

**THE HIGH COURT OF TRIPURA
A G A R T A L A**

CRL.PETN. 33 OF 2014 & CRL.PETN. 50 OF 2014

IN CRL.PETN. NO. 33 OF 2014:

Petitioner :

Shri Amrit Biswas,
S/O. Lt. Abinash Chandra Biswas,
Resident of village-Durganagar,
Post office-Ranirbazar-799035,
Police Station-Ranirbazar,
District-West Tripura.

BY ADVOCATES :

Mr. D. Chakraborty, Sr. Advocate,
Mr. N. Majumder, Advocate.

- **Versus** -

Respondents :

1. Smti. Swapna Choudhury (Biswas),
W/O. Shri Amrit Biswas,
D/o. Lt. Sushil Choudhury,
Palace Compound, West side of Press Club,
Agartala-799001,
Police Station-West Agartala,
District-West Tripura.
2. The Officer-in-Charge,
Ranirbazar Police Station,
Post office-Ranirbazar-799035,
Police station-Ranirbazar,
District-West Tripura.

BY ADVOCATES :

Mr. P.K. Biswas, Sr. Advocate,
Mr. A. Ghosh, P.P.,
Mr. P. Majumder, Advocate.

IN CRL.PETN. NO. 50 OF 2014:

Petitioner :

Sri Rupak Kumar Acharjee,
S/O. Sri Shanti Bhusan Acharjee,
C/O. Sri Pradip Kumar Ghosh,
Village-Manughat, P.O. Manughat,
P.S. Manughat, Langthrai Valley,
District-Dhalai, Tripura, Pin No.799275.

BY ADVOCATE :

Mr. J. Majumder, Advocate.

- **Versus** -

Respondents :

1. The State of Tripura,
Represented by the Secretary,
Home Department,
Government of Tripura,
Agartala, Tripura (West).
2. Smti. Antara Nandi,
D/O. Chitta Nandi,
Resident of Indranagar (near Indranagar
Higher Secondary School), P.O. Kunjaban,
P.S. East Agartala, District-West Tripura,
Pin-799006.

BY ADVOCATE :

Mr. A. Ghosh, P.P.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

Date of hearing & : 21.11.2014.
delivery of judgment
and order.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

These two cases are being disposed of by one judgment since the main issues which are involved in both the cases are the same, viz.;

(i) *Under what circumstances, can a Court issue Search Warrant in terms of Section 93 of the Code of Criminal Procedure?*

And,

(ii) *What is the procedure to be followed by the Court while issuing such Search Warrant?"*

2. To decide the aforesaid questions, it is necessary to refer to Sections 91 and 93 of the Code of Criminal Procedure (Cr.P.C.) which read as follows:-

“91. Summons to produce document or other thing.—

(1) *Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.*

(2) *Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.*

(3) *Nothing in this section shall be deemed—*

(a) *to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers’ Books Evidence Act, 1891(13 of 1891), or*

(b) *to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.*

93. When search-warrant may be issued.—

(1)(a) *Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or*

(b) *where such document or thing is not known to the Court to be in the possession of any person, or*

(c) *where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code*

will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.”

3. We shall first deal with section 93 of Cr.P.C. It starts with the words that where any Court has reason to believe that a person to whom summons or order under section 91 may be issued to produce some document or other thing and such person is not likely to produce such document or other thing, then the Court may issue a search warrant.

4. The second part of clause (a) of sub-section (1) which relates to Section 92 deals with the search warrant for production of a letter or telegram which is lying in the custody of postal or telegraph authority and we are not concerned with the same in the present cases.

5. As far as clause (b) of sub-section (1) of section 93 is concerned, that comes into operation only where the Court does not know who is in possession of the document or other thing. Sub-clause (c) deals with the third situation where the Court

considers that for serving the purpose of any inquiry, trial or other proceeding under this Code, the purpose will be served by issuing a general search or inspection warrant. In both the cases with which this Court is deciding, the powers have been exercised under sub-section (1) clause (a), and not under clauses (b) or (c).

6. Before any Magistrate exercises powers under clause (a) of sub-section (1) of section 93, he must be satisfied and must have reason to believe that a person to whom summons or orders under section 91 may be issued will not produce such document or thing as required by such summons or requisition. Therefore, it is more than obvious that before issuing search warrant under section 93, the Court must be satisfied that some summons or order is likely to be issued to that person under sub-section (1) of section 91.

7. Sub-section (1) of Section 93 deals with two situations. The first is where a summons or order under section 91 has already been issued and the Court is of the belief that the person to whom such summons or order has been issued will not produce the concerned document or thing. The second is where though proceedings may not have *stricto sensu* commenced but there is material before the Court to show that in the immediate future there is likelihood of such order or summons being issued. However, it is more than apparent that before any search warrant under section 93 is issued, the Magistrate must be sure that either a summons or order under section 91 has already been issued or is likely to be issued.

8. Not only this, the Court must also be satisfied on the basis of material produced before it that the person to whom such summons or order has been issued is not likely to produce the document or thing as required in such summons or order. The Court before passing any such order under section 93 is bound to give reasons in the order why it is issuing a search warrant. A search warrant is not an empty formality. If the police goes to the house of any citizen, searches his house and makes a seizure, the dignity of that person is affected. His reputation is lowered in the eyes of the public. Before taking such a drastic step, the Court must be satisfied that it is imperative and necessary to issue summons under section 93.

9. In ***V.S. Kuttan Pillai v. Ramakrishnan and another, [AIR 1980 SC 185]***, the Apex Court though dealing with clauses (b) and (c) of Section 93(1) clearly held as follows:-

“17. xxx xxx xxx

Of course, issuance of a search warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. Issue of search warrant being in the discretion of the Magistrate it would be reasonable to expect of the Magistrate to give reasons which swayed his discretion in favour of granting the request. A clear application of mind by the learned Magistrate must be discernible in the order granting the search warrant.”

10. A close analysis of Section 91 of the Code shows that whenever any Court or an Officer-in-charge of a Police Station considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry

or trial, then it may issue summons or order for production of such document or thing. Therefore, the Court must first come to a conclusion that the production of that document or other thing is necessary and desirable for the purpose of investigation, inquiry, trial or other proceedings.

11. Time and again, this Court is finding that some Magistrates in the State of Tripura are exercising powers under Section 93 without any criminal case having been filed and ordering recovery of Stridhan only on the basis of a search warrant issued under Section 93. This practice is totally illegal. The powers under Section 93 cannot be exercised where no case has been filed or is not likely to be filed in the immediate future. Further there must be an allegation that in such criminal case summons or order for production of a document or a thing have been or are likely to be issued. Even if such averment is made, the Court must further satisfy itself that the averments are *prima facie* correct and supported by some material. The Court must also be satisfied that the person in whose possession these goods are will not produce them, if asked to do so. The Court must also record a finding that the production of such material is necessary for the purpose of investigation or trial.

12. To give an example, supposing a complaint is filed under section 125 of Cr.P.C. for maintenance. In such a case production of Stridhan is not even necessary. Similarly, if allegation is made of cruelty only on the ground of physical cruelty, then also the production of any Stridhan would not be covered under section

93. It is only those documents or things which are related to the inquiry, investigation and trial of the case contemplated under section 91 which can be directed to be produced under section 93. The powers under section 93 cannot be used for the purpose of recovery of Stridhan or other property if it is not required to be produced for purpose of investigation or trial. This Court would also like to issue a word of caution that even where all the conditions are satisfied, then also the Court before directing issuance of such a warrant must be satisfied that the person who is in possession of such documents or things will not produce the same when ordered to do so by the Court.

13. It is not necessary that in every case before issuance of a search warrant, notice is required to be given. There may be cases where notice will frustrate the purpose of the investigation. To give an example, if the police is investigating a case of corruption or theft and alleges that the ill-gotten money or stolen property is in the possession of a person "A", then no notice may be required to be issued and search warrants may be issued directly. We are here, however, dealing with cases of marital disputes. The Courts must realize that sometimes the marital disputes get escalated and the process of settlement of disputes between two married persons is set at naught because the Court sends the police to the house of one spouse. Once that happens, the chances of settlement are very little. The Courts must be very careful that in such cases unless there is material before the Court to show that the spouse is going to take away the goods or things

or will not produce them before the Court, no orders for production or seizure should be passed.

14. This Court has also found that in a large number of cases when the list of property is given, then things like television, beds, cupboards, dining tables, utensils etc. are mentioned. These goods would be found in any household. Therefore, if the police goes to the house, it will always find these goods in any household. There must be material before the Court to show that these goods were given as Stridhan to the woman. Mere assertion in the affidavit may be a ground to issue notice to the other side but warrants cannot be issued on the basis of mere assertion. There may be cases where the wife produces the receipts of the purchase of such goods by her father before marriage or there may be cases where a list of the goods given to the bride has been signed by the husband or one of his family members and in such cases, the Court may presume that these goods are Stridhan but in other cases how will the Court without evidence come to the conclusion that this is Stridhan. That would be a disputed question which the Court while issuing warrants under section 93 cannot and should not decide. This Court would like to make it clear that there is no total ban on issuance of search warrants but they must be issued only after following the procedure prescribed by law and by ensuring that the ingredients of the sections have been complied with by the person who wants these search warrants to be issued.

15. In this regard, reference may also be made to the judgment of the Gujarat High Court reported in ***Shailendrabhai***

Motilal Mehta and others v. Krishnaben Vrajlal Mehta and another, [2001 CRI.L.J. 887] wherein a learned single Judge of the Gujarat High Court held that it is a disputed question of fact whether the items constitute Stridhan property or not and this question cannot be decided in exercise of powers under section 93 or while dealing with an application under section 125 of the Cr.P.C. The relevant observations of the Gujarat High Court are as follows:-

“5. Section 91 provides with powers of summoning and production of documents or other things. Sub-section (1) of Section 91 provides that whenever any Court or any officer-in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

6. A joint reading of Sections 91 and 93, Cr.P.C. clearly indicates that if the Court considers that production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry or trial or other proceedings it may issue summons to person in whose custody or possession such document or thing is expected to be and requiring him to produce such document or thing before the Court either by appearing in person or to produce it at the time and place stated in the summons. There is no whisper in the impugned order that it was necessary for the Magistrate or for the officer who passed the impugned order that production of Stridhan property was necessary for disposal of application u/S. 125, Cr.P.C.”

16. Reference may also be made to a Division Bench judgment of the Kerala High Court in **G. Subash Chandra Sabu v. H. Suresh Kumar, [2001 CRI.L.J. 3258]** wherein the Division Bench held as follows:-

“2. Petition filed before the Magistrate was under Sections 93 and 94 of the Code of Criminal Procedure. Section 94 deals with search of place suspected to contain stolen property, forged documents etc. The above section can be applied only when the Magistrate is, prima facie, satisfied after enquiring that there is reason to believe that any place is used for the deposit or sale of stolen property or forged document or other objectionable articles mentioned in the section. Here, admittedly, the above section is not applicable. Petition is not regarding searching a place where stolen or forged documents are kept. There is no material available for the Magistrate in this case to believe that any such place is used for such purpose and the matter is only under Section 244 stage.

3. xxx xxx xxx

Since no petition is filed under Section 91 or 92, admittedly, Section 93(1)(a) is not applicable. Section 93(1)(b) is also not applicable as it is applicable only when such documents are not known to be in the possession of any person and that is contrary to the averments in the petition itself. Then Section 91(1)(c) is relevant to a general search or inspection. It cannot be a fishy enquiry. Warrant under Section 91(1)(c) can be issued only with caution. Before issuing a warrant under Section 93(1)(c) there should be sufficient material for issuing such warrant.

xxx xxx xxx.”

17. Having settled the legal position, now each case will be dealt with separately.

CRL.PETN. NO. 33 OF 2014:

18. In this case, the wife (Smti. Swapna Choudhury) filed a petition under section 93 of the Cr.P.C. praying that search warrant be issued for recovery of Stridhan and articles belonging to her. In para-1 of the petition, it was mentioned that the petitioner had filed a complaint against the accused persons under Section 406/34 of IPC. The other allegations are that the husband and his other family members mistreated the wife, borrowed money from her and she had purchased a large number of goods for the household. She further stated that in June, 2009, i.e. about four years prior to the filing of this complaint which was filed in June, 2013, she had left her matrimonial home and was living with her brother. Her complaint was that her entire Stridhan was lying in her matrimonial home. She also alleged that the respondents are using the Stridhan which belonged to her. These are the only facts stated in the petition. No copy of the complaint allegedly filed under section 406 of IPC was attached. The orders on the complaint, if any filed, were not attached. There is not even an allegation in the petition under section 93 of Cr.P.C. that the respondents will not produce the goods if ordered by the Court to do so. Despite this, the learned Chief Judicial Magistrate (CJM) on 01-08-2013 passed an order issuing search warrant for recovery of the articles mentioned in the petition. This order was passed without notice to the private respondents. This order is illegal and not justified since there was no allegation that the husband would not produce the things. The Court also did not take into

consideration the fact that the wife had been living separately for four years and the Stridhan was still in the house of the husband. There was no material on record to show any emergency necessitating the issuance of an ex-parte order.

19. Here it would be pertinent to mention that the petitioner-wife had also filed a complaint under the Protection of Women from Domestic Violence Act, 2005. In that complaint, the Judicial Magistrate Ist Class, Agartala had passed a reasoned order on 24-01-2014 in C.R. 91 of 2013 in which the said Court had accepted that the goods mentioned in Schedule-A were Stridhan, but the Magistrate had held that the goods mentioned in Schedule-B were not the Stridhan. This was a reasoned order and despite such reasoned order having been brought to the notice of the learned Chief Judicial Magistrate, on 14-02-2014 he passed the impugned order totally bypassing the order passed by the Magistrate in exercise of the provisions of the Protection of Women from Domestic Violence Act, 2005.

20. It is, indeed, shocking that the Chief Judicial Magistrate even at this stage did not consider the fact whether any criminal case, inquiry or trial was, in fact, pending or not. He treated the proceedings under section 93 to be independent proceedings for recovery of the Stridhan which is totally against law. He ordered that even the articles mentioned in Schedule-B of the petition are the personal property of the petitioner-wife and directed that they also be seized and handed over to her. This portion of the order is

totally illegal and is, therefore, set aside. In view of the total lack of jurisdiction, the proceedings before the trial Court are quashed.

21. Sri P.K. Biswas, learned Sr. Counsel appearing for the respondent-wife, submits that since the goods mentioned in Schedule-B are in the custody of the wife, she may be permitted to remain in possession of the same till the title of the goods is decided between the parties.

22. I am afraid that this contention cannot be accepted. When the seizure is totally without jurisdiction, totally illegal and against all canons of procedure and law, then this Court cannot put its seal of approval on such an illegal Act. Therefore, the wife is directed to return the goods forming part of Schedule-B to the husband within 4(four) weeks from today on or before 25-12-2014.

CRL.PETN. NO. 50 OF 2014:

23. As far as Criminal Petition 50 of 2014 is concerned, the situation is even worse. In the petition under section 93 of Cr.P.C., it is only stated that the complainant is the wife of respondent Rupak Kumar Acharjee and the marriage was solemnized on 29-11-2012 and that during marriage the father of the complainant had given many articles including Colour TV, Refrigerator, Microwave etc. According to the complainant, the respondents demanded Rs.5,00,000/- and after this demand was not met, she was subjected to cruelty by her father-in-law. She has only stated that since 27-03-2013 she is staying with her parents and the Stridhan property which is lying with the respondents be searched,

seized and handed over to her. There is not even an allegation in this complaint that any criminal case wherein any inquiry or trial as envisaged under section 91 is to be conducted has been filed. Therefore, section 93 was not at all attracted in the facts of the present case. The procedure followed by the learned Court in this case also leaves much to be desired. On 09-06-2014, a petition under section 93 was filed for issuing search warrant to get back the Stridhan and other properties. The learned Court records that before passing any orders, it would be appropriate to call for a report from the O/C, R.K. Pur Police Station regarding the application filed by the petitioner for recovery of Stridhan properties. On the same day, the petitioner was also directed to serve notice upon the opposite parties in whose possession the Stridhan allegedly was. On the next day, i.e. 21-07-2014 the Court records that no steps have been taken for service of the opposite parties. The Court, however, perused the report submitted by the O/C, R.K. Pur Police Station and directed that search warrant be issued to recover the Stridhan properties as per report of I/O. If we go through the report of the I/O, he has only given a list of articles which were found in the house of Rupak Acharjee which included Colour TV, Refrigerator, Microwave, Grinding machine, Wooden cot, Godrej Steel Almirah, Sofa Set, Show case, Dressing table, Alna, Tea table, Mattress etc. These items would be found in any home. There is not a whisper in the report of the O/C of the police station as to how he has come to the conclusion that this is Stridhan. The Court also does not give a *prima facie* finding that this is Stridhan. There is no case pending. There is no allegation that the husband

will not produce the Stridhan, if asked to do so and the Court exercising some powers which according to it are vested under section 93 directs that the Stridhan properties be recovered. Once the Court had directed that notice be issued to the opposite parties and already a date of more than one month had elapsed, why should the Court have not ensured that the opposite parties are served before passing any order? There are no reasons given in the order. The order is wholly without jurisdiction. Therefore, I have no hesitation in setting aside this order. In view of the total lack of jurisdiction, the proceedings before the trial Court are quashed.

24. Both the petitions are, therefore, allowed in the aforesaid terms.

25. The Registrar General is directed to send a copy of this order to all the Officers in the Tripura Judicial Service to ensure that the law laid down in this judgment is followed in letter and spirit.

26. Send down the lower court records forthwith.

CHIEF JUSTICE