

**HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) 272/2021

Sri Bhaskar Deb, son of Sri Kshitish Deb, resident of Ramnagar Road no. 3 and 4 (1st crossing), P.O. Ramnagar, P.S. West Agartala, District- West Tripura

---- Petitioner-in-Person

Versus

- 1. The State of Tripura**, represented by the Secretary, Department of Home, New Secretariat Building, New Capital Complex, Agartala, West Tripura
- 2. The Director General of Police**, Police Head Quarter Complex, Agartala, West Tripura
- 3. The Superintendent of Police**, Police Head Quarter Complex, Agartala, West Tripura
- 4. The Superintendent of Police**, Khowai, Tripura
- 5. The Officer-in-Charge**, Teliamura, P.S. Teliamura, Khowai, Tripura
- 6. The Officer-in-Charge**, West Agartala P.S., Agartala
- 7. SI Pritam Datta** (Investigating Officer of Teliamura PS case no. 2020 TLM 104), Teliamura P.S., Teliamura, Khowai, Tripura

----Respondents

W.P.(C) 273/2021

Smt. Sujata Deb (Gupta), wife of Sri Bhaskar Deb, resident of Ramnagar Road no. 3 and 4 (1st crossing), P.O. Ramnagar, P.S. West Agartala, District- West Tripura

---- Petitioner-in-Person

Versus

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6. The Officer-in-Charge, West Agartala P.S., Agartala

7. SI Pritam Datta (Investigating Officer of Teliamura PS case no. 2020 TLM 104), Teliamura P.S., Teliamura, Khowai, Tripura

----**Respondents**

Petitioners-in-person

For Respondent(s) : Mr. SS Dey, Advocate General
Mr. Ratan Datta, PP
Ms. A. Chakraborty, Advocate

Date of hearing and delivery : **09.03.2023**
of Judgment & Order

Whether fit for reporting : **Yes / No**

HON'BLE THE CHIEF JUSTICE (ACTING)

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT (ORAL)

(Amarnath Goud, ACJ)

Heard Mr. Bhaskar Deb and Mrs. Sujata Deb (Gupta), the petitioners-in-person. Also heard Mr. SS Dey, learned Advocate General assisted by Mr. Ratan Datta, learned PP and Ms. A. Chakraborty, learned counsel appearing for the respondents.

2. Both the writ petitions have been taken up and heard together for final disposal by way of this common judgment since common questions of law and facts are involved.

3. Both the petitioners herein are husband and wife and practicing Advocates. Their case in brief is that on 08.10.2020 at about 05:50 hours, respondent no. 7, S.I. of Teliamura PS alongwith huge number of TSR and police personnel of Teliamura PS and West Agartala PS came to the house of the petitioners to conduct search their residence and the said search was conducted without any search warrant. It is the further case of the petitioners

that when the petitioner, Sri Bhaskar Deb enquired the respondent no. 7 about the reason for the search without search warrant, he was informed that the aforesaid search was conducted in regard to Teliamura PS case no. 104 of 2020 as respondent no. 7 had information that the accused persons of the said case were hiding themselves in the house of the petitioners since the petitioner, Sri Bhaskar Deb is the defending Advocate of those accused persons. It is the further case of the petitioners that nothing has been found to seize which clearly indicates that the entire search was illegal and the police do not have the right to search without warrant except limited circumstances.

4. During argument, Mr. Bhaskar Deb, the petitioner has argued mainly on the points that whether the police can search the house of an Advocate who is defending his clients to cause arrest of the accused persons, and whether the police can search the chamber and residence of an Advocate without any search warrant or authorization to cause arrest of his client. Mr. Deb, the petitioner has further argued that the police without issuing any notice under Section 41-A has raided his house. Mr. Deb, the petitioner has further argued that the respondent no. 7 has totally violated the legal provisions relating to the said search, particularly section 100 of the Cr.P.C. Lastly, the petitioner has submitted that the petitioner had issued notice to respondents asking to take legal action against respondent no. 5 and 7, since no action has been taken the petitioner got compelled to file this writ petition seeking certain reliefs including monetary reliefs claiming compensation of

Rs. 1,00,00,000/- for causing damage to his reputation, dignity, goodwill and mental suffering. Here during the court proceedings the petitioners have not pressed for above relief of compensation. Ms. Sujata Deb (Gupta), the petitioner adopted the submissions of Mr. Bhaskar, Deb, the other petitioner herein.

5. Controverting the submissions of the petitioners, learned Advocate General assisted by Mr. Ratan Datta, learned PP has submitted that search has been conducted following the mandatory provisions of law and there was no infringement of the right to privacy of the petitioners. The allegations which were made by the petitioners are vague, very much generalized and not at all substantiated by anything worthy to be called an evidence. The investigating agency was chasing smugglers dealing with Narcotic Drugs and were having information that they are in the house of the petitioners. NDPS Act allows to enter and search without warrant. No fundamental right of the petitioners is breached and consequently no question of enforcing a fundamental right arises, hence, the petitioners may approach any other forum since the reliefs sought for cannot be entertained by this Court.

6. We have gone through the records meticulously. From the record, it is seen that the petitioner, Sri Bhaskar Deb has stated that *search has been conducted without Search warrant to find out the accused persons of the above mentioned case whom I am defending*, but from the counter affidavit filed by the respondent, it is seen that initially Sri Bhaskar Deb had protested and denied the entry of police personnel without search warrant but on

explaining him the provisions of section 47/165 and 166 of the Cr.P.C., Sri Bhaskar Deb, the petitioner herein had allowed their entry and permitted to conduct the search. In the instant case, the police officials were in search of some accused persons on behalf of whom bail applications were filed by the petitioner, Sri Bhaskar Deb and apprehending that there is every possibility of the accused persons to abscond or evade their arrest, they on emergent basis caused the search on every possible arena and also since they have secret information regarding one of the accused persons to be available in the house of the petitioners, the police officials have conducted the search into the house of the petitioners.

7. Now, let us go through the provisions of Section 42 of NDPS Act and Sections 47, 165 and 166 of the Cr.P.C. Section 42 of the NDPS Act, reads as under:

“42. Power of entry, search, seizure and arrest without warrant or authorization.—
(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset—

- (a) enter into and search any such building, conveyance or place;**
- (b) in case of resistance, break open any door and remove any obstacle to such entry;**
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other**

article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances, granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.]”

Section 47 of Cr.P.C. reads as 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.”

Section 165 of Cr.P.C. reads as under:

“165. Search by police officer- (1) Whenever an officer in charge of a 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 of 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."

Section 166 of Cr.P.C. reads as under:

"166. When officer in charge of police station may require another to issue search-warrant- (1) An officer in charge of a police station or a police officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place, in any case in which, the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.

(4) Any officer conducting a search under sub- section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub- sections (1) and (3) of section 165.

(5) The owner or occupier of the place searched shall, on application, be furnished free of cost with a copy of any record sent to the Magistrate under sub- section (4)."

8. In the instant cases, the respondent no. 7 was the investigating officer of Teliamura PS case no. 104 of 2020 and according to him the arrest of the accused persons was necessary to unearth the real fact, but when respondent no. 7 on secret information came to know that the accused persons were

trying to abscond and apprehending their absconsion, he searched for causing their arrest on every possible area and when the respondent no. 7 got specific information that one of the accused persons was seen in the house of the petitioner, immediately with the assistance of O/C, West Agartala PS with some other TSR personnel conducted search in the residence of the petitioners. Initially, respondent no. 7 was protested by the petitioner, Sri Bhaskar Deb, but later on Sri Bhaskar Deb allowed for the said search. Thus, from the conduct of respondent no. 7, it is conclusively seen that the said search has been conducted following the mandatory provisions of section 47, 165 and 166(1) of the Cr.P.C.

9. However, with regards to this particular case, the police officer making an investigation intends/requires a search to be made outside the local limits of their police station, and in such an event the said police officer is empowered under Section 166 of the Cr.P.C to make a request to an officer in-charge of the police station within whose local limits such search is proposed to be made, to conduct the search. Such search as referred in under section 166 of Cr.P.C. is then be made by the officer-in -charge of Teliamura police station to the Officer-in-charge of West Agartala police station as if they were conducting the search within their own local limits as provided under section 165 and also that the house of the petitioners also falls within the jurisdiction of West Agartala police station. In view of the above provisions of the Cr.P.C., it can be said that search of the house

premises of the petitioners was a part of official duty of the respondent no. 6 and 7.

10. The petitioner, Sri Bhaskar Deb has sent a notice to the respondents on 02.11.2020 requesting them to take appropriate legal action against respondents no. 7 and other respondents for conducting illegal search in his residence and also claimed compensation for causing damage to his reputation, goodwill, dignity and mental suffering. On 08.12.2020, the respondent no. 4 sent his reply to the notice of the petitioner dated 02.11.2020 stating that the allegations raised by the petitioner are not true because the search was conducted as per the relevant Act and Rules. In the reply, respondent no. 4 also stated that the details relating to the circumstances under which the search was conducted and the necessary recording in the relevant record relating to search are not disclosed in his notice as the same are relating to entries in the GD. The respondent no. 4 in his reply further stated that the investigation is still in progress.

11. In the instant case, the petitioners did not file any FIR before the concerned police station nor did they file any complaint before the learned Magistrate. According to the petitioners, had they been aggrieved by any action of the respondents, they should have approached the learned Magistrate by filing an application under Section 200 Cr.P.C. for taking cognizance into the matter. In the facts and circumstances of this case, Magistrate may take cognizance on the basis of the complaint instituted before him by the petitioners and may adopt the procedure provided under

sections 200, 202 of Cr.P.C. and if there is no substance in the prima-facie evidence adduced by the complainants/petitioners, the complaint may be dismissed under section 203 Cr.P.C. In the present case, the petitioner without following the mandatory provisions of law had approached this Hon'ble court for issuance of a direction. The fundamental requirement for issuing a direction by this court is that the petitioner must have sought such a relief before the appropriate authority and only when it is denied, this Court can be approached for a direction. In *Sakiri Vasu vs. State of Uttar Pradesh and others*, reported in (2008) 2 SCC 409, the Hon'ble Apex court in paras 24, 25, 26, 27 and 28, held thus:

"24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person

has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”

12. During the course of argument, Ms. Sujata Deb (Gupta) who appears to be a practicing Advocate of this court and party-in-person stated that she allowed the police officials inside her house when they are requested to enter and search. Ms. S. Deb (Gupta), the petitioner has submitted that she expressed her consent to the police officials that in case if they are legally authorised, then, they are free to enter into the house, and accordingly, they entered. Here it will be pertinent to clarify that the observation/statement of Ms. Deb (Gupta), as made, which we have reproduced here-in-above were the statements in verbatim. When we have completed the order, Ms. Deb (Gupta) stood up and tried to modify her earlier statement submitting the later part.

13. This court is of the considered view that no doubt an Advocate has to protect his client and client's interest is paramount to the Advocate. But at the same time, it cannot be brushed away that the petitioners being Advocates are the responsible citizens and have responsibility to co-operate with the investigation agency. They are not above law. Advocates are part and parcel of justice delivery system.

14. Apart from other reasons indicated above, both the writ petitions are devoid of merits, and under Article of 226 of the Constitution of India the reliefs claimed herein cannot be granted. The writ petitions are liable to be dismissed, and accordingly they are dismissed. However, the complaints made by the petitioners to the police officials, if pending, may be looked into in accordance with law.

Pending application(s), if any, also stands disposed.

JUDGE

CHIEF JUSTICE (ACTING)



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