

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 5667 OF 2019

Sanjiv G. Punalekar.

...Petitioner.

Versus

Central Bureau of Investigation
and Another.

..Respondents.

Mr. Subhash Jha, Ghansyam Upadhyay, Nilesh C. Ojha, Vijay Kurle, Ratnesh Mishra, Abhishek Mishra, Sailendra Dubey, Shivam Mehra, Mansi Jain, Mangesh Dongre, Ganesh Selke, Dipali Ojha i/b M/s. Law Juris for the Petitioner.

Mr. S. S. Hulke, APP for the Respondent-State.

Coram : **RANJIT MORE &M. S. KARNIK, JJ.**

Closed for orders : **November 27, 2019.**

Order pronounced : **December 10, 2019.**

P. C. :

1. The basis for filing this Criminal writ petition is the order passed by learned Single Judge of this Court recusing from the hearing of anticipatory bail applications filed on behalf of some accused. It is alleged that the accused are responsible for the death of the labourers who died when the slab of upper floor of an under-construction building collapsed.

2. In the order of recusal it is mentioned that every possible attempt was made to influence the Court and hence the

the Judge recused from hearing of applications.

3. We have heard learned counsel appearing on behalf of the Petitioner. The petition seeks a direction to set the criminal law into motion to investigate and register criminal case under the relevant provisions of law against those who tried to influence the concerned Judge. Learned counsel invited our attention to the various provisions of Prevention of Corruption Act, 1988 and also the Indian Penal Code, 1860 in support of his submission that a cognizable case is made out and therefore an investigation is necessitated. It is also his case that law casts an obligation on all concerned to report a cognizable case and failure to do so invites legal consequences. He would rely upon the following decisions in support of his contentions.

(i) Manohar Lal v/s. Vinesh Anand and others - (2001)5 SCC 407.

(ii) Mrs. Nirmal Yadav v/s. Central Bureau of Investigation and another, 2011 SCC OnLine P&H 15415 : (2011) 4 RCR (Cri) 809.

(iii) Sanjay Dinanath Tiwari v/s. Director General of Police (Anti Corruption) & ors. - 2012 SCC OnLine Bom 259

(iv) Criminal Revision Application No. 389 of 2009 of Bombay High Court - Central Bureau of Investigation, Bank Securities & Fraud Cell, Mumbai vs. Shri Sham B.

Bhatia & ors.

4. The legal position canvassed by Shri Jha, learned counsel for the Petitioner is well-settled. However, in our opinion the decisions relied upon by the learned counsel will not apply in the facts of the present case. The present writ petition, according to us, is completely misconceived and untenable.

5. Hearings in the Courts of law have to be impartial and free from bias to maintain the purity of administration of justice. The legal position as it exists does not mandate a Judge to record reasons for recusal. During the course of hearing of the anticipatory bail applications, an order of recusal was made by the learned Judge. The order records that every possible attempt was made to influence the Court. Though the learned Judge was not obliged to record reasons for recusal, some observations stated above were made in the order. These observations are obviously made in the context of passing an order of recusal and the same cannot be read out of context.

6. That apart, "*influence*" always need not be read as

that one for pecuniary or any advantage in kind. It could also be negative, in a sense it to see that a particular bench / Judge does not hear the matter and the purpose would be achieved. It could also mean that no known person might have approached directly, because the words used in the said order are only "*attempt to influence*" and therefore it could mean that it was remotely done without the knowledge of the Judge and the particular Judge learnt about it from reliable sources. Under this circumstance it could be in the interest of justice for the Judge to recuse from the matter. In any case, the matter was transferred to another bench and therefore it cannot be said that the case for CBI enquiry is made out.

7. Learned counsel wants us to read so much into the order and proceed on the footing that a cognizable case is made out on the basis of the observations made in the order. However, it is not possible for us to accept the submission of the learned counsel for the petitioner that based on some observations made in the recusal order passed by learned Judge would give public interest cause to the petitioner to set the criminal law into motion. The entire edifice of our legal system stands on faith and

trust reposed by the litigants on the Judges to administer justice impartially without fear or favour. We also do not appreciate the public interest which the petitioner wants to espouse in the present writ petition, where the concerned Court could always report a cognizable case if there happens to be one. Resort to filing a criminal writ petition therefore cannot be the remedy.

8. In view of what is stated above, we find no substance in the submissions advanced by the learned counsel for the Petitioner. The petition being devoid of merit, is dismissed with no order as to costs.

[M. S. KARNIK, J.]

[RANJIT MORE, J.]