

HIGH COURT OF CALCUTTA**Bench : Hon'ble Justice Ajay Kumar Gupta****Date of Decision: May 8, 2024**

CRAN 5 of 2024

C.R.R. 1700 of 2022

Soumendra Kumar Biswas ...PETITIONER**VERSUS****The State of West Bengal & Anr. ...RESPONDENT(S)****Legislation:**

Sections 420, 406, 120B, 506 of the Indian Penal Code, 1860

Section 178 of the Criminal Procedure Code, 1973

Subject: Request for recusal of the current bench hearing a criminal revisional application concerning financial fraud allegations against IFB Finance Limited and its executives.

Headnotes:

Criminal Law – Application for Judge’s Recusal – De facto complainant, Sheshadri Goswami, requests the recusal of the current bench and reassignment to Hon’ble Justice Tirthankar Ghosh, who previously handled a related matter – Goswami alleges poor handling of a financial fraud case involving a company where he represents 17 victim investors – Initial FIR filed on 14th August 2015 in Shakespeare Sarani Police Station under various sections of IPC – Final report by police finds no prima facie material against accused, accepted by the Magistrate without hearing complainant, leading to current revisional application – Hon’ble Justice Gupta denies the recusal request, stating judicial procedure and integrity must not cater to parties selecting preferred judges for their cases – Recusal denied based on

principles of judicial conduct, impartiality, and maintenance of judicial independence. [Paras 1-26]

Decision: Recusal Request Denied – Justice Gupta emphasizes the importance of the Chief Justice’s role in assigning cases to ensure fair judicial process and prevent ‘forum shopping’ – Case to proceed under the current bench, with a hearing scheduled post-summer vacation on 12th June 2024. [Paras 23-26]

Referred Cases:

- Supreme Court Advocates-on-Record Association and Another Vs. Union of India (Recusal Matter); (2016) 5 SCC 808;
- R. K. Anand Vs. Registrar, Delhi High Court with I. U. Khan Vs. Registrar, Delhi High Court; (2009) 8 SCC 106;
- Indore Development Authority (Recusal Matter -5 J.) Vs. Manohar Lal and Others. (2020) 6 SCC 304.

Representing Advocates:

For the Petitioner: Mr. Ayan Bhattacharya, Adv., Ms. Moumita Ghosh, Adv.

For the Respondent: Mr. Rudradipta Nandy, Adv., Ms. Sanjana Saha, Adv.

De-facto Complainant/Opposite Party No. 2 (In person): Mr. Sheshadri Goswami

Ajay Kumar Gupta, J:

1. This instant application has been filed by the opposite party no. 2/de-facto complainant, Sheshadri Goswami, appearing in person praying for appropriate order or orders to release or seeking recusal from hearing of the case C.R.R. 1700 of 2022 by this Bench.
2. It was submitted by the opposite party no. 2 that he is representing 17 persons, who are poor investors. All the investors including the petitioner had invested their hard earn money to the company namely IFB Finance Limited

in the year 1996 and thereafter. Even after maturity, the said finance company neither returned the principal nor interest accrued therein of their fixed deposit. All the investors are the victims as such a letter of complaint was filed by the opposite party no. 2 before the Special Additional Commissioner of Police, Joint Commissioner of Police (Crime), Detective Department, Lalbazar, Kolkata. On the basis of said written complaint, an FIR being Shakespeare Sarani Police Station Case No. 287 dated 14th August, 2015 under Sections 420/406/120B/506 of the IPC has been registered and started against three accused persons (i) Mr. Bijon Nag, Chairman and Managing Director, IFB Finance Limited (ii) Soumendra Kr. Biswas (petitioner herein), Executive Managing Director and (iii) N. Punyaswami, Managing Director of IFB Group of Companies such as IFB Industries Limited, IFB Agro Industries Limited, IFB Finance Limited. After conclusion of investigation, the investigating officer has submitted a final report concluding therein that there is no prima facie material established against the accused persons as the allegation of the de-facto complainant appears to be case of civil in nature. The said final report was accepted by the jurisdictional Magistrate holding therein that the complainant did not appear while hearing in spite of service of notice.

3. Being aggrieved by and dissatisfied with the said acceptance of final report without applying judicious mind and also not providing opportunity of hearing to the opposite party no. 2 at the time of accepting such final report, the opposite party no. 2 filed revisional application being CRR 646 of 2018 (Sheshadri Goswami Vs. The State of West Bengal & Anr.) before the Hon'ble High Court at Calcutta. The said case was heard by a co-ordinate Bench and finally disposed of on 28.04.2022 giving an opportunity to the opposite party no. 2 herein to file an appropriate application under Section 178 of the Cr.PC before the jurisdictional Court and further directed to hear the said case and concluded the same by 20th of May, 2022. After filing of the application before the jurisdictional Magistrate, the present petitioner, at the same time, filed this instant revisional application praying for seeking necessary direction/directions as prayed for in connection with G.R. No. 1881 of 2015 arising out of Shakespeare Sarani Police Station Case No. 287 of 2015 dated August 14, 2015 under Sections 420/406/120B/506 of the Indian Penal Code, 1860 pending before the Court of the Learned Chief Metropolitan Magistrate at Calcutta.

4. It is further submitted that earlier revisional application filed by the opposite party no. 2 was heard by Hon'ble Justice Tirthankar Ghosh, who is very much well aware and conversant with the facts of the case. Even knowing the said facts, the petitioner is trying to stop the proceeding by hook or crook taking the advantage that the opposite party no. 2 is poor. This instant matter had been mentioned before this Court without prior giving any notice or informing the applicant/de-facto complainant. This matter should have appeared before the Hon'ble Justice Tirthankar Ghosh for its disposal.
5. It was further submitted that a letter for assignment of this matter has been made before the Hon'ble the Chief Justice, High Court Calcutta on 3rd January, 2024.
6. In view of the aforesaid facts, he wanted to be release or seeking recusal of this Bench from hearing the instant case. So, this matter may be heard by Hon'ble Justice Tirthankar Ghosh for quick and effective disposal.
7. Per contra, the learned counsel appearing on behalf of the petitioner strongly opposed the prayer of the opposite party no. 2. It is submitted that the opposite party no. 2 earlier filed application and supplementary affidavit praying for recusal of this case from this Bench but the said application and supplementary affidavit were not in proper form. Accordingly, this Bench has been pleased to grant leave to the applicant to file appropriate application supported by an affidavit indicating therein the reasons for seeking recusal of the matter from hearing by this Bench. The recusal application is nothing but a subterfuge which indulges in floodgates of forum shopping. This recusal application by its very nature without any valid reasons is totally interference with the administration of justice and casting doubt about the impartiality of the Judge is tantamount to contempt of Court. Freedom of recusal is upon the Judges, who are seisin of the matter for His Lordships' personal reason or some other reasonable ground. It should not to be the choice of the litigants.

8. Applicant wants to choose his arbitrator according to his own choice, which is impermissible in law though he knows this Bench has determination to hear this matter. Without any valid reasons or grounds, seeking recusal from a Bench, who has determination to hear, is clear interference with the administration of justice and to disturb the process of Court proceeding. It has been made with an ulterior motive and oblique purpose to avoid this Bench.
9. It is vehemently argued that every Judge of the High Courts or Supreme Court should be above impartiality, unfairness or bias. It is not the procedure of the High Court that if one Judge has taken earlier matter and disposed of, that similar Judge will take up the subsequent matter arises from similar proceeding even having no determination.
10. It is the procedure of the High Court that the Hon'ble the Chief Justice prepared the roster of determination time to time for disposal of the cases by the different Judges. The roster making power is bestowed on the Chief Justice of India so that litigants are not able to choose the Judges before whom they have to argue the matter according to their choice. His Lordship is a constitutional functionary who has been enjoined with the tasks at the highest pedestal to exercise the power of roster making. His Lordship is repository one's faith and once exercised the power. It is not for the Judges to choose their determination.
11. Learned Counsel appearing on behalf of the Petitioner further submitted that in view of the oath, taken by the Judges, they have to discharge their duties without fear, favour and in a dispassionate manner without any ill will and bias towards any litigant or cause save and except the Hon'ble Judge has expressed any view that the matter should not be heard by the Bench on his personal reasons or any other reasonable grounds.
12. The allegations levelled by the opposite party no. 2 is that he was not informed about the listing of this matter is false. The applicant had been informed after mentioning the matter before the Bench through email as this Bench has determination to hear the matter. Accordingly, he prays for rejection of such prayer with exemplary costs and further prays for issuing contempt rule

against him since the act of the opposite party no. 2/applicant herein is squarely falls within the scope and ambit of the Contempt of Court Act, 1971.

13. Learned Advocate further places reliance of judgments to bolster his aforesaid contentions as under:

i). Supreme Court Advocates-on-Record Association and Another Vs. Union of India (Recusal Matter)¹;

ii). R. K. Anand Vs. Registrar, Delhi High Court with I. U. Khan Vs. Registrar, Delhi High Court²

iii). Indore Development Authority (Recusal Matter -5 J.) Vs. Manohar Lal and Others³.

14. Learned counsel appearing on behalf of the State submitted in the same fashion as submitted by the learned counsel appearing on behalf of the petitioner and prayed for rejection of the prayer made by the opposite party no. 2.

15. Having heard the rival submissions, this Court finds the opposite party no. 2 is a de-facto complainant of the proceeding arising out of a Shakespeare Sarani Police Station Case No. 287 dated 14th August, 2015 under Sections 420/406/120B/506 of the IPC. He is one of the investors of fix deposit to an alleged IFB company. He has several allegations including that the said company did not pay his principal and interest accrued therein after maturity period. The said proceeding is still pending before the Jurisdictional Magistrate for adjudication.

¹ (2016) 5 SCC 808;

² (2009) 8 SCC 106;

³ (2020) 6 SCC 304.

16. This Court has not gone into the merit of the case since the preliminary prayer of the opposite party no. 2 is for release or recusal of this matter by this Bench. That is required to be decided.
17. During argument, the opposite party no. 2 did not raise any objection with regard to impartiality, biasness and unfairness by this Bench. Be that as it may, after hearing his submission, it reveals that his intension is that the matter should be heard by a co-ordinate Bench specially by Hon'ble Justice Tirthankar Ghosh, who had heard the earlier criminal revisional application, filed by the opposite party no. 2 and disposed of the same on 28.04.2022. It appears his intention is not bad or mala fide but he wants to hear the matter by the same Judge, who had dealt and has knowledge or conversant with the facts of this case. But that is not permissible either in law or in Court's procedure. It is prerogative of the Hon'ble the Chief Justice to make a roster for Judges as per determination. As per determination, cases automatically transfer from one Bench to another but it is not the practice of this High Court that the similar Judge can hear every matter arises from the similar proceeding even when earlier application or matter was disposed of by that Bench.
18. It is admitted facts that the opposite party no. 2 had received email on the same day prior to listing of the matter before this Bench. However, the applicant tries to seek recusal from hearing by this Bench. It will be unscrupulously taking over the roster making power of the Hon'ble the Chief Justice, would tantamount to interference with the judicial system and further interference of administration of justice, which is itself is a Court of contempt. The petitioner is very well known that the Hon'ble Justice Tirthankar Ghosh has no determination to hear this matter. Determination to hear this matter is with this Bench.
19. It has been informed that during pendency of this case before this Bench, the applicant/opposite party no. 2 made a prayer before the Hon'ble Justice Tirthankar Ghosh without informing the petitioner but the Honb'le Justice did not accept his prayer since His Lordship cannot hear this matter. In addition, the applicant further applied in writing before the Hon'ble the Chief Justice for

assignment of this matter on 24.11.2023 vide docket no. 2497/23 but despite of expiry of several months, no prayer for assignment has been allowed.

20. This Court also does not find any sufficient or cogent reasons to release or recuse from hearing this instant matter. If such prayer is allowed in a casual manner or without justified reasons, then it would be a precedent and judicial independence would be in danger. The parties should not have opportunity to choose Bench on their wishes.
21. In such a situation, if the litigants are given the right for seeking recusal of a Judge only on his own caprice and desire, this would open the forum shopping and Bench hunting without any valid reasons and it would definitely affect the confidence of common people on the judicial system. It is the duty of a Judge to hear every matter placed before him without fear or favour or ill will and a Judge must never recuse himself on mere asking of a litigant, unless justified with cogent and reasonable grounds.
22. The Hon'ble Supreme Court has enumerated the principles of automatic disqualification from hearing the case in a judgment referred by the Petitioner in Sl. No. (i) above as under: -

“25.1. If a Judge has a financial interest in the outcome of a case, he is automatically disqualified from hearing the case.

25.2. In cases where the interest of the Judge in the case is other than financial, then the disqualification is not automatic but an enquiry is required whether the existence of such an interest disqualifies the Judge tested in the light of either on the principle of “real danger” or “reasonable apprehension” of bias.

25.3. The Pinochet case [R. v. Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No. 2), (2000) 1 AC 119 : (1999) 2 WLR 272 : (1999) 1 All ER 577 (HL)] added a new category i.e. that the Judge is automatically disqualified from hearing a case where the

Judge is interested in a cause which is being promoted by one of the parties to the case”

In the same judgment, the Hon’ble Supreme Court further held in paragraphs 70 and 77 as under:-

“70. Guidelines on the ethical conduct of the Judges were formulated in the Chief Justices’ Conference held in 1999 known as “Restatement of Judicial Values of Judicial Life”. Those principles, as a matter of fact, formed the basis of “the Bangalore Principles of Judicial Conduct, 2002” formulated at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague. It is seen from the Preamble that the Drafting Committee had taken into consideration thirty-two such statements all over the world including that of India. On Value 2 “Impartiality”, it is resolved as follows:

“Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made. Application:

2.1. A Judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2. A Judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the Judge and of the judiciary.

2.3. A Judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the Judge to be disqualified from hearing or deciding cases.

2.4. A Judge shall not knowingly, while a proceeding is before, or could come before, the Judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the Judge make any

comment in public or otherwise that might affect the fair trial of any person or issue.

2.5. A Judge shall disqualify himself or herself from participating in any proceedings in which the Judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the Judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 the Judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2 the Judge previously served as a lawyer or was a material witness in the matter in controversy; or

2.5.3 the Judge, or a member of the Judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a Judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

77. The above principles are universal in application. Impartiality of a Judge is the sine qua non for the integrity institution. Transparency in procedure is one of the major factors constituting the integrity of the office of a Judge in conducting his duties and the functioning of the court. The litigants would always like to know though they may not have a prescribed right to know, as to why a Judge has recused from hearing the case or despite request, has not recused to hear his case. Reasons are required to be indicated broadly. Of course, in case the disclosure of the reasons is likely to affect prejudicially any case or cause or interest of someone else, the Judge is free to state that on account of personal reasons which the Judge does not want to disclose, he has decided to recuse himself from hearing the case."

The Hon'ble Supreme Court has further held in paragraphs 31 and 40 in a judgment referred by the Petitioner in Sl. No. (iii) above as under: -

“31. Recusal has been prayed for on the ground of legal predisposition. Where recusal is sought on the ground, various questions arise for consideration. Firstly, legal predisposition is the outcome of a judicial process of interpretation, and the entire judicial system exists for refining the same. There is absolutely nothing wrong in holding a particular view in a previous judgment for or against a view canvassed by a litigant. No litigant can choose, who should be on the Bench. He cannot say that a Judge who might have decided a case on a particular issue, which may go against his interest subsequently or is part of a larger Bench should not hear his case. Furthermore, if a party or his counsel can at length argue on the question of recusal of the Judge before him, he can also successfully question the correctness of a judgment rendered by him. A litigant has got the right to make arguments which suit his cause before a Judge/Judges having taken a contrary view earlier. Moreover, if it is open to one litigant to seek recusal and recusal is permitted, then the right has to be given to the opposite party to seek recusal of a Judge who may have decided a case against his interest. In case it is permitted to either side, that would end judicial independence. Then parties will be choosing Benches to their liking. In that case, the Judges holding a view can be termed to be disqualified. In case the submission of recusal is accepted, the Judges having either side view, cannot hear the matter and have to recuse from hearing. In that case to find neutral Judges would be difficult to find and that would be subvert to the very concept of independent judicial system. If litigants are given the right to seek recusal of a Judge on the ground that in a smaller Bench, a view has been taken by the Judge, the correctness of which has to be decided by the larger Bench, which includes the same Judge, then on a parity of reasoning recusal might be sought on the ground of the Judge having taken a view one way or the other even in a different case in which similar issues are involved if the Judge has decided similar issues earlier, in the same Court or in a different Court. This would open the floodgates of forum shopping. Recusal upon an imagined apprehension of legal predisposition would, in reality amount to acceding to the request that a Judge having a particular view and

leanings in favour of the view which suits a particular litigant, should man the Bench. It would not only be allowing Bench hunting but would also be against the judicial discipline and will erode the confidence of the common man for which the judicial system survives.

40. In *R.K. Anand v. High Court of Delhi*, (2009) 8 SCC 106 : (2010) 2 SCC (Cri) 563, it was observed: (SCC pp. 192-93, para 264)

“264. We are constrained to pause here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the increase. We have come across instances where one would simply throw a stone on a Judge (who is quite defenceless in such matters!) and later on cite the gratuitous attack as a ground to ask the Judge to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.”

23. In the light of above discussion and following the principles laid down by the Hon'ble Supreme Court, this Court finds applicant/opposite party no. 2, appearing in person, seeking recusal of this case from this Bench on the grounds discussed above has meritless. Prayer for recusal from hearing by this Bench is considered and rejected.

24. I do not propose to take any steps against the applicant even knowing the fact that seeking recusal from hearing the case by the Bench without any valid reason is tantamount to clear interference with the administration of justice and to disturb the process of Court proceeding because the intention of the applicant, appearing in person has not mala fide but he must be conscious about the Court procedure in future.

25. Accordingly, CRAN No. 5 of 2024 is, thus, disposed of with above observation without order as to cost.

26. Let this case be listed for hearing on 12.06.2024 after ensuing summer vacation under the heading “Contested Application”.

27. All parties are to act in terms of the copy of this order duly downloaded from the official website of this Court.

28. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as expeditiously as possible taking all legal formalities.

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