

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No. 331 of 2010

Sri Doctor Debbarma @ Bishu
son of late Indra Kumar Debbarma
of Chaigharia (Naba Sardar Para),
P.S. Jirania, District – West Tripura.

..... **Petitioner**

- V e r s u s -

- 1. The State of Tripura,**
represented by the Secretary, Home
Department, Govt. of Tripura, P.O.
Agartala, Tripura West.
- 2. The Superintendent**
Central Jail, P.O. Agartala,
District – West Tripura.
- 3. The Jailor,**
Central Jail, P.O. Agartala,
District – West Tripura.
- 4. The District Magistrate & Collector,**
West Tripura District, P.O. Agartala

..... **Respondents**

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. M.K. Roy, Advocate

For the respondents : Mr. A. Ghosh, Advocate

Date of hearing and delivery : **21.01.2015**
of Judgment & Order

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. M.K. Roy, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned State counsel appearing for the respondents.

[2] A unique question has been raised in this appeal. The petitioner was first convicted under Section 364(A) of the I.P.C. and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, further simple imprisonment for 3(three) years. He was further sentenced to suffer rigorous imprisonment for 3(three) years under Section 27 of the Arms Act by the judgment and order dated 01.07.2002 in Sessions Trial No 13(WT/A) of 2001.

[3] While the petitioner was undergoing the life sentence, he had filed an appeal in the Gauhati High Court, Agartala Bench being Criminal Appeal No. 78 of 2006 against the said judgment of conviction and order of sentence. Before the said appeal was disposed of, the petitioner was further convicted on a subsequent trial being Sessions Trial No.164 (WT/A) 2002 under Section 13 of the Unlawful Activities Prevention Act and under Section 25(ia) of the Arms Act and sentenced to suffer rigorous imprisonment for 3(three) years by the judgment and order dated 28.06.2003.

[4] There is no dispute that by the judgment and order dated 03.09.2008 passed in the Criminal Appeal No.78 of 2002 which had been preferred against the judgment and order dated 01.07.2002 passed in the Sessions Trial No.13(WT/A) of 2001, the Gauhati High Court, Agartala Bench interfered with the judgment of conviction and converted the conviction under Section 365 of the I.P.C. and modified the sentence to the period he had undergone in the custody. By that time, when the judgment in the Criminal Appeal No.78 of 2002 was pronounced on 03.09.2008, the petitioner suffered imprisonment for more than 6(six) years. But the petitioner was not released from the jail. He was released by dint of the order dated 09.11.2009 passed by the Assistant Sessions Judge in ST 164(WT/A) of 2002 when the said court has observed as under:

Upon hearing both sides I am of the opinion that Superintendent, Central Jail, Agartala is also to follow the procedure of Section 427(2), Cr.P.C.

No direction is necessary for compliance of this section.

[5] For illegal act of the Superintendent, Central Jail, Agartala according to Mr. M.K. Roy, learned counsel appearing for the petitioner, the petitioner has suffered imprisonment for the period from 03.09.2009 to 10.11.2009, when the petitioner was released from the jail by virtue of the order dated 09.11.2009 passed in S.T. 164(WT/A) of 2002. The petitioner has approached this court for compensation for such illegal detention.

[6] For purpose of reference, the provisions of Section 427(1) and Section 427 (2) of the Cr.P.C. are reproduced hereunder:

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

[7] There cannot be any difference of opinion that when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence, provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed

prior to the making of such order, the latter sentence shall commence immediately.

[8] In this case, the first sentence was not a sentence of mere imprisonment but that was a sentence for life until it was interfered by the Gauhati High Court, Agartala Bench by the judgment and order dated 03.09.2008 whereas under sub Section 2 of Section 427 provides that when a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

[9] This Court is confronted with a strange situation. Mr. A. Ghosh, learned State counsel appearing for the respondents has argued that since the order of life imprisonment has been modified by the judgment and order dated 03.09.2008, the sequence of imprisonment will be governed by sub Section 1 of Section 427 of the Cr.P.C. not by sub Section 2 of Section 427 of the Cr.P.C. Here lies the petitioner's dichotomy. Here is a situation while the petitioner was undergoing a life sentence, he was sentenced to suffer further rigorous imprisonment for 3(three) years. Thus, his imprisonment for the subsequent trial comes to an end on or before 27.06.2006 as the life sentence was only interfered with by the Gauhati High Court, Agartala Bench by their judgment and order dated 03.09.2008. Therefore,

it is clear from the provisions of sub Section 2 of Section 427 of the Cr.P.C. that the sequence of sentences so far the petitioner is concerned, was to be guided by sub Section 2 of Section 427 of the Cr.P.C. As such, when the Gauhati High Court, Agartala Bench by their judgment and order dated 03.09.2008 converted the conviction under Section 365 of the I.P.C. and sentenced to the term that he had undergone by that time the subsequent imprisonment, the petitioner ought to have been released from the jail but he was not so released from the jail till the order dated 09.11.2009 was passed.

[10] At this stage, Mr. A. Ghosh, learned State counsel has submitted that the petitioner has suffered another one year for non-payment of fine, from the day when the judgment and order was pronounced by the Gauhati High Court, Agartala Bench. Thus, he was supposed to be released on 02.09.2009 if the sub Section 2 of Section 427 of the Cr.P.C. was applicable but he was released on 10.11.2009 in terms of the order dated 09.11.2009. As such, the petitioner suffered illegal imprisonment for the period of 02.09.2009 to 09.11.2009. So he has suffered illegal imprisonment for 2 months 9 days. For such illegal detention, the petitioner has approached this Court for realising damages under the public law remedy. Even though there is some grey area as to the interpretation of this provision having regard to the situation that emerged but the Superintendent, Jail, Agartala as it appears from the records had not taken any

advice from the legal experts or from the Law Department. He had assessed the impact of the judgment and order dated 03.09.2008 of the Gauhati High Court in a nonchalant manner. Even a formal order was to be passed by the Assistant Sessions Judge, West Tripura, Agartala holding that in such case provisions under Section 427(2) of the Cr.P.C. would be applicable. Only, thereafter the petitioner was released from the jail.

[11] There cannot be any dispute that for a lackadaisical approach of the jail authority, the petitioner has suffered this imprisonment. This Court under the public law remedy is within its jurisdiction to grant compensation if it is found that there had been general violation of the fundamental rights. In **Hindustan Paper Corporation Ltd. vs. Ananta Bhattacharjee and Ors.**, reported in **(2004) 6 SCC 213**, the apex court has held that the public law remedy for the purpose of grant of compensation can be resorted to only when the fundamental right of a citizen under Article 21 of the Constitution is violated and not otherwise. The apex court has further held in **Hindustan Paper Corporation Ltd. vs. Ananta Bhattacharjee and Ors.** that it is not every violation of the provisions of the Constitution or a statute which would enable the Court to direct grant of compensation. It is well settled that the defence of sovereign immunity is not available when the State or its officers, acting in the course of employment, infringe a person's fundamental right

of life and personal liberty as guaranteed by Article 21 of the Constitution and the State can be directed in a writ jurisdiction under Articles 32 and 226 to repair the damage done to the victim by paying appropriate compensation.

[12] Having regard to this, this Court directs the respondents to pay a compensation to the extent of Rs.50,000/- (Rupees fifty thousand) to the petitioner. The said amount shall be paid to the petitioner within a period of 4(four) months from today. If within the stipulated time, such amount is not paid, the said amount shall carry interest @12% per annum till its realization.

With this observation and direction, this writ petition stands allowed to the extent as indicated above.

JUDGE

Sujay