

GOA STATE INFORMATION COMMISSION AT PANAJI

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Complaint No. 111/2009

Shri Leslie Dias,
509, Murida, Cuncolim,
Salcete, Goa – 403 703.

..... Complainant.

V/s.

Public Information Officer,
Superintendent of Police (South),
Margao – Goa.

..... Opponent/Respondent.

Complainant in person.

Adv. N. Dias for Opponent.

ORDER **(05-04-2010)**

1. This is a Complaint filed by the Complainant, Shri Leslie Dias under section 20(1) and (2) of the RTI Act, 2005.
2. The gist of the case of the Complainant is as under: -

That on 8/11/2008 a Jeep load of 5 Police personnel made their presence at his residence to serve summons under section 160 Cr.P.C. as witness by the I.O. M. M. Dessai; that at the police station he was sent for medical examination to the P.H.C. Balli as an accused to be formally arrested based on a Complaint and a FIR lodged against him and another. That the Complainant was not arrested as doctor stated "unfit for Police Custody" being a Hypertension, B.P. and Kidney Stone Patient. That the reason given in the Final Chargesheet is different. That the Complainant was in Police Custody from 11.00 a.m. to 3.00 p.m. within the meaning of section 26 and 27 of the Evident Act. It is the case of the Complainant that on 17/11/2008 he was again summoned to the Police Station as a witness under section 160 Cr.P.C. and as instructed reported to the Police

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Station at 5.00 p.m. and left at 7.00 p.m. That during his discussion with the P.I. and I.O. he was persuaded to become a State Approver under section 306/307 of Cr.P.C. and get Pardon or move the High Court under section 482 Cr.P.C. Again the Complainant was in Police Custody within the meaning of section 26 and 27 of Evidence Act. That on 16/4/2009 an application was submitted to the Public Information Officer (P.I.O.), S.P. South seeking confirmation of Attendance at the Cuncolim Police Station on 17/11/2008. That to his horror and shock the reply dated 29/4/2009 given by P.I.O. states as "Nothing is mentioned in the station diary dated 17/11/2008 about accused Shri Leslie Dias has reported at Cuncolim Police Station at 5.00 p.m. responding to call letter dated 17/11/2008. It is further the case of the Complainant that on 22/6/2009 another application seeking entries of 'station diary' dated 17/11/2008 was submitted. That the information was granted. However, the same was granted after 26 days and not 48 hours. Hence, the present Complaint to initiate penalty proceedings.

3. The Respondents resist the Application and their say is on record. It is the case of the Respondent that the I.O./M.M. Dessai had visited the residence of the Complainant with summons to serve on him based on Complaint filed against Shri Leslie Dias by Mrs. Ashiba Almeida. The Opponent/Respondent admit that Complainant attended the Police Station on 8/11/2008 in response to call letter, sent for medical examination etc. however, the Opponent/Respondent deny that the Complainant was kept in custody from 11.00 a.m. to 3 p.m. either on 8/11/2008 or on any other date. Respondent/Opponent deny that incorrect or misleading information was given. It is the case of the Respondent that P.I.O. has given the correct and necessary reply to the Complainant as per the records available at Cuncolim Police Station on 17/11/2008 at 19.00 hrs. and not

at 17.00 hrs. as contended thereby. That nothing is recorded in the station diary on 17/11/2008 stating that accused Leslie Dias has reported at Cuncolim Police Station at 17.00 hrs. as per the call letter dated 17/11/2008. According to Opponent/Respondent, Complaint is liable to be dismissed.

4. Heard the arguments. The Complainant argued in person and also filed written arguments. The learned Adv. Shri N. Dias argued on behalf of the Opponent.

The Complainant has stated in his written arguments about going to the police station at 5.00 p.m. etc. According to him there is no entry as to when he left police station. He also referred to various documents. The Complainant also referred to call letter timing and F.I.R. and also Entries furnished to him and the time of entry. He also referred to second information was provided after about 23 days and not 48 hours.

5. During the course of his arguments Advocate for Opponent admits that on the basis of Complaint of Ashiba Almeida, Police visited the residence of the Complainant. He admits of Complainant's visit to P.I.'s office sending him for medical examination etc. and being responsible citizen not arrested. Advocate for Opponent also refers about applications seeking information furnishing information in time. He submitted that the Complainant had come to the police station on 17/11/2008 but not at 17.00 hrs. According to him information is in time and Complaint is liable to be dismissed.

6. I have carefully gone through the records of the case and considered the arguments advanced by the parties. The point that arises for my consideration is whether the information is furnished within time?

It is seen that an application seeking information was made on 16/4/2009 and the same was received in the office of the Suptd. of Police, South Goa at Margao on 17/4/2009 as can be seen from the endorsement. The reply is sent on 29/4/2009 i.e. after about 12 days. The Second application was made on 22/6/2009 and reply was given on 18/7/2009. Both replies were within 30 days.

The Complainant/Applicant has stated in both the applications that information concerns the life and liberty of a person and the same be provided within 48 hours on receipt of the request. According to the Complainant it has not been done.

7. Now it is to be seen whether there is delay in respect of this. Under sub-section (1) of section 7 the C.P.I.O. or S.P.I.O. has to provide the required information within a period of thirty days. Further under proviso to sub-section (1), the information in cases concerning "Life or Liberty of a person" shall be provided within 48 hours.

Life and Liberty are two of the most important facets of our existence. Liberty means autonomy or immunity from arbitrary exercise of authority. The RTI Act envisages that the information pertaining to life and liberty of a person should be disclosed urgently. This has to be applied only in exceptional cases and the question as to whether information sought concerns the life and liberty of a person has to be carefully scrutinized in a proper perspective and imminent danger has to be substantially proved.

Coming to the case at hand the Complainant states (page 2 para 2) that in order to claim damages for malicious prosecution and defamation the attendance certificate of 17/11/2008 was sought by him as he had the certificate of 8/11/2008.

I have perused some of the rulings of Central Information Commission on this point. In Shekhar Singh & Smt. Aruna Roy V/s, Prime Minister's Office [Appeal No. CIC/WB/C/2006/0066 dated 19/4/2006] the CIC held that for the matter to be treated as one of life and liberty in case of a hunger strike, the application should be accompanied with substantive evidence such as medical report that a threat to life exists.

R. C. Sankula, New Delhi V/s. Director General of Vigilance Customs and Central Excise, New Delhi (Appeal No. 3/1C(A)CIC/2006 dated 24/2/2009). IN this case prosecution was filed by C.B.I. and threat to life and liberty claimed and inspection of files within 48 hours requested. It was held that as the Appellant is freely performing his duties as a government official and is leading a normal life there is no perceived threat to his life and liberty.

In Rahul Mangaonker V/s. Prime Minister's Office & others (Appeal No. CIC/WB/C/2006/00069 dated 27/7/2006) where a request made for information on four different issues related to Sardar Sarovar Dam and Narmada Bachao Andolan under proviso to section 7(1) of the Act. It was observed that invocation of the proviso to section 7(1) of the Act not warranted.

In the factual matrix of this case, I do not think that it would attract penalty for the simple reason that it is not proved substantially that the said information concerns the life and liberty of a person.

8. Complainant next contends that he has been knowingly given incorrect and/or misleading information. According to Opponent it is not so.

It is to be noted here that the purpose of RTI Act is per se to furnish information. Of course the Complainant has a right to establish that the information furnished to him is false, incorrect, misleading etc., but the Complainant has to prove by means of some sort of documentary evidence to counter Opponent's claim. The information seeker must feel that he got the true and correct information otherwise purpose of RTI Act would be defeated. It is pertinent to note that mandate of RTI Act is to provide information – information correct to the core and it is for the Complainant to establish that what he has received is incorrect and incomplete.

9. In the light of the above, it is seen that information is furnished and in view of submission made no intervention is required, however, the Complainant should be given an opportunity to prove that the information is incomplete, incorrect, misleading etc. Hence, I pass the following Order:-

No further intervention in the Complaint is required. The Complainant is given an opportunity to prove that information furnished is false, incorrect, misleading etc.

Complaint is accordingly disposed off.

Further inquiry posted on 28/4/2010 at 10.30 a.m.

Pronounced in the Commission on this 5th day of April, 2010.

Sd/-
(M. S. Keny)
State Chief Information Commissioner

