

23.11.2023
Item Nos.2 & 3
Ct. No.1
PG/KS

MAT 1231 of 2023
With
I.A. No. CAN 1 of 2023
Bidhan Chandra Kundu
Vs.
State of West Bengal & Ors.

With
MAT 1232 of 2023
With
I.A. No. CAN 1 of 2023
Bidhan Chandra Kundu
Vs.
State of West Bengal & Ors.

Mr. Dilip Kumar Samanta
Mr. B. P. Samanta
Ms. Tithi Paul
.....For the appellant

Mr. Suman Ghosh
Mr. Soumen Chatterjee
.....for the State in (**MAT 1231 of 2023**)
Sk. Md. Galib
Ms. Tanwishree Mukherjee
.....for the State in (**MAT 1232 of 2023**)

Mr. Debabrata Saha Roy
Mr. Neil Basu
Mr. Sankha Biswas
.....For the respondent nos.6 & 7

In Re. MAT 1231 of 2023

1. This appeal has been filed by the writ petitioner challenging the order dated 22nd June, 2023 in W.P.A. No.25568 of 2022. In the said writ petition, the writ petitioner had challenged the

notice issued under Section 91 of the Code of Criminal Procedure by the L.S.I. of the police, Burdwan Police Station on 16th November, 2022 on the ground that in terms of Section 91 of the Code of Criminal Procedure, it is only the O.C., who can issue notice and not any subordinate officer. The learned Single Bench took note of the submissions made on behalf of the State that in terms of Section 157 of the Code of Criminal Procedure, the O.C. is entitled to depute a subordinate officer to conduct investigation into the cognizable offences, if necessary and also referred to Regulation 255 of the Police Regulations of Bengal, 1943. Therefore, the Court came to the conclusion that there was no error in the stand of police issuing notice under Section 91 of the Code of Criminal Procedure.

2. After we have elaborately heard the learned advocates for the parties, we find that the reason for issuing notice under Section 91 of the Code of Criminal Procedure by the police is to collect information from the writ petitioner with regard to a money transaction. According to the respondent/police, the only document produced by the petitioner was a notarized document.
3. In our considered view, the matter is wholly of civil nature and the complaint ought not to have

been entertained and consequently, the question of issuance of any notice under Section 91 of the Code of Criminal Procedure does not arise.

4. Therefore, the appeal is disposed of by directing the respondent/police to refer the case as a mistake of fact/civil nature, leaving it open to the parties to agitate their rights before the appropriate forum.

In Re. MAT 1232 of 2023

5. In this appeal, the appellant had prayed for setting aside the notice issued under Section 91 of the Code of Criminal Procedure by the investigating office of Burdwan Police Station.
6. In M.A.T. 1231 of 2023, we have categorically held that the issue before the respondent/police in the nature of a complaint was purely of civil nature and the question of issuing the notice does not arise.
7. Accordingly, we have directed the police to refer the complaint as a mistake of fact/civil nature giving liberty to the complainant to approach the appropriate forum in accordance with law. Consequently, no separate orders are required in M.A.T. 1232 of 2023 in the light of the order passed in MAT 1231 of 2023.

8. Accordingly, the appeal stands disposed of.

9. No costs.

10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)