

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.645 OF 2020**

Sri Gopal Roy,
S/o- Lt. Brajabashi Roy,
Resident of Jagaharimura, Near Ramthakur Sangha,
P.S.- East Agartala, Agartala, West Tripura,
Pin-799001

..... **Petitioner(s)**

Vs.

1. The State of Tripura,
(To be represented by the Principal Secretary, Department of Home, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN-799006.

2. The Director General of Police,
Govt. of Tripura, O/o the DGP, Akhaura Road, Agartala, West Tripura.

3. The Superintendent of Police, West Tripura,
Govt. of Tripura, O/o the S.P. West Tripura, Akhaura Road, Agartala, West Tripura, PIN-799001.

4. The Dy. Superintendent of Police, Govt. of Tripura,
Agartala, West Tripura, PIN-799001.

5. The Officers in Charge,
East Agartala Police Station/NCC Police Station, Govt. of Tripura, Agartala, West Tripura.

.....**Respondent(s)**

For the Petitioner(s)	: Mr. P. Roy Barman, Sr. Advocate. Mr. K. Nath, Advocate. Mr. D. Paul, Advocate.
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For the Respondent(s)	: Mr. S. Kar Bhowmik, Spl. P.P. Mr. E. Darlong, Advocate. Mr. S. Bal, Advocate.
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Date of hearing	: 05.09.2023
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Date of delivery of Judgment & Order	: 13.09.2023.
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Whether fit for reporting : YES.

HON'BLE MR JUSTICE T. AMARNATH GOUD
JUDGMENT AND ORDER

Originally, the present writ petition was filed under Article 226 of the Constitution of India seeking the following reliefs:-

"a. Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to treat the written complaint, dated 04.04.2016, lodged by the petitioner as FIR under the appropriate provisions of law(Annexure-2 to the writ petition).

b. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to compensate the petitioner by paying Rs-10 lakh as public law remedy for violation of the petitioners' fundamental right to free movement & expression, right to privacy, right to life and health and right to liberty guaranteed under Article 19 & 21 of the Constitution of India.

c. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to ensure safety & security of the petitioner.

AND

Call for the records pertaining to the instant writ petition from the custody of the respondents and to make the rules absolute.

AND

After hearing both the parties pass order/orders as this Hon'ble High Court considered fit and proper."

2. At the inception, when the case was filed, it was registered and the same was numbered under the nomenclature of Writ Petition(C) No.645 of 2020. When the matter was listed for admission, upon the prayer of the learned counsel for the petitioner, the Hon'ble Single Bench of this Court by order dated 17.12.2020 deleted the prayer clause(1) in paragraph 33. The said prayer of Clause(1) in paragraph 33 is reproduced here-in-under:-

"a. Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to treat the written complaint, dated 04.04.2016, lodged by the petitioner as FIR under the appropriate provisions of law(Annexure-2 to the writ petition)."

3. The said Order dated 17.12.2020 passed by the Hon'ble Single Bench by which the prayer of Clause(1) in paragraph 33 was deleted is also reproduced here-in-under:-

"Learned counsel for the petitioner sought to delete prayer clause (a) in paragraph 33 reserving liberty to file independent proceedings if so advised. Permission, as prayed for, granted. Amendment shall be carried out today itself."

The petitioner is ex-Member of Legislative Assembly of State of Tripura. On 4 th April, 2020 he had written to the Officer-in-Charge of New Capital Complex Police Station, making certain allegations against the Chief Minister. It appears that he had typed the said letter on a paper carrying State emblem. On 5th April, 2020 one Advocate Arabinda Deb wrote to the Officer-in-Charge of New Capital Complex Police Station, Agartala, alleging that the petitioner by use of the said emblem unauthorizedly committed offence of forgery with a view to harm and injure the reputation of the Chief Minister. He requested that necessary legal action against the petitioner be initiated. On 5th April 2020 itself, the police authorities approached the Judicial Magistrate, First Class, Agartala, for issuance of a search warrant against the petitioner. On 5 th April, 2020 the Judicial Magistrate passed an order recording that without further hearing search warrant cannot be issued and, therefore, he reserved the prayer and ordered further hearing on 6 th April, 2020. On 6 th April, 2020 the Judicial Magistrate passed a detailed speaking order rejecting the request for search warrant.

The case of the petitioner is that the police authorities on 5 th April 2020, despite the Judicial Magistrate refusing to grant the prayer for search warrant, raided the residential premise of the petitioner. The petitioner has made detailed allegations about the manner and method of which the said search was carried out. According to him, on the said date nearly 200 armed police personnel under the command of Deputy Superintendent of Police, West Tripura, stormed the residence of the petitioner at about 2.45 p.m. The petitioner was residing alone at that time. The senior leaders of the political parties upon learning of the ongoing search arrived at the site and tried to intervene. However, the petitioner was locked up in the house and the visitors were not allowed to enter the house. The petitioner was physically and mentally harassed. The petitioner's detention continued for nearly 3 ½ hours. This exposed the petitioner who is a 70 year old person to grave risk of contacting Coronavirus since the raid was carried out at a time when Coronavirus was spreading.

In brief, the case of the petitioner is that the entire action was a result of political vendetta. An illegal search was carried out

despite refusal to grant the permission by the Judicial Magistrate and brutal use of force would demonstrate the true purpose behind the entire action.

Notice, returnable for 6 th January, 2021.

Learned Public Prosecutor, Mr. Ratan Datta, waived notice on behalf of State-respondents

Emphasis added

4. Then, subsequently vide Order dated 06.01.2021, passed by the Hon'ble Single Bench of this Court, the said WP(C) No.645 of 2020 was converted into Writ Petition(Criminal) under Section 482 of Cr.P.C. The said order dated 06.01.2021 reproduced here-in-under:-

"06/01/2021

The petitioner's grievance revolves around alleged illegal search of his residential premises by the police authorities despite rejection of a search warrant by the concerned Magistrate. This petition is thus primarily under Section 482 of Cr.P.C. The same may be numbered as Writ Petition(Criminal) and post it on 3 rd February, 2021 to enable the respondents to file reply."

5. Accordingly, the same was converted into WP(Crl.) No.1 of 2021 under Section 482 of Cr.P.C. and thereafter as per roster, the matter was posted before the Hon'ble Division Bench of this Court on 23.11.2021.

6. Thereafter on 07.08.2023, when this matter came up again before the Hon'ble Division Bench of this Court, the Hon'ble Division Bench felt that the matter is not to be heard by the Division Bench, but the same is to be heard by a Single Bench of

this Court. Accordingly, the matter is now listed before the Single Bench as per the roster.

7. Now, the learned counsel appearing for the petitioner filed I.A. No.01 of 2023 seeking a prayer to recall the order passed by this Court dated 06.01.2021 and treating the case as a writ petition under Article 226 of the Constitution of India. The said order dated 06.01.2021 which is quoted here-in-above is again reproduced herein for convenience:-

"06/01/2021

The petitioner's grievance revolves around alleged illegal search of his residential premises by the police authorities despite rejection of a search warrant by the concerned Magistrate. This petition is thus primarily under Section 482 of Cr.P.C. The same may be numbered as Writ Petition(Criminal) and post it on 3rd February, 2021 to enable the respondents to file reply."

8. After hearing both sides on the said I.A., since the prayer was not opposed by the respondents, this Court by order dated 12.09.2023 allowed the said I.A. No.01 of 2023 and the Crl. Petn. No.16 of 2023 has been restored to its originality i.e. WP(C) No.645 of 2020.

9. Finally, the prayers made by the petitioner that falls for consideration in the present writ petition are as under:-

"b. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to compensate the petitioner by paying Rs-10 lakh as public law remedy for violation of the petitioners' fundamental right to free movement & expression, right to privacy, right to life and

health and right to liberty guaranteed under Article 19 & 21 of the Constitution of India.

c. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to ensure safety & security of the petitioner."

10. The case of the petitioner in a nutshell is that Sri Biplab Kumar Deb, the then Chief Minister of Tripura on 02.04.2020 visited the AGMC & GBP Hospital and made a statement to the press media persons on camera stating that high alertness is called for as in Karimganj, Assam and also in Manipur 16/17 corona positive cases have been detected.

11. Finding fault with the said statement, the petitioner lodged a written complaint on 04.04.2020 to the Superintendent of Police, West Tripura District, alleging that fake information was given by the then Chief Minister of Tripura, Sri Biplab Kumar Deb. The said written complaint was lodged under Section 182, 505(1)(b) of the Indian Penal Code, before the NCC Police Station, Agartala. Thereafter, as a counterblast to the written complaint lodged by the petitioner, against the then Chief Minister of Tripura on 04.04.2020, Sri Arabinda Deb, an Advocate, who is also an Assistant Public Prosecutor of learned Sessions Judge, West Tripura District, lodged a counter compliant on 05.04.2020 to the O.C. NCC Police Station, alleging that the petitioner has unauthorizedly

used Ashok Chakra, National Emblem while making malicious and false complaint against the then Chief Minister of Tripura.

12. On 05.04.2020, a group of armed police personnel under the command of the DSP West Tripura, respondent No.4 herein, and 11 other police officers including the O.C. East Agartala, Police Station, O.C. West Agartala Police Station, the O.C. NCC police station stormed into the residence of the petitioner. On 05.04.2020, the I.O. of NCC P.S. case No.52/2020 made a prayer to the concerned Court for issuance of search warrant for the search of the house of the petitioner, but the learned Judicial Magistrate, First Class Tripura (*in-charge being a Sunday*) held that a detailed hearing is needed and posted the matter on 06.04.2020, before the regular Court. Thereafter a detailed hearing was done before the learned Addl. Chief Judicial Magistrate, West Tripura and, the learned Court rejected the prayer for search by order dated 06.04.2020. But in the meantime search has been done on 05.04.2020 itself.

13. Now the petitioner by filing this petition agitated that the police authorities on 5th April 2020, despite the Judicial Magistrate refusing to grant the prayer for the search warrant, raided the residential premise of the petitioner. According to him, on the said date nearly 200 armed police personnel under the

command of Deputy Superintendent of Police, West Tripura, stormed the residence of the petitioner at about 2.45 p.m. The petitioner was residing alone at that time. The senior leaders of the political parties upon learning of the ongoing search arrived at the site and tried to intervene. However, the petitioner was locked up in the house and the visitors were not allowed to enter the house. In brief, the case of the petitioner is that the entire action was a result of political vendetta. An illegal search was carried out despite the refusal to grant permission by the Judicial Magistrate.

14. Now as such by filing this petition, the petitioner sought a direction upon the respondents to compensate him by paying Rs.10 lakhs as a public law remedy for violation of the petitioners' fundamental right to free movement & expression, right to privacy, right to life and health and right to liberty guaranteed under Article 19 and 20 of the Constitution of India. The Petitioner has also sought direction upon the respondents to ensure the safety and security to the Petitioner.

15. On the other hand, the case of the respondents is that the petitioner has un-authorizedly used the Ashok Chakra, the National Emblem while making malicious and false complaints against the then Chief Minister of Tripura. Even during the search of the premises of the petitioner by the search team, 10(ten) blank

pads having Letterhead with National Emblem symbol printed on it and scripted as:-

*" Gopal Chandra Roy, Ex-MLA,
Advisor Tripura State Congress Committee,
President Tripura State Olympic Association,
Ex-President, Tripura Pradesh Congress Committee,
Ex-CLP Leader, Tripura,
Advocate, Tripura High Court,
Owner and Editor of Ganasambad Patrika"*

16. Mr. P. Roy Barman, learned Sr. counsel assisted by Mr. K. Nath, Advocate appearing for the petitioner submits that on 05.04.2020, the learned Judicial Magistrate 1st Class while considering the prayer for the issuing search warrant has recorded that, no preliminary investigation has been conducted by the I.O. and the learned Court did not found any material based on which search warrant can be issued. Later Addl. Chief Judicial Magistrate on 06.04.2020, rejected the prayer for the issuance of the search warrant. But by conducting the illegal search on 05.04.2020, the respondents showed utter contempt to the learned Magisterial Court and showed disrespect to the Court. After perusing the case record and after hearing the learned Addl. P.P., the learned Judicial Magistrate 1st Class, did not find any material to issue the search warrant, as no preliminary investigation was carried out by the I.O. The respondents on that day itself caused an illegal search in the house of the petitioner ignoring the salutary observation of the learned Court, that, issuance of the search warrant is not an empty

formality and as search causes loss of prestige and fame to the person, whose premises is searched. Despite such observation of the learned Court, the respondents were so desperate and arrogant, that, on that day, the respondents conducted an illegal search, subjecting to petitioners' illegal detention, harassment, etc. The respondents' defended the search by invoking Section 165 of the Cr.P.C. But in the counter affidavit, there is no whisper as to whether the conditions imposed in Section 165 were fulfilled. One of the basic precondition of invoking Section 165 of Cr.P.C. is that the I.O. records in writing the grounds of his belief that search is immediately called for and specify in writing as far as possible, the things for which search is made. From the counter affidavit, it is clear that said preconditions have been given a complete goodbye. Moreover, Condition-(i) of Section 165 of Cr.P.C. as stated above, was not also attracted as the I.O. could not have reasonable ground, that investigation cannot be carried out otherwise than by making a search without undue delay because the learned Judicial Magistrate 1st class on 05.04.2020, itself after perusing the case record and prayer for issuing the search came to the specific finding that no preliminary investigation has been conducted by the I.O., and the learned Court below was of the view that, there is nothing on record which is brought out through investigation, that, otherwise than by making a search without undue delay investigation cannot be carried out. The search of the house of the

petitioner was not called for, for the purpose of investigation and it was not authorized by law. As such, the search is illegal & arbitrary. The illegal search and detention of the petitioner was an infringement on the petitioner's right to life & liberty, including the right to privacy. For violation of fundamental rights, the petitioner is entitled to monetary compensation payable by the respondents under public law.

To support his argument, learned Sr. counsel appearing for the petitioner pressed into service **paras No.2 and 7** of the Judgment of the Hon'ble Supreme Court passed in case No **Criminal Appeal No.39 of 1958** titled as **The State of Rajasthan Vs. Rehman**, which is reproduced here-in-under:-

"2. The material facts lie in a small compass. The Deputy Superintendent of the Central Excise, having his head-quarters at Bharatpur, received information that one Sulled and his son, Rehman, the respondent herein, had cultivated tobacco but had not paid the excise duty payable thereon. On September 9, 1953, the Deputy Superintendent, accompanied by an Inspector of Central Excise, a sepoy, a chowkidar and two motbirs went to the house of Rehman at 2 p.m., with a view to search his house to find out whether he had stored tobacco there. When they declared their intention to do so, the respondent and one Dhamman, it is alleged, obstructed the making of the search; with the result that the Deputy Superintendent fell down and received some injuries. The respondent and Dhamman were prosecuted, and the Munsif-Magistrate, Hinduan, discharged Dhamman but convicted the respondent under s. 353 of the Indian Penal Code and sentenced him to undergo three months' rigorous imprisonment. On appeal, the Additional Sessions Judge came to the conclusion that on the material then available the search had not been conducted in accordance with s. 165 of the Criminal Procedure Code and remanded the case for fresh enquiry. On remand, the Munsif-Magistrate found that the search was made by the Deputy Superintendent without recording the reasons as he should under s. 165 of the Criminal Procedure Code and that the respondent in obstructing him from making the illegal search did not commit any offence, and, on that finding, the acquitted the respondent. On appeal, the High Court agreed with the view expressed by the Munsif-Magistrate and confirmed the order of acquittal. The State of Rajasthan preferred the present appeal questioning the correctness of the decision of the High Court.

7. Now we shall look at the provisions of the Criminal Procedure Code to ascertain which of its provisions regulating the mode of search are appropriate to the power conferred on the Deputy Superintendent under r. 201 of the Rules. In the Criminal Procedure Code there are four groups of sections regulating the searches authorised under it. Sections 47, 48, 51 and 52 appear in Ch. V of the Code which provides for the arrest, escape and retaking of persons. Section 47 provides for the search of a place entered by persons sought to be arrested; s. 48 for procedure where ingress is not obtainable; and ss. 51 and 52 for the search of the arrested persons. The second group consists of ss. 100, 101, 102 and 103 of Ch. VII of the Code. Section 100 deals with the search for persons wrongfully confined, and the other sections are general provisions relating to search warrants, duties of persons in charge of closed places and the requisitioning of persons to witness searches. Section 153 forms the third group and it falls under Ch. XIII of the Code which provides for the preventive action of the police. Under s. 153, a police officer can make a search without a warrant for the purpose of inspecting or searching for any weights or measures or instruments for weighing used or kept within the limits of his station, if he has reason to believe that the weights etc. are false. The fourth group of sections appear in Ch. XIV which provides for searches by a police officer during the investigation of a cognizable offence. The power of search given under this chapter is incidental to the conduct of investigation the police officer is authorized by law to make. Under s. 165 four conditions are imposed : (i) the police officer must have reasonable ground for believing that anything necessary for the purposes of an investigation of an offence cannot, in his opinion, be obtained otherwise than by making a search, without undue delay; (ii) he should record in writing the grounds of his belief and specify in such writing as far as possible the things for which the search is to be made; (iii) he must conduct the search, if practicable, in person; and (iv) if it is not practicable to make the search himself, he must record in writing the reasons for not himself making the search and shall authorize a subordinate officer to make the search after specifying in writing the place to be searched, and, so far as possible, the thing for which search is to be made. As search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power. A comparative study of the aforesaid provisions with the provisions of r. 201 of the Rules indicates that searches made by a police officer during the course of an investigation of a cognizable offence can properly be approximated with the searches to be made by the authorized officer under r. 201 of the rules; for, in the former case, the police officer makes a search during the investigation of a cognizable offence and in the latter the authorized officer makes the search to ascertain whether a person contravened the provisions of the Act or the Rules which is an offence. There is also no reason why conditions should be imposed in the matter of a search by the police officer under s. 165 of the code, but no such safe-guard need be provided in the case of a search by the excises under the Rules. We think that the legislature, by stating in s. 18 of the Act that the searches under the Act and the Rules shall be carried out in accordance with the provisions of the Code relating to searches, clearly indicated that the appropriate provisions of the Code shall govern searches authorized under the Act and the Rules. We therefore hold that the provisions of s. 165 of the Code must be followed in the matter of searches under s. 201 of the Rules."

17. On the other hand, Mr. S. Kar. Bhowmik, Spl. Public Prosecutor appearing for the State-respondents contended that this search was justified due to the finding of the letterhead with the National Emblem printed in the left corner of it. According to THE STATE EMBLEM OF INDIA (PROHIBITION OF IMPROPER USE) ACT, 2005 and State Emblem of India(Regulation of Use) Rules 2007, the petitioner cannot use the same as he was an ex-MLA at the time of the incident and he is not allowed to use the National emblem. No wrong was committed by the investigating agency. Further a criminal case that has been lodged against the petitioner for improper use of the State Emblem is under investigation and there is no prayer for quashing the same. As such no compensation can be granted to petitioner until the unless the criminal case is alive. In the grab of getting compensation, the petitioner is trying to put a death nail on the criminal proceeding because without quashing the criminal case, compensation cannot be granted. The petitioner is a man of big stature and the petitioner himself submitted that when police went to his premises for search, all the senior members of the political party went to his house. So naturally a large police force was needed to maintain the law and order and to conduct the search peacefully. Accordingly, sufficient police were present and conducted search without infringing the rights of the petitioner.

He further argued that in the Case Dairy, on pages No. 4, 17, 21, and especially on page- 38, a detailed reasoning has been given for making the search and they have not violated Section 165 of Cr.P.C. and other provisions of law. Also at the time of the search, the I.O. of the case seized 10(ten) blank pads having letterhead scripted as:-

*" Gopal Chandra Roy, Ex-MLA,
Advisor Tripura State Congress Committee,
President Tripura State Olympic Association,
Ex-President, Tripura Pradesh Congress Committee,
Ex-CLP Leader, Tripura,
Advocate, Tripura High Court,
Owner and Editor of Ganasambad Patrika"*

With the symbol of the National Emblem printed on the left corner of the letter pad.

To support his argument, Mr. S. Kar Bhowmik, learned Spl. P.P. appearing for the respondents cited **paras No.9, 10,11 and 12** of the Hon'ble Apex Court Judgment reported in **2023 SCC Online SC 379** passed in **Central Bureau of Investigation Vs. Aryan Singh etc.** The same is reproduced herein under:-

"9. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under [Section 482](#) Cr.P.C. and/or in exercise of the powers under [Article 226](#) of the Constitution of India.

10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge

and/or quashing of the criminal proceedings, while exercising the powers under [Section 482](#) Cr.P.C., the Court is not required to conduct the mini trial.....

11..... Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings / proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.

12. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside. "

18. Heard both sides and perused the evidence on record.

19. Now for proper appreciation of the case, it is required to examine Sections 47, 160, and 165 of Cr.P.C., which is produced here-in-under:-

"**47.** Search of place entered by person sought to be arrested.

[\(1\)](#) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

[\(2\)](#) If ingress to such place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance: Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering

such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

160. Police officer' s power to require attendance of witnesses.

(1) Any police officer, making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required: Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub- section (1) at any place other than his residence.

165. Search by police office (1) Whenever an officer in charge of police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under Sub-Section (1), shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section [100](#) shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under Sub-Section (1) or Sub-Section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance to the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate."

20. Vide order dated 05.04.2020 (Sunday), passed by the learned Judicial Magistrate 1st Class, a specific finding was given that no materials was produced to justify the issuance of the search warrant and learned Court below kept the matter for further hearing on 06.04.2020. Since 05.04.2020 was Holiday (Sunday) the case was taken up by an in-charge Judge, but on 06.04.2020, the same was taken up before a regular Court having Jurisdiction and the learned Addl. Chief Judicial Magistrate, West Tripura, Agartala passed a detailed order on 06.04.2020 rejecting the search. But by 05.04.2020 itself, the search has been done.

21. Here it also becomes relevant for extracting Sections 3, 7(1) (2) of THE STATE EMBLEM OF INDIA (PROHIBITION OF IMPROPER USE) ACT, 2005:-

" 3. Notwithstanding anything contained in any other law for the time being in force, no person shall use the emblem or any colourable imitation thereof in any manner which tends to create an impression that it relates to the Government or that it is an official document of the Central Government, or as the case may be, the State Government, without the previous permission of the Central Government or of such officer of that Government as may be authorised by it in this behalf.

Explanation.- For the purposes of this section, "person" includes a former functionary of the Central Government or the State Governments.

7(1). Any person who contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both or, if having been previously convicted of an offence under this section, is again convicted of any such offence, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than six months, which may extend to two years and with fine which may extend to five thousand rupees.

(2) Any person who contravenes the provisions of section 4 for any wrongful gain shall be punishable for such offence with imprisonment for a term which shall not be less than six months, which may extend to two years and with fine which may extend to five thousand rupees.

22. Hear we may also produce Rules 5, 6 and 10 of State Emblem of India(Regulation of Use) Rules, 2007, published vide notification Gazette of India, Extraordinary, Part-II, Section 3, Sub Section(i) dated the 4th October, 2007:-

" 5. Use of official seals.- The use of emblem in official seal shall be restricted to the authorities specified in Schedule I.

6. Use on stationery.- (1) The use of the emblem on official or demi-official stationery shall be restricted to the authorities specified in the Schedule I aforesaid.

(2) The emblem, when printed or embossed on official or demi-official stationery, shall appear prominently on the middle of the top of such stationery.

10. Restriction on the use of the emblem.(1) No person(including former functionaries of the Government, like former Ministers, former Members of Parliament, former Member of Legislative Assemblies, former Judges and retired Government Officials, other than those authorized under the rules shall use the emblem in any manner.

SCHEDULE-1

(See Rules 5 and 6)

CONSTITUTIONAL OR STATURORY AUTHORITIES, MINISTERS OR DEPARTMENTS OF THE CENTRAL GOVERNMENT, STATE GOVERNMENT OR UNION TERRIROTY ADMINISTRATION AND OTHERS GOVERNMENT FUNCTIONARIES WHICH MAY USE THE EMBLEM.

- (I) President, Vice-President, Prime Minister and a Union Minister;*
- (ii) Governors, Lieutenant Governors, Administrators, if the emblem is adopted by, or incorporated in the Emblem of, that State or the Union Territory, as the case may be;*
- (iii) Office and officers of the Parliament of India;*
- (iv) Judges and office and officers of the Judiciary;*
- (v) Office and officers of the Planning Commission;*
- (vi) Chief Election Commissioner of India, Election Commissioners and the office and officers of the Election Commission of India;*
- (vii) Comptroller and Auditor General of India, the office and officers of the Comptroller and Auditor General of India;*
- (viii) Chairperson and Members of the Union Public Service Commission and the office and officers of the Union Public Service Commission;*
- (ix) Ministries, Departments and offices of the Central Government and their officers;*
- (x) Diplomatic Missions abroad and their officers;*
- (xi) Chief Ministers and Ministers of the States and the Union territories,, if the emblem is adopted by, or incorporated in the Emblem of, that State or the Union territory;*
- (xii) Members of Parliament and members of State or the Union territory-Legislative Assemblies or Councils, as the case may be;*

(xiii) Ministries, Department's and offices of the State and the Union territory Governments and their officers, if the emblem is adopted by, or incorporated in the Emblem of, that State or the Union territory;
 (xiv) Office and officers of the State or the Union territory Legislative Assemblies or Councils, if the emblem is adopted by, or incorporated in the Emblem of, that State or the Union territory;
 (xv) Commissions and authorities, constituted or established by an Act of Parliament or set up by the Central Government;
 (xvi) Commissions and authorities constituted or established by an Act of the State Legislature or set up by the State Government, if the emblem is adopted by, or incorporated in the Emblem of, that State or the Union territory;"

23. The Judgment in the **State of Rajasthan Vs. Rehman(supra)** relied by petitioner-counsel is referred here-in-under for convenience:-

"2. The material facts lie in a small compass. The Deputy Superintendent of the Central Excise, having his head-quarters at Bharatpur, received information that one Suled and his son, Rehman, the respondent herein, had cultivated tobacco but had not paid the excise duty payable thereon. On September 9, 1953, the Deputy Superintendent, accompanied by an Inspector of Central Excise, a sepoy, a chowkidar and two motbirs went to the house of Rehman at 2 p.m., with a view to search his house to find out whether he had stored tobacco there. When they declared their intention to do so, the respondent and one Dhamman, it is alleged, obstructed the making of the search; with the result that the Deputy Superintendent fell down and received some injuries. The respondent and Dhamman were prosecuted, and the Munsif-Magistrate, Hinduan, discharged Dhamman but convicted the respondent under s. 353 of the Indian Penal Code and sentenced him to undergo three months' rigorous imprisonment. On appeal, the Additional Sessions Judge came to the conclusion that on the material then available the search had not been conducted in accordance with s. 165 of the Criminal Procedure Code and remanded the case for fresh enquiry. On remand, the Munsif-Magistrate found that the search was made by the Deputy Superintendent without recording the reasons as he should under s. 165 of the Criminal Procedure Code and that the respondent in obstructing him from making the illegal search did not commit any offence, and, on that finding, the acquitted the respondent. On appeal, the High Court agreed with the view expressed by the Munsif-Magistrate and confirmed the order of acquittal. The State of Rajasthan preferred the present appeal questioning the correctness of the decision of the High Court.

7. Now we shall look at the provisions of the Criminal Procedure Code to ascertain which of its provisions regulating the mode of search are appropriate to the power conferred on the Deputy Superintendent under r. 201 of the Rules. In the Criminal Procedure Code there are four groups of sections regulating the searches authorised under it. Sections 47, 48, 51 and 52 appear in Ch. V of the Code which provides for the arrest, escape and retaking of persons. Section 47 provides for the search of a place entered by persons sought

to be arrested; s. 48 for procedure where ingress is not obtainable; and ss. 51 and 52 for the search of the arrested persons. The second group consists of ss. 100, 101, 102 and 103 of Ch. VII of the Code. Section 100 deals with the search for persons wrongfully confined, and the other sections are general provisions relating to search warrants, duties of persons in charge of closed places and the requisitioning of persons to witness searches. Section 153 forms the third group and it falls under Ch. XIII of the Code which provides for the preventive action of the police. Under s. 153, a police officer can make a search without a warrant for the purpose of inspecting or searching for any weights or measures or instruments for weighing used or kept within the limits of his station, if he has reason to believe that the weights etc. are false. The fourth group of sections appear in Ch. XIV which provides for searches by a police officer during the investigation of a cognizable offence. The power of search given under this chapter is incidental to the conduct of investigation the police officer is authorized by law to make. Under s. 165 four conditions are imposed : (i) the police officer must have reasonable ground for believing that anything necessary for the purposes of an investigation of an offence cannot, in his opinion, be obtained otherwise than by making a search, without undue delay; (ii) he should record in writing the grounds of his belief and specify in such writing as far as possible the things for which the search is to be made; (iii) he must conduct the search, if practicable, in person; and (iv) if it is not practicable to make the search himself, he must record in writing the reasons for not himself making the search and shall authorize a subordinate officer to make the search after specifying in writing the place to be searched, and, so far as possible, the thing for which search is to be made. As search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power. A comparative study of the aforesaid provisions with the provisions of r. 201 of the Rules indicates that searches made by a police officer during the course of an investigation of a cognizable offence can properly be approximated with the searches to be made by the authorized officer under r. 201 of the rules; for, in the former case, the police officer makes a search during the investigation of a cognizable offence and in the latter the authorized officer makes the search to ascertain whether a person contravened the provisions of the Act or the Rules which is an offence. There is also no reason why conditions should be imposed in the matter of a search by the police officer under s. 165 of the code, but no such safe-guard need be provided in the case of a search by the excises under the Rules. We think that the legislature, by stating in s. 18 of the Act that the searches under the Act and the Rules shall be carried out in accordance with the provisions of the Code relating to searches, clearly indicated that the appropriate provisions of the Code shall govern searches authorized under the Act and the Rules. We therefore hold that the provisions of s. 165 of the Code must be followed in the matter of searches under s. 201 of the Rules."

24. On the other hand, the Supreme Court Judgment passed in **Aryan Singh(supra)** relied by the respondents supporting their claim that the search was made in accordance

with Section 165 of Cr.P.C. is again reproduced herein for convenience:-

"9. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under [Section 482](#) Cr.P.C. and/or in exercise of the powers under [Article 226](#) of the Constitution of India.

10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under [Section 482](#) Cr.P.C., the Court is not required to conduct the mini trial.....

11..... Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings / proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.

12. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside. "

25. Admittedly, it is the case where the petitioner has confined his petition only to the extent of paying compensation. The said prayer of the petitioner is again reproduced here-in-under:-

"b. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to compensate the petitioner by paying Rs-10 lakh as public law remedy for violation of the petitioners' fundamental right to free movement & expression, right to privacy, right to life and

health and right to liberty guaranteed under Article 19 & 21 of the Constitution of India."

26. Here the petitioner has prayed for compensation for alleged violation of Articles 19 and 21 of the Constitution of India.

The same is produced here-in-under:-

"19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

21. "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law."

27. During the course of the argument, learned Sr. counsel appearing for the petitioner has categorically stated that his client was not arrested but his premises was only searched. Learned Sr. counsel made a submission that search was made with 200 Armed Police Personnel, under the command of the DSP, West Tripura, respondent No.4 herein, and 11 other police officers were involved. Though in the counter affidavit, the respondents have denied the same, but they submitted that sufficient numbers of police personnel with lady officers had conducted the raid.

28. Here it is to be considered that the petitioner who is an accused person in this crime against whom the FIR has been registered by the respondents is a prominent leader. The petitioner at the time of the alleged incident was an Ex-MLA, Advisory Tripura Pradesh Congress Committee, President, the Tripura State Olympic Association, Ex-president of Tripura Pradesh Congress Committee, Ex-CLD Leader Tripura, Advocate, Tripura High Court Bar Association, Editor Ganasanbad Partika.

29. In view of the prominence of the petitioner in being a political leader and holding various important positions as mentioned here-in-above, anticipating some law and order problems and disturbance in the locality, the police personnel took proper precautions during the course of undertaking the search. Admittedly it is not the case of the petitioner that he was arrested unlawful detention was made or his liberty was affected. No specific emphasis is made as to which Right under Article 19 of the Constitution of India was infringed and also how Article 21 of the Constitution of India has been violated.

30. Here, the petitioner has also filed an Interlocutory application No.1 of 2023 and has sought to decide the matter as a writ petition under Article 226 of the Constitution of India. The prayer portion of the petitioner in I.A No.01 of 2023 is as follows:-

" i. Allow the instant application by the petitioner filed under Section 482 of the Cr.P.C. and recall the Order, dated 06.01.2021 passed in WP(C) No.645 of 2020 by the Hon'ble Court and treat the petition filed by the petitioner as writ petition under Article-226 of the Constitution of India.

ii. Pass any further Order/Orders as this Hon'ble High Court considered fit and proper."

In view of the above prayer, the present I.A. filed by the petitioner stood ordered.

31. Now examining the present matter under Article 226 of the constitution of India which is cited supra, unless a case is

made out to give a finding against any action of the respondents that they have violated the law, it is not for this Court to straightaway express its opinion that the respondents-Police Official have violated the law and award compensation for the same. Moreover, seeking any compensation in the absence of any such scheme or rules and praying before this Court to invoke the writ Jurisdiction is illusory. This Court has no hesitation to say that in view of the disputed questions of facts, it would not be proper to grant compensation. In view of the facts and circumstances, the compensation can only be claimed before the competent Civil Court but not in writ Court. This Court has not expressed any opinion that the petitioner is entitled to compensation or otherwise.

32. This Court is of the opinion that no case has been made out for compensation and no relief can be granted under Article 226 of the Constitution of India. It is premature to even consider the request for compensation as the allegations made by the petitioner are not established and substantiated. Disputed questions of facts cannot be gone into in a petition filed under Article 226 of the Constitution of India. The petitioner made an allegation that 200 armed police personnel raided his premises on 5th April 2020 but prima facie the allegation has not been established. According to the prosecution, the petitioner made a

complaint on a letterhead with the National Emblem printed in the left corner of it. On search of the premises of the petitioner, the police seized 10(ten) blank pads having the said letterheads scripted on them. The said fact has not been denied by the petitioner. The petitioner in his pleading has not explained the physical and mental harassment as alleged by him. The petitioner has not even made out how Articles 19 and 21 of the Constitution of India are infringed by the respondents and the same has not been explained. It is seen from the record that there was no order restraining the search made by the respondents on 05.04.2020, therefore, it cannot be said that the said search was illegal. The petitioner herein also has made contradictory statements; on one hand, he accuses the then Chief Minister of Tripura, Sri Biplab Kumar Deb of giving fake information on COVID-19 infections, and on the other hand, the petitioner contends that during the COVID period, so many police officers raided his premises; causing likely hood of spreading COVID. Thus, if there is COVID, the statement of the then Chief Minister of Tripura is correct. If there is no COVID, the allegation of the petitioner that during COVID period, 200 police personnel raided his premises causing likely hood of spreading COVID fails.

33. In so far as the relief claimed to provide security and safety in concerned, it is always open for the petitioner to

approach the concerned authority as per procedure. Since no specific case is made out ventilating the endangering of life requiring security and safety measures, no relief can be granted and thus prayer stands rejected with the above observation.

34. In view of the above discussion this Court is of the opinion that the present writ petition is devoid of merits and the same is liable to be dismissed and thus it is accordingly dismissed. As a sequel, stay if any stands vacated and pending application(s), if any also stands closed.

JUDGE

suhanjit

RAJKUMAR
SUHANJIT
SINGHA

Digitally signed by
RAJKUMAR
SUHANJIT SINGHA
Date: 2023.09.15
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