

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

W.P.A. 4032 of 2025

***Asipu Mohan Rao*
versus
The State of West Bengal & Ors.**

For the Petitioner : Mr. Amritam Mondal
Ms. Oindrila Ghosal
Mr. Tamal Singha Roy
Ms. Yamini Tiwari.

For the State : Mr. Sirsanya Bandopadhyay
Mr. Ritesh Kr. Ganguly.

For the Respondent no.5 : Mr. Ayan Bhattacharjee
Mr. Pratim Priya Dasgupta.

Heard On : 07.03.2025

Judgement On : 07.03.2025

Tirthankar Ghosh, J. :

Affidavit of service filed by the petitioner be kept with the record.

Petitioner is aggrieved by the order dated 30th September, 2024
passed in connection with Shakespeare Sarani P.S. Case No.146 dated

07.09.2024. Petitioner's principal grievance is that the private respondent no.5 was allowed for refund of money in respect of accounts which were frozen. According to the petitioner, the Investigating Officer gave no objection which was the consequence of the learned CJM, Calcutta passing an order. Additionally, it has been submitted that the investigation commenced with allegations of certain sum of money and the money which has been returned to the petitioner is much more than the subject matter of the allegations.

Learned advocate for the petitioner relies upon the judgment in *Kim Wansoo Vs. State of Uttar Pradesh & Ors.* reported in 2025 SCC OnLine SC 17. Emphasis has been made on paragraph 12 which reads as follows:

“12. On judging the case on hand with reference to the allegations extracted hereinbefore, in the light of the decisions referred supra, we have absolutely no hesitation to hold that the High Court clearly erred in refusing to exercise the extraordinary power under Article 226 of the Constitution of India to quash the subject FIR No. 64/2020 and all further proceedings in pursuance thereof, *qua* the appellant.”

Learned advocate for the respondent no.5 opposes the contentions and submits that the learned CJM, Calcutta after considering the submissions and only on bond has released the amount pending investigation.

Learned advocate for the respondent no.5 relies upon the judgment of the Hon'ble Supreme Court in Radhey Shyam & Anr. Vs. Chhabi Nath & Ors. reported in (2015) 5 SCC 423. Reference has been made to paragraphs 25 to 27 which read as follows:

“25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all the other courts having limited jurisdiction subject to the supervision of the King's Court. Courts are set up under the Constitution or the laws. All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil

court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression “inferior court” is not referable to the judicial courts, as rightly observed in the referring order [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] in paras 26 and 27 quoted above.

26. *The Bench in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Articles 226 and 227 was obliterated was not correct as rightly observed [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] by the referring Bench in para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including Waryam Singh v. Amarnath [(1954) 1 SCC 51 : AIR 1954 SC 215 : 1954 SCR 565] , Ouseph Mathai v. M. Abdul Khadir [(2002) 1 SCC 319] , Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] and Sameer Suresh Gupta v. Rahul Kumar Agarwal [(2013) 9*

SCC 374 : (2013) 4 SCC (Civ) 345] . In *Shalini Shyam Shetty* [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] this Court observed : (SCC p. 352, paras 64-67)

“64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675] and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the

amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time-honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly.”

27. *Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.”*

Learned Senior Standing Counsel appearing for the State submits that the investigation of the case is under progress, substantial

materials have been collected and the order so passed is a judicial order in course of investigation which is not subject to amenable under Article 226 of the Constitution of India.

Mr. Bandopadhyay in order to fortify his argument relied upon the judgment in the case of Naresh Shridhar Mirajkar Vs. State of Maharashtra reported in AIR 1967 SC 1. Reference has been made to paragraphs 8, 58, 60 and 62 which read as follows:

“8. The petitioner felt aggrieved by the said oral order passed by Mr Justice Tarkunde and moved the Bombay High Court by a Writ Petition No. 1685 of 1964 under Article 226 of the Constitution. The said petition was, however, dismissed by a Division Bench of the said High Court on 10th November, 1964 on the ground that the impugned order was a judicial order of the High Court and was not amenable to a writ under Article 226. That is how the petitioner has moved this Court under Article 32 for the enforcement of his fundamental rights under Article 19(1)(a) and (g) of the Constitution.

58. We have referred to these decisions to illustrate how the jurisdiction to issue writs of certiorari has been exercised either by the High Courts under Article 226 or by this Court under Article 32. Bearing these principles in mind, let us enquire whether the order impugned in the present proceedings can be said to be amenable to the jurisdiction of this Court under Article 32. We have already seen that the impugned order was passed by the learned Judge after

hearing the parties and it was passed presumably because he was satisfied that the ends of justice required that Mr Goda should be given protection by prohibiting the publication of his evidence in the newspapers during the course of the trial. This matter was directly related to the trial of the suit; and in exercise of his inherent power, the learned Judge made the order in the interests of justice. The order in one sense is inter-partes, because it was passed after hearing arguments on both the sides. In another sense, it is not inter-partes inasmuch as it prohibits strangers like the petitioners from publishing Mr Goda's evidence in the newspapers. In fact, an order of this kind would always be passed after hearing parties before the Court and would in every case affect the right of strangers like the petitioners who, as Journalists, are interested in publishing court proceedings in newspapers. Can it be said that there is such a difference between normal orders passed inter-partes in judicial proceedings, and the present order that it should be open to the strangers are who affected by the order to move this Court under Article 327. The order, no doubt, binds the strangers; but, nevertheless, it is a judicial order and a person aggrieved by it, though a stranger, can move this Court by appeal under Article 136 of the Constitution. Principles of res judicata have been applied by this Court in dealing with petitions filed before this Court under Article 32 in Daryao v. State of U.P. [(1962) 1 SCR 574] We apprehend that somewhat similar considerations would apply to the present proceedings. If a judicial order like the one with which we are concerned in the present proceedings

made by the High Court binds strangers, the strangers may challenge the order by taking appropriate proceedings in appeal under Article 136. It would, however, not be open to them to invoke the jurisdiction of this Court under Article 32 and contend that a writ of certiorari should be issued in respect of it. The impugned order is passed in exercise of the inherent jurisdiction of the Court and its validity is not open to be challenged by writ proceedings.

60. *The basis of Mr Setalvad's argument is that the impugned order is not an order inter-partes, as it affects the fundamental rights of the strangers to the litigation, and that the said order is without jurisdiction. We have already held that the impugned order cannot be said to affect the fundamental rights of the petitioners and that though it is not inter-partes in the sense that it affects strangers to the proceedings, it has been passed by the High Court in relation to a matter pending before it for its adjudication and as such, like other judicial orders passed by the High Court in proceedings pending before it, the correctness of the impugned order can be challenged only by appeal and not by writ proceedings. We have also held that the High Court has inherent jurisdiction to pass such an order.*

62. *Whilst we are dealing with this aspect of the matter, we may incidentally refer to the relevant observations made by Halsbury on this point. "In the case of judgments of inferior courts of civil jurisdiction", says Halsbury in the footnote, "it has been suggested that certiorari might be granted to quash them for want of jurisdiction [Kemp v. Balne, (1844) 1 Dow. &*

L. 885, at p. 887], inasmuch as an error did not lie upon that ground. But there appears to be no reported case in which the judgment of an inferior court of civil jurisdiction has been quashed on certiorari, either for want of jurisdiction or on any other ground [Halsbury Laws of England Vol 11, pp. 129, 130]”. The ultimate proposition is set out in the terms: “Certiorari does not lie to quash the judgments of inferior courts of civil jurisdiction”. These observations would indicate that in England the judicial orders passed by civil courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the jurisdiction to issue writs of certiorari.”

Having considered the submissions of the respective parties, I am of the view that since the police report was taken into account by the learned CJM, Calcutta while passing the order dated 30th September, 2024 in connection with Shakespeare Sarani P.S. Case No.146 dated 07.09.2024 corresponding to G.R. (S) No.843 of 2024, the provisions of Article 226 of the Constitution of India cannot be invoked in view of the alternative and efficacious remedy available under the law to the petitioner.

Accordingly, WPA 4032 of 2025 is dismissed.

There will be no order as to costs.

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

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)