Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

W.P.A. No. 12942 of 2025

Yamini Bhandari.
versus
The State of West Bengal & Ors.

For the Petitioner	:	Mr. Indranil Roy Choudhuri, Mr. S.N. Dhuria.
For the State	:	Mrs. Sabnam De Bardhan, Jr. Govt. Adv, Mrs. Kakali Naskar.
For Respondent nos. 5 & 6	:	Mr. Somporiyo Chowdhury, Mr. Raja Baliyal, Mr. Rajarshi Ganguly, Mr. Vidya Bhusan Upadhyay.

Heard On : 30.06.2025 & 11.07.2025.

Judgement On : 11.07.2025.

Tirthankar Ghosh, J. :

Petitioner has approached this Court for quashing of the notice issued under Section 91 of the Code of Criminal Procedure. Such notice was issued by the Investigating Officer of the case in connection with Ballygunge Police Station case no. 38 dated 20.03.2019. The main grievance of the petitioner is that the investigating officer did not have the authority to issue the notice under Section 91 of the Cr.P.C. for marking the accounts of Madhu Bhandari, PAN No. ADRPB4838K; Yamini Bhandari, PAN No. AESPB2498B; M/S. Anil Kumar Bhandari, PAN ADRPB4838K and M/S. Raylon Industries, PAN No.ADRPB4838K as debit freeze and the same having been illegally done without taking the proper recourse to law under Section 102 of the Code of Criminal Procedure, would entitle the petitioner to have access to her account as the investigating officer has exercised his powers illegally under Section 91 of the Code of Criminal Procedure. To that effect learned advocate has drawn the attention of the Court to the provisions of Section 91 of the Code of Criminal Procedure which is set out 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.*
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> *(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.*
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> *(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."

In order to substantiate his argument learned advocate has relied upon the judgment of the Hon'ble Himachal Pradesh High Court in Aeronfly International Private Limited –Vs. – State of Himachal Pradesh and Ors. (Cr.MMO No. 533 of 2024), reference has been made to paragraph 25 and 26 which are set out as follows:

"**25.** *Admittedly, in the case at hand, Cyber Cell, Kullu, straightaway, without ascertaining the factual position, issued notice to ICICI Bank, Kullu, to debit freeze the account of the petitioner-company that too by issuing notice under Section 91 Cr.P.C., which does not empower the Investigation Officer to order debit freeze of bank account. There is nothing to suggest that at any point of time, Cyber Cell approached competent Court of law under Section 102 Cr.P.C. for ordering freezement of the bank account of the petitioner and there is no order in that regard, if any, passed by the Magistrate. Though, Mr. Rajan Kahol, learned Additional Advocate General, argued that there is procedural lapse, which can be ignored, but afore submission of learned Additional Advocate General is totally contrary to record. At no point of time, process, if any, ever came to be initiated at the behest of Investigating Officer to start process against accused under Section 102 Cr.P.C., rather Investigating Officer itself without there being any* *authority of law proceeded to order debit freeze of the account of accused under Section 91 Cr.P.C, which was not permissible.*

*26. Consequently, in view of the above, present petition is allowed and notice under Section 91 Cr.P.C., dated 14.05.2024, issued by Incharge, Cyber Cell Kullu, District Kullu, Himachal Pradesh to Manager, ICICI Bank, Kullu, District Kullu, Himachal Pradesh, is quashed and set aside. The petition stands disposed of in the aforesaid terms, along with all pending applications, if any.***"**

Reference has also been made to the judgment of the Hon'ble Karnataka High Court in Writ Petition no. 7604 of 2023 (M/s Lightoo Technologies Private Limited –Vs. – State of Karnataka & Ors.) and attention of the Court is drawn to paragraph 9 which reads as follows:

"9.** It becomes clear that the account of the petitioner is debit frozen invoking power under Section 91 of the Cr.P.C. On the very perusal of Section 91 of the Cr.P.C., such power is unavailable to the Investigating Officer, it cannot be under Section 91 of the Cr.P.C., but could be under Section 102 of the Cr.P.C. As far as the power under Section 102 of the Cr.P.C. concerned, the initiated under Section 102 of the Cr.P.C. and no record to demonstrate intimation to the Magistrate, as required under Section 102(3) of the Cr.P.C. Therefore, the impugned communication is rendered unsustainable."**

Additionally, petitioner in order to fortify his argument has referred to the judgment of the Madras High Court in WPA 21344 of 2022 (Sahil Raj –Vs. – The State of Tamil Nadu & Ors.) and attention of the Court is drawn to paragraphs 7 and 8 which states as follows:

> ***"7.*** *Thus, it is clear that the first respondent has no jurisdiction. In the summons issued under Section 91 of Cr.P.C., the investigation officer summons the person to produce the document or other things. On the summons issued under Section 91 of Cr.P.C., account cannot be freezed. That apart, the first respondent failed to comply with the procedure as contemplated under Section 102(3) of Cr.P.C. Admittedly the first respondent failed to inform the freezing of the petitioner's account to the concerned jurisdictional Magistrate even till now. However, the petitioner himself admitted that he placed order of purchase of USDT (virtual digital asset in the form of crypto currency) from a user named Raj Ghosh on 21.10.2021. He also had made a payment of Rs.89,000/- to his HDFC Bank current account.*
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> ***8.*** *In view of the above, the petitioner is directed to deposit a sum of Rs.89,000/- in the form of fixed deposit in favour of crime No.33 of 2021 on the file of the first respondent and on such deposit, the third respondent is directed to permit the petitioner to operate his Account No.10074558873 IFSC: IDFB 0020109, Karol Bagh Branch, IDFC First Bank. Insofar as the notice under Section 41-A of Cr.P.C., now the date of enquiry has expired. However, the first respondent is directed to issue fresh notice after compliance of the procedure laid down under Section 41- A of Cr.P.C. for enquiry."*

Learned advocate appearing for the State has referred to the report of the Officer-in-Charge of Ballygunge Police Station which reflects that the investigation in connection with the Ballygunge P.S. Case no. 38 dated 20.03.2019 after conclusion has resulted in submission of charge-sheet before the jurisdictional Court on or about 09.05.2022.

Learned advocate appearing for the respondent nos. 5 and 6 submits that in connection with the same case earlier another accused approached before the Coordinate Bench in WPA 17008 of 2023 wherein the Coordinate Bench was pleased to hold as follows:

> *".......It appears that the bank accounts, fixed deposits were frozen in connection with a criminal case, which is pending at the stage of framing of charge. There is an order of rejection dated 29.09.2022 by which the petitioner's prayer for defreezing of the accounts was rejected by the learned Trial Court. The petitioner could have challenged the same before the appropriate forum. Approaching the police after all these is a futile exercise......"*

I have considered the submissions of all the parties and I find that the criminal case was initiated in the year 2019, such notice under Section 91 of the Cr.P.C. was issued in the year 2022 and the charge-sheet was submitted before the jurisdictional Court also in the year 2022. The charges in the case have remained unchallenged. Once the police authorities have submitted their charge-sheet under the relevant provisions of Section 420/406/467/468/471/120B of the Indian Penal Code, prima facie the investigating authorities have come to a conclusion that there has been a case of cheating, criminal breach of trust and forgery. No case has been made out before this Court that the subject matter so far as the merits of the cases are concerned relating to the amount which has been frozen are not subject matter of a case of misappropriation, cheating or forgery. Since the case is at the stage of framing of charges as is reflected from the order passed in WPA 17008 of

2023 (although Mr. Chowdhury, learned advocate appearing for the respondent nos. 5 & 6 submits that the charges have been framed), I am of the view that the action of the police authorities and the relevancy of the notice at this stage is completely diluted. The criminal Court/jurisdictional Trial Court is already in seisin of the issue, once the statutory Court takes cognizance of the offence the veracity of the notice which was issued in course of the investigation becomes diluted. Needless to state that judgments are not statutes and are to be read in the backgrounds of the fact of each and every case.

Having considered that the Coordinate Bench has already directed the learned Trial Court to consider and the trial Court being already in seisin of the issue, I am of the view that at this belated stage the veracity of the notice which has been issued by the investigating officer and the applicability of the section has become redundant to be considered. Petitioner at this stage is supposed to show that the subject matter of the case pending before the learned trial Court has no relation with the accounts concerned which have been frozen in course of the investigation. Until and unless the petitioner is able to overcome such threshold it would not be possible for a Court of law to asses, appreciate and arrive at a conclusion regarding the de-freezing of the accounts which are presently the subject matter of the case pending before the Court.

Considering the aforesaid, I find that the judgments which have been relied upon by the petitioner are not applicable to the facts of the present case as the stage at which those cases were considered, were completely different from the stage of the present case.

In view of the aforesaid the writ petition being WPA 12942 of 2025 is dismissed.

Report so submitted by the State be kept with the report.

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

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

(Tirthankar Ghosh, J.)