

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website: www.gsic.goa.gov.in

Appeal No. 285/2022/SCIC

Mr. Edwin Herculano Peres,
H.No. 152, Non Mon Bandar,
Khariwada, Vasco-da-Gama,
Goa 403802.

.....Appellant

V/S

1. First Appellate Authority,
Superintendent of Police, South,
Margao-Goa 403601.

2. Public Information Officer,
Sub-Divisional Police Officer,
Vasco-Da-Gama, Goa, 403802.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 09/11/2022

Decided on: 21/04/2023

FACTS IN BRIEF

1. The Appellant, Mr. Edwin Herculano Peres, r/o. H.No. 152, Non Mon Bandar, Khariwada, Vasco-da-Gama, Goa vide his application dated 29/08/2022 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), Vasco Police Station at Vasco-Goa.
2. The said application was responded by the PIO on 28/09/2022 in the following manner:-

Sr.No	Question	Answer
1	Provide me "certified copy of Chargesheet filed on petitioner Mr. Edwin H. Peres as mentioned in Criminal Writ Petition No. 132 of 2018 in the High Court of Bombay at Goa, for which I attach the copy of order passed for your reference and also the case/ FIR is	No any chargesheet has been filed in Cr.No. 52/12018 u/s 504, 354-D, 509 IPC. However, C Final summary has been submitted in the above case and the same is pending before the Hon'ble court of JMFC

	registered at Vasco police Station under FIR no. 52/2018.	Vasco. All the original case papers have been submitted to the Hon'ble court.
2	Also provide me first Appellate Authority name and address, If I am aggrieved, so I can approach the first Appellate Authority.	Shri. Abhishek Dhania, IPS, First Appellate Authority SP South Margao Goa

3. According to the Appellant, since the above application was not responded by the PIO within the stipulated time, deeming the same as refusal, the Appellant filed first appeal before the Superintendent of Police (South) Margao Goa on 04/10/2022 being the First Appellate Authority (FAA).
4. The FAA vide its order upheld the reply of the PIO and dismissed the first appeal on 27/10/2022.
5. Being aggrieved and dissatisfied with the order of the FAA dated 27/10/2022, 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 complete/ updated information, to impose penalty and also recommend disciplinary action against the PIO.
6. Notices were issued to the parties, pursuant to which the representative of the PIO, Shri. Ganesh Matonkar, PSI attached to Vasco Police Station appeared. The PIO submitted his reply through entry registry on 14/12/2022, same is taken on record duly furnishing copy to the otherside.
7. It is the case of the Appellant that, upon registering the FIR against him by the Vasco Police Station at Vasco, he filed a Writ Petition before the Hon'ble High Court of Bombay at Goa, challenging the said FIR No. 52/2018. When the Writ Petition No. 132/2018 came up for the hearing on 09/07/2019 the Public Prosecutor appearing on behalf of the State informed the Hon'ble

Court that pursuant to the final report, a charge sheet has been filed in the matter. Accordingly the said petition is disposed off as infructuos.

8. The grievance of the Appellant that, submission of the Public Prosecutor before the Hon'ble High Court was on the basis of the record and information provided by the Vasco Police Station, therefore, they are in possession of the Charge sheet.

In order to ascertain the actual status of the investigation, the Appellant by filing the RTI application dated 29/08/2022 sought the copy of the charge sheet that has been allegedly filed by the Vasco Police Station in Cr. No. 52/2018. However, till date the PIO has failed and neglected to furnish the copy of the charge sheet. Therefore, by this second appeal he prays that direction be given to the PIO to furnish the copy of the charge sheet.

9. As against this, the PIO through his reply dated 13/12/2022 contended that, the Appellant was informed through his mobile phone by the Police Constable 7435 that his RTI information was ready on 27/09/2022 and he may collect the same during office hours. As the Appellant failed to collect the information, the same was forwarded to PIO Vasco Police Station for service.

He further contended that, No charge sheet has been filed in Cr. No. 52/2018 under Section 504, 354-D, 509 of IPC. However, C-Final Summary has been submitted in the above case and same is pending before the Court of Judicial Magistrate First Class (JMFC) at Vasco-Goa. According to him all the original case papers have been submitted to the Court of JMFC, Vasco-Goa. Alongwith the reply he also produced on record the bunch of documents.

10. Perused the pleadings, reply and scrutinised the documents on record.

11. Wide letter dated 15/10/2018 forwarded by the office of Sub-Divisional Police Officer Vasco-Goa to the JMFC Vasco, the case of Cr. No. 52/2018 was recommended for closure Final report. A substantial part of the same is reproduced as below:-

"The I.O in this case vide Vasco Police Station Cr. No. 52/2018 u/s 504, 354 D, 509 IPC, upon investigation has submitted the "C" Final report as the Complainant is not available in India to verify the date mentioned in the Complaint. The facts in the case are neither true nor false and same has been recommended by the I/C of Vasco Police Station.

That I have perused the case papers of investigation of this case vide Vasco Police Station Cr. No. 52/2018 u/s 504, 354 D, 509 IPC and do hereby recommend 'C' final summary in this case."

12. A perusal of another letter dated 19/08/2022 addressed by Police Inspector, Vasco Police Station to JMFC at Vasco-Goa, seeking permission to re-investigate the above matter being relevant same is reproduced below:-

"It is submitted that during the course of investigation it was revealed that the after the registration of the FIR the complainant left India and went aboard for employment and due to which she was not available for the investigation in the above mentioned crime and the said case remained pending for long time for the want of investigation. As the complainant was aboard and it was found difficult to conduct the investigation. As such LPSI Prajoti Dessai prepared a 'C' final report summary and the same was filed in Hon'ble JMFC court on 16/01/2019 vides FR/10/2019/D, dt. 16/01/2019.

It is submitted that, as the complainant came down to Goa and she wants to re-investigate the above case and she has assured that she will co-operate with the investigation agency i.e Vasco Police Station for investigation in the above mentioned crime."

The PIO also produced on record the order of the JMFC, Vasco dated 19/08/2022 and letter issued by JMFC, Vasco to the Police Inspector of Vasco Police Station, returning back the investigation report directing further investigation in the matter.

13. It is the matter of fact that, under Section 173 of CrPc, the Police Officer, as soon as investigation is completed without unnecessary delay shall forward his report to the concerned JMFC to take cognizance of the offence. However, if no evidence is found to proceed against the accused, the Police can suggest closing of the case by filing Closure report (C-final Summary) to JMFC under Section 169 of CrPc. The Police is also empowered to initiate fresh investigation in the matter under Section 173(8) of CrPc with the approval of the JMFC.
14. Be that as it may, it is a consistent stand of the PIO that no charge sheet has been filed in the matter. The PIO also furnished all the available records to the Appellant, including the recommendations of 'C' final summary and vice versa. The Act provides access to all information that is available and existing. The PIO is not expected to give the reason or clarification as to why and for what reason the Judge had come to particular decision in Writ Petition No. 132/2018. If any party is aggrieved by the order passed by a Hon'ble Judge, the remedy available to such a party is to challenge the same by way of appeal or revision or any other legally permissible mode.

15. In an alternate, if the Appellant feels that any official is not performing his duty in proper manner or doing something that is contrary to law, he can approach the concerned competent authority on the basis of information furnished but he cannot compel the public authority under the RTI Act, to act in a particular way.

16. While considering the scope of information which can be furnished under the Act, the Hon'ble Supreme Court in the case **Central Board of Secondary Education v/s Aditya Bandopadhyay (Civil Appeal No. 6454/2011)** has observed :-

*"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides **access to all information that is available and existing**. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non- available information and then furnish it to an applicant."*

17. In a similar judgement the Patna High Court in the case **Shekhar Chandra Verma v/s State Information Commissioner (Letter Patent A. No. 1270/2009)** has held that:-

"10. In our view, the RTI Act contemplates furnishing of information which is available on records, but it does not go so far as to require an authority to first carry out an enquiry and thereby 'create' information, which appears to be what the information seeker had required of the appellant."

18. The contention of the Appellant is that the information furnished was false and misleading. I am unable to accept this contention as the PIO is expected to furnish the information in the form and the manner in which it exists. It is not the case that the PIO was unwilling to furnish the information. Therefore, I am not inclined to impose penalty as prayed by the Appellant. As the information is not at all in existence due to non-generation, nothing can be ordered to be furnished to the Appellant. The appeal is devoid of any merits, hence disposed.

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

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner