



INDIAN BAR ASSOCIATION

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GRIEVANCE NO: PRSEC/E/2019/01563

Date: 23st January, 2019

To,

Hon'ble Chief Justice Bombay High Court

Subject : Direction to not to place my any matter before Shri. Justice K.K. Tated in view of law laid down by Hon'ble Supreme Court in **Devender Pal Singh Bhullar 2011 14 SCC 770** is applicant lost complaint for prosecution against them.

Ref: Case Number **PRSEC/E/2019/01563** filed before Hon'ble President of India.

May it please your honour;

1. The undersigned have filed a complaint before Hon'ble President of India and Hon'ble Chief Justice of India for initiating Criminal Prosecution, Contempt Proceeding against Shri. Justice K. K. Tated, B. P. Colabwalla and N.J. Jamadar.
2. That a copy of said complaint is also given to Your Honour's office. **A copy is Annexed** herewith.
3. The sanctioning authority for prosecution of High Court Judges is Hon'ble President of India.
4. The applicant's case before Hon'ble President of India is been registered as **PRSEC/E/2019/01563**
5. That under the circumstances it will not be proper for me to appear before the aforesaid Judges and also there is a fear of injustice in the mind of Applicant.
6. Hon'ble Supreme Court in State of **Punjab Vs. Davinder Pal Singh**

Bhullar and Ors (2011) 14 SCC 770 it is ruled as under ;

Constitution of India, Article 226 - BIAS- allegations made against a Judge of having bias - High Court Judge in order to settle personal score passed illegal order against public servant acted against him - Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order etc.

stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial "coram non-judice". - Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as "sua causa. Whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one - No one should be Judge of his own case. This principle is required to be followed by all judicial and quasi-judicial authorities as non-observance thereof, is treated as a violation of the principles of natural justice. The failure to adhere to this principle creates an apprehension of bias on the part of Judge.

7. Division Bench of Hon'ble Bombay High Court in **Suresh Ramchandra Palande and Ors. Vs. The Government of Maharashtra and Ors. 2016 (2) ALL MR 212** it is ruled as under ;

JUDICIAL BIAS AND DISQUALIFICATION OF A JUDGE TO TRY THE CASE - Held, *It is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias- No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially - a person,*

trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias - if a man acts as a judge in his own cause or is himself interested in its outcome then the judgment is vitiated- A judgment which is the result of bias or want of impartiality is a nullity and the trial ' coram non iudice'.

Justice should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in courts of law are open to the public - a person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially. No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially. The broad principle evolved by this Court is that a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias - Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome.

8. Hon'ble Supreme Court in the case of **P.K. Ghosh Vs. J.G.Rajput AIR 1996 SC 513** it is ruled as under;

Request for recusal by Judge - Constitution of Bench - Objection as to hearing of Contempt petition by a particular Judge - Failure to recuse himself is highly illegal - order vitiated - The response given by B. J. Shethna, J. to Chief Justice of India indicated his disappointment that contempt proceedings were not initiated against the appellants for raising such an objection. The expression of this opinion by him is even more unfortunate.

In the fact and circumstances of this case, we are afraid that this facet of the rule of law has been eroded. We are satisfied that B. J. Shethna, J., in the facts and circumstances of this case, should have recused himself from hearing this contempt petition, particularly when a specific objection to this effect was taken by the appellants in view of the respondent's case in the contempt petition wherein the impugned order came to be made in his favour. In our opinion, the impugned order is vitiated for this reason alone.

Learned Chief Justice of India apprised B. J. Shethna, J. of this allegation to elicit his comments - Letter sent by B. J. Shethna, J. to the Chief Justice of India in this connection are on record. In none of these letters, the basic facts relevant in the present context have been defined and the tenor of both the letters indicates, unfortunately, an attempt to justify the course adopted by B. J. Shethna, J. of hearing the contempt petition and making the impugned order in spite of the above objection expressly taken to his presence in the Bench which heard the contempt petition - These letters also indicated his disappointment that contempt proceedings were not initiated against the appellants for raising such an objection. The expression of this opinion by him is even more unfortunate.

In view of the fact that B. J. Shethna, J. has since then been transferred from the High Court of Gujarat to the High Court of Rajasthan, it is needless to direct that the matter be now heard in the High Court of Gujarat by a Bench of which he is not a member.

We are indeed sad that in these circumstances, B. J. Shethna, J. persisted in hearing the contempt petition, in spite of the specific objection which cannot be called unreasonable on the undisputed facts, and in making the impugned order accepting prima facie the respondent's above noted contention. The more appropriate course for him to adopt was to recuse himself from the Bench hearing this contempt petition, even if it did not occur to him to take that step earlier when he began hearing it. It has become our painful duty to emphasise on this fact most unwillingly. We do so with the fervent hope that no such occasions arise in future which may tend to erode the credibility of the course of administration of justice.

Ensuring credibility and impartiality of judiciary - Litigant having reasonable basis to expect that practitioner Judge should not hear his matter - Judge should rescue himself from Bench - learned Chief Justice

of India apprised B. J. Shethna, J. of this allegation to elicit his comments..

A basic postulate of the rule of law is that 'justice should not only be done but it must also be seen to be done'. If there be a basis which cannot be treated as unreasonable for a litigant to expect that his matter should not be heard by a particular Judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should rescue himself from the Bench hearing that matter. This step is required to be taken by the learned Judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge, may be subconsciously, has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party. Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done. (Para 9)

9. Therefore in the interest of justice and in view of law laid down by Hon'ble Supreme Court and also to avoid embarrassing situation to both the parties it is just an necessary that my matters should not be heard by the opposite Judges.

10. **Request :**

A) It is therefore humbly prayed that appropriate direction be given to registry to not to place my any matter/case before the Hon'ble Bench of which Hon'ble Judges Shri. K. K. Tated, Shri. B. P. Colabwalla, Shri. N. J. Jamadar are members.

B) Further direction be given to Hon'ble Judges Shri. K.K. Tated, B.P. Colabwalla and N.J. Jamadar to recuse themselves from my cases in view of law laid by Hon'ble Supreme Court in the case of **P.K.GHOSH VS. J.G. RAJPUT AIR 1996 SC 513**

Copy To:

1. Hon'ble Chief Justice of India

For information & necessary action.

Copy also given to

1. **SHRI. JUSTICE K. K. TATED**
2. **SHRI. JUSTICE B. P. COLABWALLA**
3. **SHRI. JUSTICE N. J. JAMADAR**

THROUGH REGISTRAR GENERAL, BOMBAY HIGH COURT

Adv. Vijay S. Kurle

(President: Maharashtra & Goa)

Indian Bar Association