

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP (CrL.) 04 of 2015

Shri Goutam Dey
S/O Sri Manik Dey,
Of Shibnagar near
Gedu Miah Masjid,
P.S. East Agartala,
District-West Tripura.

..... Petitioner

Versus

1. The State of Tripura

Represented by the Secretary,
Department of Home Affairs,
Government of Tripura,
New Capital Complex,
PO Kunjaban, Agartala,
District-West Tripura

2. The District Magistrate,

West Tripura, Agartala, Govt. of Tripura,
PO Agartala, PS West Agartala, PIN-799001.

..... Respondents

**BEFORE
THE HON'BLE MR. JUSTICE U.B. SAHA
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the Petitioner : Mr. BN Majumdar, Advocate.
For the Respondents : Mr. A Ghosh, PP.

Date of hearing and
delivery of Order : **01.04.2015.**

Whether fit for reporting : **No**

ORDER (ORAL)

(Talapatra J.)

Heard Mr. BN Majumdar, learned counsel for the petitioner
as well as Mr. RC Debnath, learned Addl. PP for the State.

2. By this petition filed under Article 226 of the Constitution of
India, the petitioner has challenged the legality of the order dated

02.12.2014 under No. F.1(56)-DM/W/CON/2014/1190-93 (Annexure-P/15 herein) issued by the District Magistrate and Collector, West Tripura district in exercise of his powers as provided under Section 6 of The Tripura Security Act, 2000.

3. There is no dispute that earlier also the petitioner was asked to extern from the district by the order dated 29.03.2014 passed by the District Magistrate and Collector, West Tripura under Section 6 of The Tripura Security Act, 2000. Initially the petitioner against that order preferred an appeal under Section 9(1) of The Tripura Security Act, 2000, when the appellate authority, the District & Sessions Judge, West Tripura, Agartala remanded the matter back after quashing the order of externment, for reconsideration on supplying the materials relied on for passing the said order dated 29.03.2014.

4. Being aggrieved by that order, the petitioner approached this Court by filing a writ petition being WP(C) 212/2014. The said writ petition was disposed of by a common judgment dated 26.09.2014 holding, inter alia, that there was no infirmity in the order of the appellate authority and the District Magistrate and Collector was asked to reconsider the case after providing the petitioner all materials and opportunity of advancing his rejoinder before any decision is taken.

5. Apparently, it appears that the notice dated 14.10.2014 (Annexure P/12) has been issued in terms of the order dated 26.09.2014 passed by this Court but Mr. BN Majumdar, learned counsel appearing before us, has submitted that the said notice has included certain materials which were not part of the earlier notice and on consideration of those materials, the impugned order dated 02.12.2014

has been passed. Mr. BN Majumdar has drawn our notice to the First Information Report relating to East Agartala P.S. Case No. 72/2014 under Sections 384/506 as the materials of that case were considered by the District Magistrate and Collector while passing the impugned order. The First Information Report lodged by one Sub-Inspector of Police, namely, Samaresh Das on 10.05.2014, for purpose of reference, is entirely reproduced hereunder:

**“To
The Officer-in-Charge
East Agartala Police Station
West Tripura, Agartala.**

Sub:- Submission of FIR against Sri Goutam Dey (33) S/o Sri Manik Dey of West ShibNagar near Gedu Mia Maszid PS East Agartala in C/W East Agt. PS GD entry No. 78 dt. 02.04.2014 U/S-157(1) CrPC

Sir,

With ref. to above, I beg to submit complaint against Sri Goutam Dey (33) S/o Sri Manik Dey of West ShibNagar near Gedu Mia Maszid PS East Agartala to the effect that Sri Abhishek Singh, District Magistrate West Tripura issued an externment order based on the proposal of Superintendent of Police West Tripura District against Sri Goutam Dey (33) S/o-Sri Manik Dey of West ShibNagar near Gedu Mia Maszid PS-East Agartala U/S 6(3)(a) and (b) of the Tripura Security Act 2000 on 29/03/2014 at 1200 hrs vide order No. F.1(56)/DM/W/CON/2014/310 dated 29/03/2014 with a direction to leave the jurisdiction of West Tripura District within 48 hours from the date and time of the said order by appropriate route and means and to desist from entering the District until 6 month from the date of the said expire without written permission from his office. He was asked to inform his place of stay to the nearest Police Station and to register his attendance on every Monday. The said order of externment issued by the DM(West) was served to Shri Goutam Dey on the same day on 29/03/2014 at 1500 hrs in presence of witness Sri Santi Saha S/o Lt. Sushil Saha of Shibnagar, PS-East Agartala on taking signature in one copy of the externment order by that stipulated date and time and violated the order of the District Magistrate & Collector, West Tripura, Agartala w.e.f. 1200 hrs on 31/03/2014 till the grant of stay order by the Hon'ble District & Session Judge, West Tripura, Agartala.

On received of this information the matter was entered in GD vide East Agartala PS GD Entry No. 78 dated 02/04/2014 and an investigation U/S-157(1) CrPC was taken as to why the said Goutam Dey did not carry out the order of District Magistrate & Collector, West Tripura and myself took up the investigation as endorsed by the OC PS

During investigation U/s-157(1) Cr.PC it revealed that the externment order issued by the District Magistrate & Collector, West Tripura received through the Superintendent of Police, West Tripura has duly been served to Shri Goutam Dey in presence of the witness on taking signature been one copy of the externment order on the same day on 29/03/2014 and returned the copy of the order after service to the District Magistrate & Collector, West Tripura, Agartala. This refers East Agartala PS GD Entry No. 1597 dated 29/03/2014.

According to externment order passed by the District Magistrate, West Tripura District, Sri Goutam Dey was bound to leave the West Tripura District by 31.03.2014 at 1200 hrs. But he did not leave the District within the stipulated date and time. As per

recorded statement of Sri Ranada Prasad Roy, Ld. PP West, Agartala who received the copy of appeal petition of Sri Goutam Dey on 31.03.2014 at 1435 hrs, on 31.03.2014, however Sri Goutam Dey has violated the order of the District Magistrate & Collector, West Tripura, Agartala w.e.from 1200 hrs to 1435 hrs on 31.03.2014 till the time of grant of stay order on appeal petition by the Hon'ble District & Sessions Judge, West Tripura.

During investigation, I have conducted inquiry about the person for not leaving the district in spite of receiving the order of the District Magistrate & Collector, West Tripura, Agartala. And it is revealed that he is very much dangerous and disparate in nature and creating further apprehension breach of peace in the area and indulging in commission of further crime against human body and property defined under chapter XVI & XVII of IPC. He also threatening the people to pay Rs. 50,000 (Fifty thousand) each for expenditure of court regarding externment order. This refers to PS GD entry No. 68 & 73, dated 02.04.2014, GD entry No. 152 & 155 dated 03.04.2014. The local people are fearful and not willing to come forward to depose against him out of fear of their lives and property.

According to the relevant records maintained at the PS, Sri Goutam Dey (33) is a listed anti-Social under this District and his movement and acts are causing alarm, danger and harm to persons and property of common people in the West District and he extorting money from the common people in the West Shibnagar area dishonestly induces the persons to put in fear to deliver money etc. In view of the above, I lodge this complaint against Sri Goutam Dey S/o Sri Manik Dey of West ShibNagar near Gedu Mia Maszid PS East Agartala U/s-384/506 IPC and 12 of Tripura Security Act, 2000, as revealed during investigation U/s-157(1) CrPC and also the contravention of the order made by the District Magistrate & Collector, West Tripura, Agartala U/D-6(1)(a)(b)(c) of the Tripura Security Act, 2000 by the aforesaid accused person.

Yours faithfully

Sd/- 10.05.2014
(SAMARESH DAS)
SI of Police
East Agartala PS
I/O of the Case"

6. Mr. Majumdar, learned counsel having made incisive references to the content of this First Information Report has contended that consideration of those materials, as manifest, points out that the District Magistrate and Collector did not appreciate the materials objectively, else in the impugned order he should have mentioned that on going through the materials, he had discarded those materials or he should not have inferred on the basis of those materials, but no such observation is available in the impugned order dated 02.12.2014.

7. We have scrutinized the affidavit-in-opposition filed by the State in this matter. Even there is no explanation as to why a fresh

notice dated 14.10.2014 has been issued when the matter was remanded for reconsideration on the basis of the previous notice. That apart, we are aghast to observe that the contents of the First Information Report in East Agartala police station case No. 72/2014 is entirely relating to the execution of the externment order which was stayed by the appellate authority on 31.03.2014. To facilitate externment, this Court does not have any hesitation to hold that the said FIR has been lodged against the petitioner. A precise arithmetic has been carried out by the informant to find out that there was a gap of few hours between the expiry of 48 hours and the passing of the stay order by the appellate authority and for that reason statement of the public prosecutor, West Tripura District has been relied for ascertaining the exact time when the stay order was passed by the appellate authority, District and Sessions Judge, West Tripura, Agartala.

8. Mr. RC Debnath, learned Addl. PP when asked by this Court to make response in this regard, has fairly submitted that the First Information Report was considered by the District Magistrate while passing the impugned externment order dated 02.12.2013. Even he had no answer to why the District Magistrate had issued a fresh notice dated 14.10.2014 after having the order remanding for reconsideration of the materials those were relied on the previous notice issued by the District Magistrate for passing the order dated 29.03.2014.

9. On considering the materials in totality, we are of the view that the inference drawn by the District Magistrate and Collector that the petitioner has been indulging in "anti-social activities over the period without any sign of reformation" is inferred based on no

objective analysis of the materials so placed before him and as such we are constrained to interfere with the impugned externment order dated 02.12.2014 (Annexure-P/15 to the writ petition). Hence, it is set aside.

10. Since our findings hinges on consideration of the First Information Report relating to East Agartala P.S. Case No. 72/2014 under Sections 384/506 IPC and for issuing fresh notice dated 14.10.2014, the District Magistrate and Collector shall be at liberty to take decision afresh under Section 6 of The Tripura Security Act, 2000 on the basis of the other materials if it is so required having due regard to the procedure of law as well as the observation made in judgment and order dated 26.09.2014 delivered in WP(C) 212/2014 and WP(C) 213/2014 by this Court.

11. Having held and observed thus, the impugned order dated 02.12.2014 is quashed. In the result this writ petition stands allowed to the extent as indicated above. There shall be no order as to costs.

JUDGE

JUDGE

lodh