

# GOA STATE INFORMATION COMMISSION AT PANAJI

**CORAM:** Shri Afonso Araujo, State Information Commissioner

Appeal No. 228/2008

Shri Socorro D'Souza,  
Noronha Heritage Bldg.,  
1<sup>st</sup> Floor, Dongor Waddo,  
Fatorda, Margao – Goa.

..... Appellant.

V/s.

1. The Public Information Officer,  
The Superintendent of Police, PHQ,  
Panaji - Goa.
2. The First Appellate Authority,  
Shri Kishan Kumar (IPS),  
The Inspector General of Police, Goa,  
Police Headquarters, Panaji - Goa.

..... Respondents.

Adv. S. D'Souza for the Appellant.

Adv. D. Kinlekar for both the Respondents

## **J U D G M E N T**

(Per Afonso Araujo)

The order of the First Appellate Authority dated 6/11/2008, affirming the denial of the information by the Public Information Officer, is challenged in this Second Appeal.

2. The Appellant on 28/08/2008 approached the Respondent No. 1 with an application seeking the information under the Right to Information Act, 2005 (for short the Act). In the request for information, the Appellant required the copies of the statements of witnesses recorded in the inquiry instituted against P.S.I. Navlesh Dessai. The Respondent No. 1 in the reply dated 24/09/2008 denied the information on the ground that the exemption from disclosure clause was attracted. Not content with the denial of the information, the Appellant preferred the First Appeal before the Respondent No. 2 who by order dated 6/11/2008 upheld the denial of the information by the Respondent No. 1. This is the Impugned Order.

3. In her submissions Smt. Souza, stated that the Appellant requires the statements recorded in the inquiry conducted against P.S.I. Navlesh Dessai by S.S.P. Shri. V. B. Chowdhury and that as the Appellant is the

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Complainant in the inquiry, he is entitled for the copies of statements of witnesses whose names are mentioned in the application. Smt. D'Souza produced copies of application and order of anticipatory bail, bail, order of State Police Complaints Authority and stated that it was false case filed against the Appellant and that the provision of section 8(1)(h) is not attracted and the Appellant is entitled for the copies of the statement recorded in the inquiry. On the other hand, Kum. Kinlekar submitted the Appellant is one of the Accused and that there was no need of the inquiry as charge sheet has been filed in the Court and that rightly the information was denied under section 8(1)(h) of the Act as the Appellant may use those statements in the case and damage the prosecution case. Kum. Kinlekar also submitted written arguments and as directed produced the copies of the charge sheet filed against the Appellant.

4. I have gone through the records and taken into consideration the submissions of the parties. The only question which arises for determination is whether the information sought is exempted from disclosure.

5. The Appellant is one of the Accused in the Crime No. 257/07 and the criminal case is pending trial. The Appellant made a representation to the Chairman of Ad-hoc Committee (Home Affairs) stating that on a false complaint filed by one Prakash Pandey, PSI Navlesh Dessai registered the offence of extortion. In an inquiry conducted against P.S.I. Navlesh Dessai statements of a number of witnesses were recorded by Sr. Superintendent of Police, V. V. Chowdary. The Appellant sought the information under the Act and required those statements recorded in the inquiry conducted against P.S.I. Navlesh Dessai and which were denied under section 8(1)(h) of the Act.

6. Section 8(1)(h) of the Act says: -

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

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(h) information which would impede the process of investigation or apprehension or prosecution of offenders.

Once the clause (h) of section 8(1) of the Act is invoked, the burden is on the Public Information Officer – the Respondent No. 1 to indicate in what manner the information sought will affect the prosecution and it is exempted from disclosure. It is contended by the Respondent No. 1 that the department has decided that no inquiry is warranted in the matter as Crime No. 257/07 is sub-judice before the Court.

7. The mere fact that the charge sheet is filed in the Court of the Magistrate and the Appellant being an offender is facing prosecution, it does not mean that he is not entitled for the information required. Right from the beginning the stand taken by the Appellant is that a false case was registered by P.S.I. Navlesh Dessai against him for which an inquiry was conducted. The Respondent No. 1 has not indicated in what manner the statements of the witnesses recorded in the inquiry will affect the prosecution of the Appellant. No doubt that the Appellant is implicated in a serious offence of extortion. But by the very fact that an inquiry was instituted against the P.S.I. Navlesh Dessai; the order of the Session Court granting anticipating bail to the Appellant; the order of the Magistrate releasing the Appellant on bail; the order of State Police Authority indicating prime facie case of misconduct of P.S.I. Navlesh Dessai, cast some doubts on the involvement of the Appellant in the offence of extortion for which he has been prosecuted. By providing the statements of the witnesses recorded in the inquiry in no way will hamper the prosecution case. On the contrary, it will help to bring out the truth for which the information sought under the Act is very much required and there cannot be a total exemption from disclosure. Moreover some of the witnesses whose statements were recorded in the inquiry are also witnesses in the criminal case pending trial.

8. Since it was not indicated in what manner the disclosure of the information sought will affect the prosecution of the Appellant, the Appellant is entitled for the copies of the statements of the witnesses whose names are common in the inquiry as well as in the charge sheet. Hence, the following order: -

**ORDER**

The Appeal is partly allowed. The Respondent No. 1 to provide the information to the Appellant requested in the letter dated 28/9/2008 of the statements recorded only of the witnesses at Sr. No. 1 P.S.I. Navlesh Dessai, (3) Prakash Pandey, (4) Nazir Baig, (5) Francis D'Silva,(6) Namdev and (7) Manju Pandey. The Respondent No. 1 to provide this information to the Appellant within 15 days from the date of this order.

Pronounced in the open court on this 4<sup>th</sup> day of May, 2009.

Sd/-  
(Afonso Araujo)  
State Information Commissioner

