crime is closed as civil in nature and final report is filed. The remedy available to the petitioner is to go before the Magistrate and file a protest petition. 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***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.

5. Whenever a writ is filed, the Court has its own defined self imposed restrictions and limitations. The Code of Criminal Procedure incorporated enough safeguards to victims as well as accused. It lays down the procedure for conducting investigation and filing of the final report, taking of cognizance,

¹ (1998) 8 SCC 1

conducting of trial and also it provides enough safeguards against illegal action of police. The Code of Criminal Procedure is a self-contained Code and it is comprehensive of all aspects of criminal law and whenever these kinds of complaints are filed, by recording the evidence, the Court will be in a better position to provide effective justice to the needy. In those circumstances, always the person must first exhaust the said remedy and cannot invoke the writ remedy as a matter of course both in cases of non-registration of crime or there is no proper investigation. In this case, since it is the case of the petitioner that the police have closed the complaint, there is a procedure for filing a protest petition where the Court will be in a position to examine the witnesses and mark the documents, if any. Hence, this Court finds that this Writ Petition is not maintainable.

6. The Writ Petition is accordingly, disposed of leaving it open to the petitioner to avail appropriate remedy available to him in law. There shall be no order as to costs.

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

LALITHA KANNEGANTI, J

11th April 2022
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