

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937Q

WP(C).NO. 1240 OF 2015 (S)

PETITIONER(S) :

JIJU LUKOSE AGED 30 YEARS
S/O.GEORGE LUKOSE, 1300 WORCSTER RD, FRAMINGHAM
MA 01702, USA
HAVING NATIVE ADDRESS AT: PLATHOTTAM HOUSE
ATHIRAMPUZHA P.O., KOTTAYAM, PIN: 686 562.

BY ADVS.SRI.G.KRISHNAKUMAR
SMT.P.A.PRIYA

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY SECRETARY, HOME DEPARTMENT, SECRETARIAT
THIRUVANATHAPURAM - 695 001.

2. STATE CHIEF INFORMATION COMMISSIONER,
STATE INFORMATION COMMISSION, T.C.26/298, PUNNEN ROAD
THIRUVANANTHAPURAM - 695 001.

3. DIRECTOR GENERAL OF POLICE,
KERALA STATE, THIRUVANANTHAPURAM - 695 001

4. STATE POLICE CHIEF,
KERALA STATE, THIRUVANANTHAPURAM - 695 001.

WP(C).NO. 1240 OF 2015 (S)

ADDITIONAL RESPONDENT IMPEADED:

5. SNEHA JOSE

D/O JOSE KURIAN, VEMPENY, VETTIMUKAL
EATTUMANOOR

KOTTAYAM DISTRICT REPRESENTED BY THE GUARDIAN JOSE KURIAN
AGED 51 YEARS, S/O.KURIAN VEMPENY, VEMPENY HOUSE
VETTIMUKAL, EATTUMANOOR, KOTTAYAM DISTRICT.

IS IMPEADED AS ADDITIONAL RESPONDENT NO.5 VIDE
ORDER DATED 02.07.2015 IN IA NO.7859 OF 15.

R1 R3 & 4 BY SPECIAL GOVERNMENT PLEADER SMT. GIRIJA GOPAL
RADDL 5 BY ADV. SRI.M.K.CHANDRA MOHANDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17.11.2015, THE COURT ON 30.11.2015 DELIVERED THE FOLLOWING:

WP(C) .NO. 1240 OF 2015 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE PRINT OUT OF RELEVANT PAGE OF
WEBSITE OF KERALA POLICE.

EXHIBIT P2 TRUE COPY OF THE PRINT OUT OF RELEVANT PAGE OF
WEBSITE OF DELHI STATE.

EXHIBIT P3 TRUE COPY OF THE PRINT OUT OF RELEVANT PAGE OF
WEBSITE OF CHANDIGARH POLICE

EXHIBIT P4 TRUE COPY OF THE REPRESENTATION DATED 2/11/2014
PREFERRED BY THE PETITIONER

EXHIBIT P5 TRUE COPY OF THE RELEVANT PAGES OF THE WEBSITE OF
KERALA POLICE.

EXHIBIT P6 TRUE PRINT COPY OF THE RELEVANT PAGES OF THE
OFFICIAL WEBSITE OF KERALA POLICE.

RESPONDENT(S) ' EXHIBITS:

NIL

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.P(C) No.1240 of 2015

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Dated this the 30th day of November, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Petition has been filed as a public interest litigation seeking a direction to upload the copy of the FIR in the website of the police station and to make available copies of the FIR to the accused immediately on registration of the FIR.

2. Petitioner in the Writ Petition has narrated the circumstances and the background facts for filing this public interest litigation. Petitioner, a resident of Ettumanoor was made an accused in C.C. No.567 of 2013 alleging offence under Section 498A of the Indian Penal Code at the instance of the petitioner's wife. Petitioner's parents are senior citizens and on registration of the FIR, the family members were called upon to come to the police station. Although the FIR was

registered on 21.12.2012, petitioner could obtain a copy of the FIR only after two months. Till the petitioner could obtain a copy of the FIR, the petitioner and his family members were in dark about the nature of the allegations levelled against the petitioner. Petitioner is in a job at the United States of America. Petitioner's case in the Writ Petition is that the accused has no way of knowing whether the complaint levelled against him is false or not. Once the FIR is lodged, unless the accused has good contacts in police station there is no way of knowing even the number of the FIR. Delay in getting copies of the FIR by the accused and delay in filing FIR in Court gives opportunity for falsification of the FIR including modifying the FIR. There should be transparency with regard to registering a crime and furnishing copy of the FIR and also uploading in the website. According to Section 207 of the Code of Criminal Procedure (for short, "the Cr.P.C."), an accused is entitled for supply of copies of the FIR free of cost only when proceedings are instituted by the Magistrate in the Court on the basis of police report. According to Section 173(7) of the Cr.P.C. when the Officer

investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5) of Section 173. In the absence of copy of the FIR, the very right of the accused to get himself defended cannot be fulfilled, since he is not in a position to know the nature of the allegations so that he may approach the appropriate Forum for getting his right and liberty protected. Petitioner's further case is that right to get information is part of fundamental right to freedom of speech and expression guaranteed under Article 19(1)(f) of the Constitution of India. Article 21 guarantees protection of life and personal liberty. A person against whom criminal offence is alleged is under a threat of being apprehended by the police. Being under the threat of apprehension by the police, he has right to get information as to the allegations levelled against him. It is submitted that recording of FIR is an official act of a public official in discharge of his official duties and hence it is a public document within the meaning of Section 74 of the Evidence Act, 1872. Being a public document, the public officer shall give on demand certified

copy thereof in terms Section 76 of the Evidence Act. Petitioner's further case is that in view of the Right to Information Act, 2005 (for short, "the 2005 Act") all public officers are under obligation to put all information recorded in the public domain. The FIR which is lodged is to be put on the website of the police station, so that any one can assess the FIR including a person staying outside the country. Police is also obliged to accept the online application under the 2005 Act for obtaining copy of the FIR. With the aforesaid pleadings, petitioner in the Writ Petition has prayed for the following reliefs:

"i. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to initiate immediate steps to ensure that they upload copy of the FIR on the official website of the concerned police station immediately after it is registered, forthwith.

ii. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to initiate immediate steps to provide online copy of full FIR, including complaint copy, within 24 hours

of registering the FIR in the station.

iii. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to initiate immediate steps to provide certified copy of FIR under the 'Life & Liberty' section of the Right to Information Act, to the accused within 48 hours of application at Police Station by paying necessary fees as prescribed under the act.

iv. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding respondents 3 and 4 to provide necessary instructions to the police stations in the State to accept applications under the RTI Act for obtaining copies of FIR, even without quoting FIR number in the application.

v. Issue such other appropriate writ, order or direction as this Honourable Court deems fit and proper in the facts and circumstances of the case.

And

vi. Allow this Writ Petition (Civil) with cost”.

3. A statement dated 13.03.2015 as well as additional counter affidavit dated 10.06.2015 had been filed by the 1st respondent, the State Government. It is stated

in the statement that provisions of the Cr.P.C. does not envisage supply of copy of FIR to the accused on registration of the FIR. Section 207 of the Cr.P.C. envisages supply of FIR only by the Magistrate in any case where the proceedings had been initiated on a police report and not otherwise. The Government have decided that it would not be advisable to take any policy decision to have all the FIRs uploaded in the website of the police station concerned immediately on registration of the same. Decision on matters as to which are the kinds of cases in which FIRs could be uploaded and at what stage, etc., are one which require deeper analysis and decisions thereon can be taken only after deliberations at various levels and hence the Government have not yet taken any policy decision to accede to the request of the petitioner to have the copy of the FIR uploaded in the website on registration of the same. In the counter affidavit it has further been pleaded that although in technical sense the FIR is a public document, it cannot be made available online for visibility to the public as a routine measure. The first information received will be

discreet especially in cases involving national and international security. The uploading of FIR in the website can also become defamatory, harassing and intrusion upon the privacy of the individuals. This will be especially so in the case of sexual offences and the FIR is covered by the exemption provided under Section 8(1)(h) of the 2005 Act which need not be disclosed to the public till investigation is completed.

4. We have heard Shri G.Krishna Kumar, learned counsel for the petitioner and Smt.Girija Gopal, learned Special Government Pleader for the State respondents and Shri M.K.Chandramohan Das, learned counsel for the additional 5th respondent.

5. Learned counsel for the petitioner in support of the Writ Petition referring to the pleadings contends that the accused in the FIR has a right to receive copy of the FIR even prior to the stage of Section 173(7) of the Cr.P.C. There should be obligation on the part of the police authorities to immediately make available copy of the FIR as and when request is made by the accused to have a copy of the FIR.

Learned counsel for the petitioner further contends that in view of the right of citizens it is incumbent on the State to get the FIR uploaded in the website of the respective police station. It is submitted that uploading of the FIR in the website shall serve various purposes and object. Petitioner has heavily relied on the directions issued by the Delhi High Court in suo motu W.P(Crl.) No.468 of 2010 where the Delhi High Court has given direction for uploading the FIRs except those which are sensitive. A decision whether the FIR is sensitive or not has to be taken by the Officer not below the rank of Deputy Commissioner of Police. It is submitted that similar directions also have been issued by the Orissa High Court in W.P(Crl.) No.1096 of 2011 and the High Court of Punjab and Haryana in CWP No.21898 of 2012.

6. Smt.Girija Gopal, learned Special Government Pleader appearing for the State refuting submissions of learned counsel for the petitioner contends that uploading of FIR in the website is neither practical nor advisable due to various reasons. It is submitted that the police has to apprehend the accused and uploading the FIR will cause

hindrance to the police apprehending the culprits. It is submitted that several FIRs cannot be made public in the interest of national and international security. Under the 2005 Act exemption has been provided under Section 8(1) (h) which sufficiently clothe the police authority not to disclose the FIR on application under the 2005 Act. Provisions of the Cr.P.C. does not contemplate uploading of the FIR in the website. It is further contended that Cr.P.C. also does not contemplate giving of copy of the FIR prior to the proceedings under Section 207 of the Cr.P.C. It is submitted that under Section 154(2), the Code require immediate giving copy to the informant free of costs but no such obligation is there in the Code to immediately provide copy of the FIR to the accused. Against the judgment of the Orissa High Court dated 05.10.2012, a Special Leave Petition has already been filed in the Apex Court. Judgment of the Orissa High Court was delivered relying on the judgment of the Delhi High Court dated 6.12.2010. Petitioner is not entitled to the reliefs as claimed in the Writ Petition.

7. We have considered the submissions of the

learned counsel for the parties and perused the records.

8. The Writ Petition raises mainly three issues which are up for consideration in this public interest litigation. They are:

(1) Whether the accused has right to receive copy of the FIR even before the stage of proceedings under Section 207 of the Cr.P.C.

(2) Whether the police authorities are obliged to provide copy of the FIR when an application is filed under the 2005 Act?

(3) Whether all the FIRs registered in the State are to be uploaded in the website of the respective police stations?

9. The first issue is regarding right of accused to receive copy of the FIR. The Scheme of Cr.P.C. does not provide for giving copy of the FIR to the accused at any earlier stage than by a Magistrate on commencement of the proceeding under Section 207 of the Cr.P.C. Section 173 of the Cr.P.C. however provides that Officer in charge of the police station shall forward to the Magistrate a report stating the details as mentioned in Section 173(2). Section 173(6)

also empowers the police officer to indicate by appending a note requesting the Magistrate not to provide a part of the statement to the accused by giving reasons. When the FIR is registered against a person, the police has to initiate investigation under Section 157 of the Cr.P.C. If from an information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report report to a Magistrate empowered to take cognizance upon such offence on a police report. The Code also empowers the police officer to arrest the accused. Section 438 of the Cr.P.C. provides that where a person who has reason to believe that he may be arrested on accusation of having committed a non-bailable offence he may apply to the High Court or the Court of Session for a direction. Section 438(1) reads as follows:

“438. Direction for grant of bail to person apprehending arrest.- (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable

offence he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested;

either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

For meaningful exercise of the right given to the accused under Section 438 of the Cr.P.C., obtaining copy of the FIR is relevant and necessary. A person who is accused of a cognizable offence by registration of the FIR at the police station cannot be denied the right to know the contents of

the FIR to enable him to defend himself and take such steps as provided under law. About a century ago, the Patna High Court in **Dhanpat v. Emperor** (AIR 1917 Patna 625) laid down as follows:

“It is vitally necessary that an accused person should be granted a copy of the FIR at the earliest possible in order that he may get benefit of the legal advice.”

The Calcutta High Court in **Panchanan Mondal v. The State** (1971 Crl. L.J. 875), after examining the provisions of Code of Criminal Procedure, 1898 has laid down the following in paragraph 5:

“5. The second contention of Mr.Dutt is a very wide one. Mr.Dutt contended that the accused is entitled to have copies of any document including the F.I.R. sent to the Court as part of the record on payment of the legal fees therefor. He relied on the provisions of S.157(1) of the Criminal P.C. in this context. The said provisions are as follows:

“If from information received or otherwise an officer in charge of the police station has reason to suspect a commission of an offence which he is empowered under S.157 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take

cognizance of such offence upon a police report...”

On the basis of the same Mr.Dutt contended that the accused is entitled to a copy of the F.I.R. as part of the record. The question however is one of stage and the provisions contained in S.157(1) of the Criminal P.C. by themselves do not entitle the accused to such a copy. Copies of all the documents sent to the Court and forming part thereof cannot as such be granted to the accused irrespective of the stage reached in the case. Section 173(4) of the Criminal P.C. undoubtedly lays down one such stage and is as follows:

“After forwarding a report under this Section, the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of costs, a copy of the report forwarded under sub-s.(1) and of the first information report recorded under S.154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions. If any, recorded under S.164 and the statements recorded under sub-s.(3) of 161 of all the persons whom the prosecution proposes to examine as its witnesses”.

I accordingly hold that although the F.I.R., when forwarded to the Court, forms part of the record, the accused will not be entitled, merely on that footing, to a copy thereof irrespective of the stage reached independently of the other

provisions in the Statute, and of other considerations, entitling him to have the same. In view, however, of the other specific provisions in the different Statutes which have been considered at length in the context of the other issues, I hold that case of F.I.R. is different and the accused is entitled to a copy thereof on payment of the legal fees therefor at any stage”.

A Division Bench of the Allahabad High Court in **Shyam Lal v. State of U.P. and Others** (1998 CrL. L.J. 2879) had elaborately considered the question as to whether an accused is entitled for copy of the FIR and he can obtain it either from the police station or the office of the Superintendent of Police or from the Magistrate. In paragraphs 10.4 and 10.5 the following was stated:

“10.4 Fully agreeing with the ratio laid down in the aforesaid cases we hold that the accused is entitled to know what was said in the first information report to connect with the offence so that he may be in a position to protect his interest. He is therefore, entitled to a copy thereof. He can have it from (i) the police station, or (ii) the office of Superintendent of Police, or (iii)

C.J.M/Magistrate, Incharge/Special Judge as the case may be and as per his desire. Ours is a welfare democratic State. It is a Government by the people, of the people and for the people, as said by Abraham Lincoln. It is common knowledge that the office of the Superintendent of Police or for the matter of that the Courts are situated invariably at a distance far from the Police Stations. Imagine the plight of such a person who is required to cover a great distance for having a certified copy of the F.I.R. to know its contents so that he could defend himself.

10.5. Accordingly, there is no manner of doubt that an accused person or any person who suspects that his name figures in a first information report can file an application or get an application filed through his pairwikar (representative/agent) for supplying certified copy of the first information report either before the S.O./S.H.O. of police Station or the office of Superintendent of Police or the C.J.M. or the Special Judge before whom the first information report is kept or forwarded by the Police Station concerned. We may point out that we find a note in one of the commentary of the Cr.P.C. that it was held by the Full Bench of the Madras High Court reported in 1988 Mad. L.W. (Cr.)503 that an accused is nor entitled to

certified copy of the F.I.R. before forwarding of the Final Report but we are handicapped to appreciate the reasons for holding so due to their non-mentioning. In any view of the matter for the reasons recorded as above we are unable to agree with that view.”

A Division Bench of the Delhi High Court in W.P(Crl.) No.468 of 2010 has also after elaborate consideration of earlier cases held that the FIR is a public document and an accused is entitled to have a copy of the FIR.

10. As noted above, apart from other reasons which entitled an accused to receive copy of the FIR his right to defend himself by filing application under Section 438 of the Cr.P.C. can only be fulfilled only when he receives a copy of the FIR. Section 438 in so far as the State of Kerala is concerned is a provision for obtaining anticipatory bail. In this context reference is also made to the judgment of the Apex Court in **Parvinderjit Singh v. State of (U.T. Chandigarh)** (AIR 2009 SC 502) where the Apex Court had occasion to examine the right given under Section 438 of the Cr.P.C. In paragraph 15, the following was observed:

“15...An order under Section 438 is a device to secure the individual's 'liberty' it is neither a passport to the commission of crimes nor a shield against any and all of accusations likely or unlikely”.

When Section 438 is held to be a device to secure individual's liberty, all means to secure the said liberty has to be held to be available to the accused to fulfill the object which clearly reinforces the right of the accused to receive copy of the FIR. We thus hold that the accused is entitled for copy of the FIR. The accused can make an application to the police station concerned or office of the Superintendent of Police or the Court of concerned Magistrate which is required to be provided to him immediately within forty eight (48) hours.

11. Now we come to the second issue as to whether copy of the FIR registered in a police station can be obtained under the 2005 Act. The 2005 Act has statutorily recognised the right of information of all citizens. The Apex Court in **State of U.P. v. Raj Narain** (1975 (4) SCC 428) held that in a Government of responsibility like ours, where

all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. The following was laid down in paragraph 74:

“74. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security...”.

In **Dinesh Trivedi v. Union of India** (1997 (4) SCC 306) the following was laid down in paragraphs 16, 17 and 19:

“16. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate

sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognised limitations; it is, by no means, absolute. This Court has had many an opportunity to express itself upon this issue. In the case of State of U.P. v. Raj Narain (1975 (4) SCC 428) Mathew, J. eloquently expressed this proposition in the following words:

“In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.

(Emphasis added)

17. Implicit in this assertion is the proposition that in transactions which have serious repercussions on public security, secrecy can legitimately be claimed because it would then

be in the public interest that such matters are not publicly disclosed or disseminated.

19. What then is the test? To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers in Government can have frightening side effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest”.

The Apex Court further held in **People's Union for Civil Liberties v. Union of India** (2004 (2) SCC 476) that right

of information is facet of the freedom of speech and expression as contained in Article 19(1)(g) of the Constitution of India.

12. The State in the counter affidavit has refuted the claim of the petitioner that all copy of FIRs can be provided under the 2005 Act. The State comes up with various reasons due to which copy cannot be provided. Reference of Section 8(1)(h) which provides for exemption to the 2005 Act has been heavily relied on. It is useful to refer to paragraph 4 of the counter affidavit which is to the following effect:

“4. The averments made in paragraphs 3, 4 & 5 of the reply affidavit are also incorrect, hence denied. The investigation process under Chapter XII of the Code of Criminal Procedure, 1973 proceeds on the First Information Report. In most of the instances First Information is inextricably linked to the process of investigation or apprehension or prosecution of offences. In such cases, such information need not be disclosed to the public as it is exempted under Section 8(1)(h) of the Right to Information Act, 2005 which provides that

information which would impede the process of investigation or apprehension or prosecution of offenders need not be disclosed to the citizens. Therefore, even when the case law developments point to the fact that FIR is a public document, where an FIR is covered by the provisions under Section 8(1)(h) of the Right to Information Act, 2005, it need not be disclosed to the citizens till investigation is completed. But it can be claimed by the informant and the accused as per legal provisions under the Code of Criminal Procedure, 1973 as a matter of legal right. The provisions in the Code of Criminal Procedure, 1973 are specific to this effect, that is, the supply of copy of FIR to the accused is contemplated only at a stage after proceedings are being initiated on a police report by the competent Magistrate. As such there is no legal provision which entails the accused to have a copy of the FIR served on him immediately on the FIR being lodged. It is also totally impossible in most cases to judge within twenty four hours of lodging the FIR as to who the real accused is. The law makers never intended that the accused should also be served with a copy of the FIR within 24 hours of its lodging or that it be made public. As such, the prayer of the petitioner to that effect

cannot be acceded to”.

The Apex Court in **CBSE v. Aditya Bandopadhyay** ([2011] 8 SCC 497) had occasion to consider the scope and ambit of Section 8 of the 2005 Act. The Apex Court held that the courts and Information Commissions enforcing the provisions of the RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act. While interpreting Section 8 and the other provisions of the Act, the following was laid down in paragraphs 61 and 62:

“61. Some High Courts have held that S.8 of RTI Act is in the nature of an exception to S.3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that therefore S.8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual

practice, does not conflict with other public interests which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While S.3 and S.4 seek to achieve the first objective, S.8, S.9, S.10 and S.11 seek to achieve the second objective. Therefore when S.8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals.

62. When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the

earlier Act that is S.8 of Freedom to Information Act, 2002. The Courts and Information Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting S.8 and the other provisions of the Act”.

The petitioner has brought on record sufficient materials to indicate that website of the Kerala Police itself provides for common integrated police application under which online application can be given for copy of the FIR. In the reply affidavit petitioner has filed Ext.P5 which provides the option website, (www.keralapolice.gov.in) and other details. It is useful to extract the following:

“Official website [www.keralapolice.gov.in]

Official website of Kerala Police gives overall information about the State Police. It contains Press releases, latest news, alerts, announcements, look out notices, Circulars, Executive Directives, Tenders, seniority lists, information as per RTI act, contract, information, crime and road accident statistics, criminal intelligence gazette etc. An online complaint facility viz., Citizen's Watch is incorporated in the website”.

Common Integrated Police Application

The Common Integrated Police Application (CIPA) is a multilingual application to automate the processes (workflow) at primary sources of data itself e.g., Police Station and to build a crime & criminal information system based on Cr.PC. It provides an efficient way of organising crime records for generating queries/reports and crime analysis for decision support. This will be subsumed by the CCTNS when it is implemented. At present all Police Stations of Kerala State are networked under the project and FIRs are being prepared on the computers in all these stations from 1st September, 2009”.

In Ext.P7 filed along with the reply by the petitioner it is clearly mentioned that online facility is provided for filing application under the 2005 Act which stated the following:

Online facility to file application under RTI Act

Online facility is provided for filing applications under the RTI Act. The applicant can send their applications in the format available on the website through email. The mode of payment of fees (Postal order, Money Order etc) should be mentioned in the online application. The requested information shall be furnished by the SPIO's only after receiving

formal application and the fee”.

It is thus clear that information under the 2005 Act is being provided by the police authorities even online also. We are thus of the view that application for copy of the FIR can also be submitted by any person under the 2005 Act. It is however, relevant to note that whether in a particular application police authorities are claiming exemption under Section 8(1) of the 2005 Act is a question which has to be determined by the police authorities by taking appropriate decision by the competent authority. In event no such decision is taken to claim exemption under Section 8 of the 2005 Act, the police authorities are obliged to provide for copy of the FIR on an application under the 2005 Act.

13. Now we come to the third issue, i.e., uploading of FIR in the website. As noted above, the State in its statement as well as counter affidavit has stated that it is not advisable to take any policy decision to have all the FIR uploaded in the website of the police. Paragraph 4 of the statement filed on behalf of the State is as follows:

“4. It is respectfully submitted that

keeping in view of the above statutory prescriptions as also the practical situations that would be required to be faced by the Investigating Officers in various kinds of offences, the Government have examined the matter in detail and have decided that it would not be advisable to take any policy decision to have all the FIRs uploaded in the websites of the police station concerned immediately on registration of the same. It is keeping in mind that various instances would demand FIRs to be kept in sealed cover that the Government has decided not to take a decision to have FIRs uploaded in the official website, irrespective of the crime involved. Since decisions on matters as to which are the kinds of cases in which could be uploaded and at what stage etc. are ones which require deeper analysis and decisions thereon can be taken only after deliberations at various levels, the Government has not yet taken any policy decision thereon to acceded to the petitioner's prayer to have FIRs uploaded immediately on registration of the same. Moreover, it is also pertinent a fact to be brought to the notice of this Honourable Court that all the police stations in the State are not provided with the facility of website and since the process of uploading FIRs in the website concerned would not only require

technical expertise but also financial commitments, the Government has not yet taken any positive decision in this regard”.

Again in the counter affidavit reasons have been given by the State for not uploading FIR in the website as noted above in paragraph 3 of the counter. Certain more reasons have been given by the State for not uploading the FIR in the website as mentioned in paragraphs 8 and 9.

14. As submitted by the learned counsel for the petitioner, the Delhi High Court has already issued directions in W.P(Crl.) No.468 of 2010 where one of the directions is that FIR be uploaded in the website of the Delhi police except where decision is taken not to upload FIR in sensitive cases. Directions (D), (E) and (F) are relevant which are to the following effect:

“(D) The copies of the FIR, unless reasons recorded regard being had to the nature of the offence that the same is sensitive in nature, should be uploaded on the Delhi Police Website within twenty four hours of lodging of the FIR so that the accused or any person connected with the same can download the FIR and file appropriate application before the court as per

law for redressal of his grievances.

(E) The decision not to upload the copy of the FIR on the website of Delhi Police shall not be taken by an officer below the rank of Deputy Commissioner of Police and that too by way of a speaking order. A decision so taken by the Deputy Commissioner of Police shall also be duly communicated to the Area Magistrate.

(F) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR”.

15. From the submissions made by the learned counsel for the parties and the pleadings on record, it is clear that there may be cases where uploading of FIR may not be in the public interest. Cases relating to communal harmony, cases relating to security of nation and international security and several other categories of cases may fall in this group. As noted above, the Legislature itself has narrated exemptions under Section 8 of the 2005 Act. The Apex Court in **CBSE v. Aditya Bandopadhyay** (supra) has laid down that Section 8 has been enacted to ensure that revelation of

information in actual practice does not conflict with other public interest which include efficient operation of the Governments, optimum use of limited fiscal resources and preservation of confidential and sensitive information. Section 8 cannot be allowed as an exception to Section 3 so as to construe strictly, literally and narrowly. The Apex Court held that State information Commission have to adopt purposive consideration involving reasonable and balanced approach which harmonises two objects while interpreting Section 8 and other provisions of the 2005 Act. Section 4 of the 2005 Act requires that all public authorities have to ensure that all records that are appropriate to be computerised are computerised and connected through a network all over the country. Section 4(1)(a) of the 2005 Act is as follows:

“4. Obligations of public authorities.-(1)

Every shall - (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of

resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated”.

As noted above, police stations in the State of Kerala have been connected with website and online application under the 2005 Act are already been entertained on different police stations. As noted above, it has been pleaded on behalf of the State that the State has not yet taken a policy decision to upload all the FIRs in the website. Even if it has not taken a policy decision as to upload all FIRs in the website, it has to take a decision as to which category of FIRs have to be uploaded in the website for information to all and to permit easy access to all those who are concerned with crime registered and those who have to take further steps regarding the crime registered. As noted above, it is in the domain of authorities as to which category of the FIRs are to be put on website for information to the public in general. But there has to be a decision and appropriate categorization or norms for taking a decision as to in which case FIR be uploaded and in which it is not be

uploaded. State of Kerala having taken steps towards technological advancement including e-governance, we are of the view that the State is also obliged to take decision on the above subject even if any such policy decision has not yet been taken as on date. It is relevant to note that even in the Delhi High Court judgment as noted above, it has been provided that FIR with regard to sensitive cases may not be uploaded. However, such decision was to be taken by the Officer not below the rank of Deputy Commissioner of Police. The State can come with any such decision which may balance right of information available to the public in general and interest of the State. We are thus of the opinion that petitioner has made out a case for issuing directions to the State to consider all aspects of the matter and take appropriate decision regarding uploading of the FIR in the police website with all details regarding its operation and mechanism.

In the result, the Writ Petition is disposed of with the following directions:

(1) On an application submitted by an

accused for copy of the FIR, the concerned police station/office of Superintendent of Police shall make available copy of the FIR within two days from making the application.

(2) Copy of the FIR can also be obtained by an accused from the court of the concerned Magistrate where the report has already been sent within two working days from the date of making the application.

(3) Copy of the FIR has also to be made available on an application filed under the Right to Information Act, 2005 as per the provisions of the said Act unless a decision is taken by the competent authority that it is covered by any of the exemptions as provided under Section 8 of the 2005 Act.

(4) For uploading of all or such category or nature of the FIR, in the official website with all concerned details, the State shall consider all aspects of the

matter and take appropriate decision in that regard within a period of three months from the date a copy of this judgment is produced before the 1st respondent.

Parties shall bear their own costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

VSV