

**GOA STATE INFORMATION COMMISSION**  
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**Appeal No. 19/2022/SCIC**

Mr. Jawaharlal T. Shetye,  
H.No. 35/A, Ward No. 11,  
Khorlim, Mapusa-Goa,  
403507.

.....Appellant

V/S

1. The Public Information Officer,  
Office of the Sub-Divisional Police Officer,  
Mapusa Police Station,  
Mapusa-Goa 403507.

2. The First Appellate Authority,  
The Superintendent of Police (North),  
Porvorim, Bardez-Goa.

.....Respondents

**Shri. Vishwas R. Satarkar**

State Chief Information Commissioner

**Filed on: 20/01/2022**

**Decided on: 11/04/2023**

**ORDER**

1. The Appellant, Shri. Jawaharlal T. Shetye r/o. H.No. 35/A, Ward no. 11, Khorlim, Mapusa, Bardez-Goa vide his application dated 06/09/2021 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), Mapusa Police Station, Mapusa-Goa.
2. The said application was responded by the PIO on 30/09/2021 in the following manner:-

*"Refer to your application dated 06.09.2021, addressed to the Public Information Officer Mapusa Police Station, Mapusa –Goa which was received in the office of undersigned on 06.09.2021 on the subject cited above. The information furnished by APIO/ PIO Colvale Police Station, is as follows:-*

Sr. No.	Questions	Reply
	Kindly refer FIR No. 12/2021 dated 11/07/2021 u/s 447 r/w 34 IPC registered at Colvale Police Station against this applicant and two others, pursuant to the police complaint dated 03/07/2021 filed by the Councillor Swapnil Vilas Shirodkar and kindly furnish to me the following information as under:-	
1	Furnish certified copy of property document bearing Survey No. 156/1 of Village Camurlim-Bardez, Goa which has been criminally trespassed into by the accused persons namely Jawaharlal T. Shetye, Mr. Sudesh Tivrekar and Mr. Nandu Nagvekar as claimed by the complainant Mr. Swapnil Vilas Shirodkar from your office records.	As per PI Colvale PS, required information is not available.
2	Furnish certified copy of the Affidavit executed before the Notary Adv. Sandeep Raikar on 11/09/2018 by the Partners of M/s P & S Nanovem Homes namely Mr. Pascoal Baptisa Fernandes and Mr. Shantilal G. Patel on behalf of the deponents Nos. 1 to 7 and deponents Nos. 8 to 12 as their lawful attorneys which is self explanatory.	As per PI Colvale PS, required information is not available.
3	Furnish certified copies of any other documents submitted by the complainant Mr. Swapnil Vilas Shirodkar to the Colvale Police Station in support to his claim that he is the owner of the property bearing Survey No. 156/1 of Village Camurlim, Bardez-Goa.	As per PI Colvale PS, the said case is presently under investigation, hence the information sought by the applicant could not be provided u/sec 8(1)(h) of the RTI Act, 2005 as providing such information would impede the process of further investigation.
4	Under Section 2(j)(i) of the RTI Act 05 this undersigned would like to inspect the entire file records documents submitted by the complainant Mr. Swapnil Vilas Shirodkar along with his two police complaints dated	As per reply given at Point No. 3 above.

	<p>03/07/2021 and 07/07/2021 against the accused persons for trespassing into his property bearing Survey No. 156/1 of Village Camurlim, Bardez-Goa.</p> <p>Kindly intimate to me the date, time and venue for inspecting the above requested file records documents as early as possible.</p>	
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3. Aggrieved and not satisfied with the reply of the PIO, the Appellant preferred first appeal before the Superintendent of Police (North), Porvorim-Goa being the First Appellate Authority (FAA).
4. The FAA vide its order upheld the reply of the PIO and dismissed the first appeal on 26/11/2021.
5. Being aggrieved and dissatisfied with the order of the FAA, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act, with the prayer to direct the PIO to furnish the information and to impose penalty on the PIO for providing incomplete/ incorrect information.
6. Notices were issued to the parties, pursuant to which the Appellant appeared in person on 21/02/2022, representative of the PIO, Shri. Somnath Mahajik appeared on 31/03/2022 and placed on record the reply of the PIO. The FAA duly served, opted not to appear in the matter.
7. A perusal of the reply filed by the PIO on 30/03/2022, the PIO categorically informed that, after completion of investigation in to the Covale Police Station, FIR No. 12/2021 the case has been charge sheeted before the Hon'ble JMFC at Mapusa vide No. 2070/2022 dated 19/03/2022 alongwith all the original documents and same is pending before the Hon'ble JMFC vide Cr.C. No. 194/S/2022/F.
8. The representative of the PIO, Shri. Somnath Mahajik, Police Inspector attached to Covale Police Station submitted that, since

the JMFC Mapusa has already framed the charges against the accused in accordance with the law, the issue is sub-judice and no information can be furnished at this stage.

9. Full Bench of Central Information Commission in **C. Seetharamaiah v/s Commissioners of Customs & Central Excise (Appeal No. CIC/AT/A/2008/01238)** dated 07/06/2010 has held as under:-

*"27.....In our view an information which is evidence or is related to evidence in an ongoing prosecution comes under the control of the Trial Court, within the meaning of Section 2(j) of the RTI Act which states as follows: "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to.....*

*28. It is significant that this Section uses two expressions about the location of a given information, i.e. "held" and "under the control of". In our view, expression 'held' implies that a public authority has physical possession of a given information. The word "under the control of" implies that the information, regardless of which public authority holds it, is under the control of a specific public authority on whose orders alone it can be produced in a given proceeding. In the present case, the material sought by the appellant is undoubtedly related to an ongoing court proceeding and hence it can be rightly said to be under the control of Trial Court, who alone can decide how the information is to be dispensed. Any action under the RTI Act or any other Act for disclosure of that*

*information to the very party who is arraigned before the Trial Court or to anyone representing that party, would have the effect of interfering with the discretion of the Court, thereby impeding an extant prosecution proceeding. In S.M. Lamba v. S.C. Gupta and another Delhi High Court has held "This court would like to observe that under the Code of Criminal Procedure, 1973 once the stage of an order framing charges have been crossed, it would be open to the accused to make an appropriate application before the learned trial court to summon the above documents in accordance with the law.*

**30.** *It is, therefore, important that all determinations about disclosure of any information relating to an ongoing prosecution should be through the agency of the Trial Court and not otherwise."*

10. The Central Information Commission in the case **Mr. R.K. Morarkar v/s Central Bank of India (CIC/908/ICPB/2007)** has held that:-

*".... This Commission has consistently taken a view that, if the information sought relates to a pending proceeding before a competent Court/ Tribunal, then said information should be obtained only through Court / Tribunal and not under the provisions of the RTI Act."*

11. In the instant case, the matter is sub-judice. The prosecution proceedings have neither been finally disposed off nor has the matter been finally concluded, therefore, said information clearly falls within exemption as contemplated in Section 8(1)(h) of the Act.

12. The RTI application dated 06/09/2021 was replied by the PIO on 30/09/2022 i.e. within stipulated time, hence I am not inclined to impose penalty on the PIO as prayed by the Appellant.

13. Considering the facts and circumstances hereinabove, I do not find any merits in the matter, hence the appeal is dismissed.

- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

**(Vishwas R. Satarkar)**

State Chief Information Commissioner