

22.06.2023
Court No.13
Item No.295
pk

WPA 25568 of 2022

**Bidhan Chandra Kundu
Vs.
State of West Bengal and Ors.**

Mr. Biswapriya Smant

... For the Petitioner.

Mr. Suman Ghosh,
Mr. Soumen Chatterjee

... For the State.

1. Affidavit of service filed in Court is taken on record.

2. The question that comes for consideration in the instant writ petition is as to whether a notice under Section 91 of the Cr. P. C., issued to the petitioner under the signature of a LSI of Police of the Bardhaman Police Station on 16.11.2022, is valid in the eye of law.

3. Counsel for the petitioner would argue that his client is the complainant and a notice under Section 91 of the Cr. P. C. can only be issued by the O. C. and not by any subordinate offices.

4. Counsel for the State relies upon Section 157 of the Cr. P. C. which empowers the O.C. to depute a subordinate officer to conduct investigation into cognizable offences, if necessary. He also relies upon Regulation 255 of the Police Regulation of Bengal, 1943 to support the delegation of power to the LSI

who issued the said notice under Section 91 of the Cr. P. C. There is some substance in the argument of the counsel for the State.

5. If the investigation itself can be delegated by the O. C. to a subordinate officer not less than the rank of S. I. of Police, this Court does not find any serious infirmity in the I.O. issuing the said impugned notice under Section 91 of the Cr. P. C. The same by itself cannot constitute any illegality or prejudice the petitioner. It may constitute a minor irregularity.

6. This Court is of the view that the said impugned notice issued to the petitioner who himself is a complainant, is required to be complied with if the petitioner is serious with his complaint and the FIR registered.

7. Counsel for the State explains that while the petitioner claims to have paid sums of money under an agreement for sale in instalments to the private respondents, the latter has denied receipt of such money. The I.O. had required the income tax return of the petitioner only for the purpose of ascertaining the veracity of payment by the petitioner to the private respondents.

8. This Court does not find any serious infirmity in the said impugned notice.

9. For the reasons stated herein above, the impugned notice under Section 91 of the Cr. P. c. does not call for interference.

10. The petitioner shall comply with the notice.

11. The report of the Police dated 22.06.2023 is kept with the record.

12. The writ petition is disposed of.

13. There will be no order as to costs.

14. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)