

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(103) **CM-5045-CWP-2017 in/and
CWP-15246-2015
Decided on: April 25, 2017.**

P.P. Kapoor

.... Petitioner

Versus

SIC and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Rajesh Bansal, Advocate, for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

M.M.S. BEDI, J (ORAL)

CM-5045-CWP-2017

This is an application for fixing actual date of hearing in the appeal.

Application is allowed.

Case is taken up for hearing today itself.

CWP-15246-2015

The petitioner had moved an application under Right to Information Act, 2005 on 07.03.2012 for providing the copies of zimni, investigation, inquiry report in FIR No.316 dated 11.09.1998 under Sections 376, 341, 506, 34 IPC registered at Police Station Ganaur District Sonapat but vide letter dated 21.03.2012, the same had been denied on the ground that zimni report cannot be provided under Section 172 Cr.P.C.

Learned counsel for the petitioner has submitted that the Chief Information Commissioner, Haryana vide order dated 08.07.2009 Annexure P-4 had ordered for providing the similar information to one Capt. Rajinder

Singh Jain in a case decided by the State Information Commission, Haryana.

I have gone through the order Annexure P-4.

The reason for allowing the supply of case diary, was permitted by the Chief Information Commissioner mainly on the ground that the police in the said case had permitted the inspection of the case diary to the complainant.

The petitioner, on the principle of parity, seeks a direction of supply of the information which is prohibited under Section 172 Cr.P.C.

I have heard learned counsel for the petitioner and considered the contention that on the principle of parity with order Annexure P-4, the petitioner should be provided the police diary. No doubt, the Right to Information Act, is meant for ensuring transparency, to bring in accountability and containing corruption on the one hand and at the same time ensuring that the revelation of information, in actual practice, does not harm or adversely or other public interests which include efficient functioning of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. In this context, reference can be made to the observations of the Supreme Court made in **Institute of Chartered Accountants of India Vs. Shaunak H. Sayta and others, A.I.R. 2011 S.C. 3336.**

The information which is prohibited under a Statute cannot be claimed as a matter of right by an applicant under the Right to Information Act. Section 172 of the Code of Criminal Procedure reads as follows:

“172. Diary of proceedings in investigation.

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the

investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872.”

The case diary can be used only for the purpose, mentioned in Section 172 (3) Cr.P.C during course of criminal proceedings for the purpose of contradicting the police officers and can be looked into by the Court.

When any information which is prohibited to be supplied by a Statute, the same cannot be allowed. The reliance on order Annexure P-4 is misconceived. The circumstances, in the said case, have already been explained hereinabove.

No ground is made out to interfere in the impugned order.

The petition is dismissed.

(M.M.S. BEDI)
JUDGE

April 25, 2017
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No