

THE HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) 59 of 2009

Smt. Suvra Deb, wife of Sri Sudhendu
Bhushan Deb, Resident of Village – Town
Rajarbag, P.O. & P.S. Radhakishorepur,
Udaipur, District – South Tripura.

..... *Petitioner*

- Vs. -

1. The State of Tripura.
Represented by the Secretary to the
Department of Home,
Government of Tripura, having his office
At Secretariat Complex, Agartala, West Tripura.
2. The Director General of Police,
Government of Tripura, Agartala,
West Tripura.
3. The Superintendent of Police (West),
Agartala, West Tripura.
4. Smt. Ila Deb, Officer-in-Charge,
Agartala Women's Police Station, Agartala,
West Tripura, working at Agartala
Women's Police Station, West Tripura.
5. Sri G.S. Rao, AIGP (Ops),
PHQ, Agartala.
6. Sri B.K. Nag, Additional
Superintendent of Police (Urban),
Agartala, West Tripura.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioner	: Mr. M. Malhotra, Advocate. Mr. M.K. Roy, Advocate. Ms. G. Deb, Advocate.
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For the respondents : Mr. S.M. Chakraborty, Sr. Advocate.
Ms. B. Chakraborty, Advocate.
Mr. A. Ghosh, P.P.
Mr. J. Majumder, Advocate.

Date of hearing & : 30.06.2015.
delivery of
Judgment & order

Whether fit for : Yes.
reporting

JUDGMENT & ORDER (ORAL)

By means of this petition, the petitioner has prayed for grant of compensation to her on the ground that she was unauthorizedly arrested on the night intervening 7th August, 2004 and 8th August, 2004 at 2.45 a.m. in the morning.

2. The undisputed facts are that the son of the petitioner was married to a lady, who was the daughter of a Judicial Officer. The father was a Member of the Tripura Judicial Service and posted at Agartala. The husband and wife earlier lived together at Delhi and thereafter, they lived at Kolkata, but a complaint being FIR No.49/2008 was registered with Agartala Women's Police Station under Section 498A of the IPC. After the FIR was lodged, the admitted case is that on 08.04.2008 at 0245 hours the petitioner was arrested by a police party headed by respondent No.4, who at the relevant time was the in-charge of the Women's Police Station.

3. Here it would be necessary to give some other facts. The FIR in question was filled not only against the present petitioner, but her other sons and married daughters. The complaint against the petitioner Smt. Suvra Deb and others Smt. Gopa Deb, Sudhendu Bhusan Deb, Smt. Soma Deb was quashed by a learned Single Judge of this Court on August 7, 2008 and this judgment of the learned Single Judge of the Gauhati High Court (which then exercised jurisdiction over Tripura) was upheld by the Apex Court. It would also be pertinent to mention that the son of the petitioner i.e. the husband had also filed a petition for quashing the proceedings in G.R. Case No.291 of 2008 arising out this very same FIR and these proceedings were quashed by this Court in Criminal Petition No.1 of 2009 decided on 01.08.2014. In both these judgments which have achieved finality, it was found that no offence had been committed within the State of Tripura.

4. The petitioner earlier also filed two petitions and she also initiated criminal proceedings against respondent No.4, Smt. Ila Deb. In the criminal proceedings, the Court did not proceed with the matter due to want of sanction. The petitioner, thereafter, approached the State to grant sanction under Section 197 Cr.P.C., but this sanction was refused on the ground that respondent No.4 Smt. Ila Deb had already been inflicted punishment of censure and no ground was made out for proceeding further against her in criminal proceedings.

5. The present petitioner Smt. Suvra Deb filed W.P.(Crl) 08 of 2015 before this Court which was dismissed by a Division Bench of this Court and the judgment in question was authored by me and in that case this Court held as follows:-

"3. From the facts stand established on record, it is not disputed that the petitioner was arrested in violation of the mandate of Section 46(4) of Cr.P.C. which reads as follows:-

**"46. Arrest how made.— xxx
xxx xxx**

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made."

4. The mandate of sub-section (4) of Section 46 is clear that no woman should be arrested after sunset and before sunrise except in exceptional circumstances and where those circumstances exist, the arresting officer should make a report in writing and obtain prior permission of the Judicial Magistrate. It is thus clear that a lady cannot be arrested after sunset and before sunrise unless the permission of the Magistrate has been obtained prior to such arrest.

5. We may point out that sub-section (4) was inserted in the Code of Criminal Procedure vide Amendment Act 25 of 2005 w.e.f. 23-06-2006. Before the said date this provision was not there on the statute. It is, however, clear that on the date of arrest, i.e. 08-04-2008 this provision was there on the statute. Therefore, we are clearly of the view that there was violation of Section 46."

6. Therefore, even in that case, this Court found that there was clear violation of Section 46 of the Cr.P.C. However, this Court held that the conditions of Section 166 of the IPC had not

been satisfied because it had not been proved that the respondent No.4 had knowingly disobeyed the directions or that she had any *Mens rea* to cause injuries to the petitioner.

7. We had also held that even if a criminal offence had been committed it was for the State to decide what action it should take against its officers and finally, we had dismissed the writ petitions. While disposing of the said writ petition, we had observed as follows:-

"13. A party to whom injury is caused in such a manner has two options open to it. It may seek recourse to criminal proceedings or it may take civil action like filing a suit for damages. If it seeks recourse of criminal proceedings, then sanction to prosecute must be obtained."

8. We are dealing here with a petition where the petitioner has taken action for filing a claim for damages under Article 226 of the Constitution of India.

9. A preliminary objection has been raised by Mr. S.M. Chakraborty, learned senior counsel that in Para 13 of the judgment quoted hereinabove, this Court has only given the option of filing a civil suit. We cannot accept this contention. That observation was only made with a view of stating that a party had two options of either filing a criminal action or taking action for recovery of damages. Normally damages have to be recovered by way of filing a civil suits, but when the fundamental rights of a

citizen are violated then this Court under public law can award damages. As far as this position of law is concerned, there is no dispute that the writ Court can award damages when there is violation on the fundamental rights of a citizen.

10. We are a country governed by a written Constitution. The preamble of Constitution contains the heart and soul of the Constitution. The preamble guarantees to every citizens liberty of thought, expression, believe, faith and virtue. Article 21 of the Constitution reads as follows:-

"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."

11. The liberty of a citizen is the most sacrosanct right guaranteed by our Constitution. A man's or woman's home is his or her castle and nobody can enter that castle unless invited. No police official has the right to enter into the home of any person except under authority granted by law. Section 46 of the Cr.P.C. makes it absolutely clear that no lady should be arrested after sunset or before sunrise by any police official. The only exception is that if a case is made out then the police officer can obtain prior permission from the Judicial Magistrate and then arrest a lady after sunset or before sunrise. Though in W.P. (Crl) 08 of 2015, this Court had held that there is nothing on record to show that the respondent No.4 was aware about this provision of law, as far as

this case is concerned, there is sufficient material on record to show that the respondent No.4 was aware of this provision of law. Reference in this behalf may be made to the letter sent by the Superintendent of Police, West Tripura wherein it is mentioned as follows:-

"3. The I/O explained that, she is aware of the law i.e. section 46 Cr.P.C. 1973. But there was no opportunity to take permission from the Ld. Court as required u/s 46(4) of Cr.P.C. to arrest the lady accused Smti. Suvra Deb who was available along with other accused persons namely (1) Sudhendhu Bhushan Deb (Husband) (2) Siddhartha Deb(son). The investigating officer is a lady officer who observed all legal formalities regarding their arrest. There was no scope to the Investigating officer to release the FIR named lady A/P Suvra Deb where she was present alongwith other FIR named A/Ps."

12. Reference may also be made to the affidavit filed by respondent No.4 especially Para 12 whrereinafter referring to Section 46(4) of the Cr.P.C., the petitioner has made the following averments:-

"So, in this case Agartala Woman Police station is located in Agartala city. The place of arrest of the accused persons is located at Udaipur which is a distance of about 55 k.m. from the Woman P.S. The answering respondent went to Udaipur from Agartala on the basis of secrete information that the principal accused i.e. the husband of the complainant would absconded before sun rise. So, the answering respondent rushed to the house of the accused persons in the night and the principal accused was also available in his house along with other F.I.R. named accused persons. So, the answering respondent did not get any scope to take permission from the Learned Magistrate in that dead hours of night and the answering respondent had no intention to take custody of the petitioner. But the petitioner was not allowing the answering respondent to take custody of the principal accused of the case. So, in that situation the answering respondent had no option but to take custody of the F.I.R. named accused persons including the petitioner as the offence was non-bailable

and it was also fact that the answering respondent at the time of arrest observing all formalities maintaining high decency of the accused, specially to the petitioner.”

13. The case of the respondent No.4 is that she did not have any opportunity to approach the Magistrate. This is no excuse in view of the clear cut provision of law where prior permission of Magistrate is necessary before arresting a woman after sunset and before sunrise. I also fail to understand what was tearing hurry to arrest the petitioner in the middle of the night in a case which was only under Section 498A. There is no material placed on record to show that the petitioner was either trying to run away or was trying to hide any evidence. She could have easily been arrested the next morning.

14. Therefore, the act of respondent No.4 in arresting the petitioner after sunset and before sunrise at 2.45 a.m. is not in accordance with procedure established by law and therefore, is violative of Article 21 of the Constitution of India.

15. As such, I have no hesitation in coming to the conclusion that the petitioner's fundamental right of life and liberty has been violated and therefore, she is entitled to compensation under Article 226 of the Constitution of India.

16. Next comes the issue as to what should be the quantum of compensation. In this behalf it would be necessary to recapitulate that as now found by the Courts, no offence had been committed in the State of Tripura. Therefore, the lodging of the FIR itself was suspect. The Apex Court has confirmed the judgment of the Gauhati High Court especially with regard to the present petitioner that there was no case made out against her in the FIR. If no case was made out then what was the need of arresting her? Lastly, what was the imperative need to arrest her in the middle of the night? There are no answers to these questions. The answer lies in the fact that the complainant was the daughter of a serving Judicial Officer and I have no hesitation in coming to the conclusion that the judicial office was misutilised for purpose of harassing the in-laws of the daughter. This is not the behaviour expected of Judicial Officers. When Judicial Officers are involved in litigation they should be even more careful that the law is not flouted in the slightest manner.

17. It has been urged by Mr. S.M. Chakraborty, learned senior counsel that the State cannot be held liable to pay damages because the illegal action, if any, is of the respondent No.4. This contention is without any merit whatsoever. Right from ***Nilabati Behra (SMT) alias Lalita Behera (Through the Supreme Court Legal Aid Committee) vs. State of Orissa and others : (1993) 2 SCC 746*** till ***Radul Sah vrs. State of Bihar: (1983) 4***

SCC 141 and **D.K. Basu Vrs. State of West Bengal: (1997) 1 SCC 416**, the Courts have repeatedly held that the State is vicariously responsible to pay for the wrongful acts of its employees.

18. Having considered all the aforesaid factors, I am of the clear cut view that in this case exemplary damages should be awarded because this case is not one where the police official acted innocently. As is apparent from her affidavit in reply she knew the provisions of Section 46. This has to be read in conjunction with the other attending circumstances which are that no case was made out against any of the accused much less the petitioner.

19. Therefore malice is writ large. The act committed by respondent No.4 may not have been a criminal offence as held by this Court in W.P. (Crl.) 08 of 2015, but it is definitely an actionable wrong and the claimant is entitled to damages. The husband of the petitioner was a Government employee. One of her daughters is a lawyer and another daughter is working in the Agriculture Department. One son is an Engineer. She belongs to a respectable family. She was arrested the middle of the night like a common criminal. This definitely lowered her reputation in the eyes of her friends, relatives and all concerned. Therefore, I award **Rs.2,00,000/-** (Rupees Two lakh) as damages in favour of the

petitioner and against the respondent Nos.1 to 4, who are jointly and similarly held liable to pay the said amount. The State being vicariously liable for the acts of its employees is directed to deposit the amount in the Registry of this Court on or before 30th September, 2015 failing which, the State shall be liable to pay interest @12% per annum on this amount of Rs.2,00,000/- from the date of filing the writ petition till deposit/payment of the amount. It is left open to the State to decide whether it wants to recover this amount from respondent No.4 or not. In case the State wants to recover the amount from respondent No.4. It can do so in accordance with the procedure prescribed by law such as departmental proceedings.

20. The writ petition is disposed of with the aforesaid directions.

CHIEF JUSTICE

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