

# **GOA STATE INFORMATION COMMISSION**

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Appeal No. 16/2007-08/Police

Adv. S. S. Saudagar  
F-6, St. Peter Bldg.,  
Opp. Mapusa Clinic,  
Mapusa, Bardez - Goa.

..... Appellant.

V/s.

1. Public Information Officer,  
The Superintendent of Police (South),  
Margao - Goa.
2. First Appellate Authority,  
Dy. Inspector General of Police,  
Police Head Quarters,  
Panaji - Goa.

..... Respondents.

## **CORAM:**

Shri A. Venkataratnam  
State Chief Information Commissioner  
&  
Shri G. G. Kambli  
State Information Commissioner

(Per A. Venkataratnam)

Dated: 16/08/2007.

Appellant in person.

Adv. K. L. Bhagat for both the Respondents.

## **ORDER**

This is a matter in which a request was made for the issuance of a copy of the station diary of the Vasco Police Station for the period from 17/01/2005 to 28/2/2005. The Appellant requested the copy of this station diary by his application dated 15/02/2007 to the Public Information Officer, Respondent No. 1 herein. By his reply dated 8-10/03/2007, the Public Information Officer refused the request under Section 8(h) of the Right to Information Act (RTI Act, in brief). Though the reply states the disclosure would impede prosecution of offender, he did not mention clearly how it will impede the prosecution. Feeling aggrieved, the Appellant has moved his first appeal to the first Appellate Authority, Respondent No. 2 herein on 26<sup>th</sup> March, 2007 which came to be dismissed by order dated 3<sup>rd</sup> May, 2007. The order of the first Appellate Authority is very

...2/-

brief. In fact, it is only a one line order “ The reply given by the PIO, SP South, is upheld”. While we appreciate the Appellate order should be brief, it should not be so brief as not to mention any reasons for arriving at such a conclusion. Thereafter, the Appellant has moved the present second appeal on 1<sup>st</sup> June, 2007.

2. On the issuance of the notices, all the parties appeared and the Respondents filed their replies. In the affidavit-in-reply filed by the Respondent No. 1 reiterated that the station diary cannot be given as it contains the details about the investigation about other cases in which the Appellant’s client was not involved. He has also taken the stand that the station diaries are privileged documents and are exempted under the Indian Evidence Act, particularly Sections 123, 124 and 125 thereof. In support of his arguments, he has enclosed an order dated 19<sup>th</sup> January, 2007 of the learned Sessions Judge, Margao in the Sessions case No. 15/2005 in which the disclosure about this very same station diary of Vasco-da-Gama for the same period was discussed and the request of the Appellant (defence lawyer in that case) was rejected. In his written reply before us, the Respondent No. 1 also submitted that the station diary is meant for safeguarding the interest of public as per Bombay Police Manual. The Respondent No. 2 in his affidavit-cum-reply submitted that he was fully satisfied by the reply given by the Public Information Officer and that the supply of the certified copy of the station diary in this case “would impede the process of the investigation or apprehension or prosecution of offenders, other crimes and offences whose details are also found recorded therein for the relevant period”.

3. While joining arguments, the Appellant, who is an Advocate himself, has submitted briefly three points. Firstly, he stated that the provision of Indian Police Act and the Bombay Police Manual do not prohibit the disclosure of the contents of the station diary. In fact, it is his case that the Bombay Police Manual is not even extended to Goa and produced a copy of the letter issued to him by S.P. (North Goa) stating that the Bombay Police Manual is referred for Police matters by Goa Police only as a practice. Therefore, his request cannot be rejected either under the Indian Police Act or Bombay Police Manual. Secondly, it is his case that the station diary which contains general information is not a confidential document and is a public document. Though the Indian Evidence Act contains provisions to deny access to the unpublished public documents, and the case diaries of the criminal case it does not apply to the station diaries. In fact,

he has produced copies of the order of the Hon'ble Bombay High Court, Goa Bench at Panaji, order dated 26/9/1995 in a criminal appeal case No. 38/94 in the matter of Mohammed K. A. Mohidin V/s. State of Goa passed by a Division Bench. The sum and substance of their judgment is that the station diary can be summoned by the defence counsel of an accused if it is necessary for the defence and that Section 172 Cr.P.C. is not attracted in such cases. Finally, argument of the Appellant is that the RTI Act being a special Act superceding all other provisions to the contrary in matters regarding the disclosure of information by the public authority vide Section 22 of the RTI Act, the copy of the document requested by him has to be given by the Public Information Officer.

4. We have considered the arguments advanced by the Appellant and learned Counsel for the Respondents and perused replies of both parties. The Public Information Officer's contention is that the furnishing of the document requested will prejudice all other cases recorded therein. He did not specifically say in his written statement that the document would impede the prosecution of offender in criminal case No. 9/05. In fact, it has come on record that the case was already disposed off by the Sessions Court in case No. 15/05. There is, therefore, no reason to withhold the entries regarding the case No. 9/05 of Vasco Police Station in which the Appellant is interested after deleting the entries which are not connected with this case and mentioning clearly that the station diary so furnished contains complete information only in respect of criminal complaint No. 9/05 of the Vasco Police Station and no other information. Such a procedure is possible under the provision of "severability" under Section 10(1) of the RTI Act. Again, the requested document cannot be denied in view of the clear provision of Section 22 of the RTI Act which overrides even the severe provisions of Official Secrets Act, 1923. In fact, it overrides all other laws in force or "any instrument having effect by virtue of any law" and which contain provisions inconsistent with the provision of the RTI Act. In other words, it is very clear that if the requested document is not covered under any of the exemptions of disclosure under RTI Act, it cannot be withheld even if contrary provisions exist in other laws prohibiting its disclosure.

5. We are, therefore, guided only by the provision of the RTI Act while examining request for information by the Appellant. We also find that the information about the other cases and other matters contained in the station

diary can be withheld if deemed fit by the Public Information Officer under Section 10 of the RTI Act after giving reasons. We, therefore, see no reason for refusing the request of the Appellant particularly after both the investigation and the prosecution of the criminal Complaint No. 9/05 is completed. The question of impeding the process of prosecution in this case does not arise. Accordingly, this appeal succeeds and is hereby partly allowed. The letter dated 08-10/03/2007 of the Respondent No. 1 and the order dated 03/05/2007 of the Respondent No. 2 are hereby set aside. We direct the Respondent No. 1 to provide to the Appellant an extract of the station diary for the period from 17/01/2005 to 28/02/2005 pertaining to the criminal case No. 9/05 within 10 days from the date of the order.

Announced in the open court on this 16<sup>th</sup> day of August, 2007.

Sd/-  
(A. Venkataratnam)  
State Chief Information Commissioner, GOA.

Sd/-  
(G. G. Kambli)  
State Information Commissioner, GOA.

/sf.  
sf/km.