

THE HIGH COURT OF TRIPURA
AGARTALA

WP(CRL) 08 OF 2015

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

..... **Petitioner.**

- V e r s u s -

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 Chief Secretary,
Government of Tripura, having his office at
Secretariat Complex, Agartala,
West Tripura.
3. The Director General of Police,
Government of Tripura,
Agartala, West Tripura.
4. Smt. Ila Deb, Officer-in-charge,
Agartala Women Police Station,
Agartala, West Tripura.

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE U.B. SAHA

For the petitioner : Mr. D. Bhattacharji, Advocate.

For the respondents : Mr. A. Ghosh, P.P.

Date of hearing and
delivery of judgment
and order. : 11.06.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

By means of this petition, the petitioner has challenged the order dated 30-09-2014 passed by the Chief Secretary as In-charge of the Home Department refusing to grant sanction to prosecute respondent No.4.

2. Briefly stated, the facts of the case are that respondent No.4 is a police official and in the year 2008 she was Officer-in-charge of Agartala Women Police Station. The case of the petitioner herein is that on 08-04-2008 the petitioner was arrested by the respondent No.4 at about 0245 hours, i.e. after sunset and before sunrise in total violation of the mandate of Section 46 of the Code of Criminal Procedure (Cr.P.C.). According to the petitioner, since the respondent has violated the law, she has to be punished under Section 166 of the Indian Penal Code (IPC). Furthermore, the case of the petitioner is that since the State itself was not willing to prosecute the respondent No.4, the petitioner had filed a private complaint and in that private complaint, the Magistrate has observed that the complaint cannot proceed without sanction of the State Government in terms of Section 197 of Cr.P.C. Thereafter, the petitioner approached the State Government for grant of sanction and this sanction has been refused by the impugned order. Hence, the petition.

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. The question that next arises is whether every violation of a statutory provision is an offence or not. Section 166 of the IPC reads thus:-

“166. Public servant disobeying law, with intent to cause injury to any person.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”

7. This Section mandates that when a public servant knowingly disobeys any direction of the law with regard to the manner in which he is to conduct himself as such public servant with intention to cause injury by such disobedience or where such public servant can be imputed with the knowledge that by disobeying the mandate of law he is bound to cause injury to a person, then such public servant is liable for punishment as prescribed in the Section. The first ingredient is that the person charged must be a public servant. The second ingredient is that he must knowingly disobey the law. The third ingredient is that this law should be in relation to the manner in which the public servant is to conduct himself as a public servant. The fourth ingredient is that he must have the intention to cause injury or must be imputed with the knowledge to cause injury.

8. We have gone through the complaint in detail which is at Annexure-P/9. Two ingredients on the face of it are satisfied.

The first is that the respondent No.4 is a public servant. The second is that she was discharging her duties as public servant and any violation of the mandate of law would be attracted. However, on going through the complaint we find that except from the following averment made in para-25, there is no clear cut allegation that the respondent No.4 knowingly violated the law. The contents of para-25 are reproduced hereinafter:-

“25. The complainant states that the accused being a public servant, knowingly disobeyed the categorical provisions as envisaged in Section 46(4) of the Criminal Procedure Code and also disobeyed the directions/guidelines laid down by the Hon’ble Supreme Court of India, as to the way in which she was supposed to conduct herself as an Inspector of Police and a Officer in charge of the Agartala Women’s Police Station, West Tripura, knowing full well that the arrest of the complainant shall be illegal and thereby detained her illegally.”

9. We are aware that ignorance of law is no excuse but sometimes when new provisions are added in the law not only police officials but sometimes Judges and lawyers are also unaware of this fact. There is not an averment in the complaint that anybody brought it to the knowledge of the public servant, i.e. respondent No.4 that she was violating the provisions of Section 46. Therefore, knowledge cannot be clearly spelt out from the complaint.

10. Even assuming that we can ascribe knowledge to the respondent No.4 because she being a police official should have been aware of this provision of law, there is not a single allegation

in the complaint that the respondent No.4 arrested the petitioner with intention of causing injury to her or with the knowledge that this would cause injury to her. The complaint, therefore, does not contain all the ingredients of the Section.

11. There is not a whisper in the complaint that the respondent No.4 acted at the behest of somebody or that she was asked by somebody to arrest the petitioner with a view to damage the reputation of the petitioner. The respondent No.4 has violated Section 46 but the question is whether such a violation is a criminal offence or not. Every violation does not necessarily become a criminal offence until all the ingredients of Section 166 are attracted. *Mens rea* is part of the basic principle of our criminal jurisprudence and in this complaint, there is no allegation which would impute *mens rea* to the respondent No.4.

12. Even assuming that a criminal offence had been committed, it is finally for the State to decide what action it should take against its officers. The State had already taken disciplinary action and penalty of censure was imposed upon the respondent No.4. In the order dated 30-09-2014, it has been mentioned that earlier in the year 2008 when this fact was brought to the notice of the Director General of Police, administrative action was taken against respondent No.4 and she was awarded punishment of censure vide order dated 14-01-2009. Therefore, the State was of the view that no sanction should be granted to prosecute her in the criminal offence. The violation of Section 46 took place in the year

2008 and we are clearly of the view that now the matter should be closed, especially in view of the penalty of censure already having been imposed.

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.

14. We, therefore, find no error in the order refusing to grant prosecution sanction. An order granting or refusing to grant prosecution sanction is basically an administrative order. Section 197 lays down that no Government Officer can be prosecuted for anything during the discharge of his duties unless sanction is obtained from the Government. The grant or non-grant of sanction is within the realm of the administration. The Court is not an appellate authority to sit over this order. The Court can, however, ascertain whether the procedure followed while passing the order is proper or not. The Court will only decide whether such an order is reasonable order or not. The Court can only interfere if the order is perverse or is an order which cannot be sustained in the eyes of law. As far as the impugned order is concerned, we are clearly of the view that this does not fall within the exceptions and as such, we find no merit in the petition which is accordingly dismissed.

15. One of the reasons which has weighed with us while passing the aforesaid order is that the official may not have been aware about the mandate of Section 46 sub-section (4). Now, the Section is many years old and this case has also brought the legal provisions to the notice of most people concerned. We also direct the Registrar General of this Court to send a copy of this judgment to the Director General of Police who shall ensure that it is circulated amongst all the police officials to ensure that the mandate of Section 46 is followed in letter and spirit while making arrest. In future, if such violations come to the notice of this Court, then we may presume that there was knowledge of this provision and the same was deliberately violated.

16. With these observations, the writ petition is disposed of.

JUDGE

CHIEF JUSTICE