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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 10423 OF 2010**

The State of Maharashtra and others .....Petitioners

V/s.

Dilip Pandurang Suryavanshi and another .....Respondents

Mr. A. I. Patel Addl. GP for the petitioner

Mr. K. H. Giri for respondent no. 1

**CORAM : SHANTANU KEMKAR AND  
NITIN W. SAMBRE, JJ.**

**DATE : JULY 17, 2018.**

**P.C.**

This petition is preferred by the State of Maharashtra along with its police officials against respondent no. 1 who was Assistant Commissioner of Police and applicant an application under the provisions of Right to Information Act, 2005 (Hereinafter referred to as 'the Act' for the sake of brevity).

2 The brother of respondent no. 1 who was also a senior police

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inspector was found to have been involved in a crime. In the aforesaid background, respondent no. 1 moved an application under the Act seeking following relief:

*The copies of the papers of investigation in crime no. 302 of 2006 registered with Versova Police Station including that of extract of station diary entries, communications exchanged in between various offices in relation to the same. Another information that was sought was copies of the papers of investigation in crime no. 246 of 2009 registered with Versova Police Station including that of extract of station diary entries, communications exchanged in between various offices in relation to the same.*

3 The said information was sought from the Public Information Officer. The Public Information Officer, vide communication dated 30/04/2010 provided certain information, however, respondent no. 1, feeling aggrieved, approached the same authority again, who in response issued communication dated 12/05/2010 intimating him

that information was already furnished to him and the investigation in the matter is going on.

4 Respondent no. 1, feeling aggrieved, approached the First Appellate Authority i.e. petitioner no. 2 who in turn rejected his First Appeal as whatever information available was supplied to him.

5 Feeling aggrieved, petitioner approached in second appeal to respondent no. 2 Authority who in turn passed the order impugned on 01/12/2010 directing the petitioners to provide all information sought by respondent no. 1 without any cost, failing which they will be proceeded against by saddling cost/fine. As such, this petition.

6 The petition which remained pending for eight years is taken up for admission wherein the order of respondent no. 2 dated 01/12/2010 is questioned.

7 The learned Additional Public Prosecutor Shri. Patel would urge that whatever information available was already supplied to

respondent no. 1. According to him, in Criminal Writ Petition no. 2473 of 2006, papers were submitted before this Court. According to him, while passing the order impugned, the fact that investigating officer is carrying out further investigation, pursuant to provisions of section 173 of Code of Criminal Procedure, 1973 was also brought to the notice of the Authority i.e. respondent no. 2. That being so, the order impugned passed by the Authority is contrary to the provisions of section 8 sub clause (h) of the Act. The learned AGP then would urge that the information under the application was sought in regard to 3<sup>rd</sup> party. The complainant in crime which was registered against brother of respondent no. 1, has objected for providing such information and in view thereof, order goes contrary to the scheme of section 8 (h) and section 11 of the Act. Shri. Patel then would urge that respondent no. 1-applicant, being a real brother of accused who was already provided with copy of the charge-sheet and other material and who has faced the trial, and other proceedings before this Court is trying to twist the arms of the petitioner-authorities by mis-using the provisions of Right to Information Act, 2005.

8     *Per contra* the learned counsel for the respondents would support the order. According to him, the order impugned is not complied with till date. He submits that he needs to take further instructions in the matter and sought adjournment as respondent no. 1 is not in touch with his counsel.

9     Considered rival submissions.

10    In the explanation tendered by the petitioner before respondent no.2 Authority, in categorical terms it was brought on record that the information cannot be furnished in view of provisions of section 8 (1) (h) and section 11 (1) of the Act. In such eventuality, what is expected of respondent no. 1 was to examine the same and record its findings, however, the fact remains that the order impugned does not demonstrate any consideration of the said legal submissions. It appears that respondent no. 2 has ignored the fact that at relevant time, pursuant to provisions of section 173 of Code of Criminal Procedure, 1973, further investigation was already going on. Record

of the matter in question was submitted before this Court in hearing of a petition in relation to investigation. The information was sought by respondent no. 1, who is not a party, and such request was rightly dealt with by petitioner in the backdrop of section 11 of the Act. The complainant has objected the prayer of respondent no. 1 seeking information about investigation.

11 Apart from above, in our opinion, the order impugned does not warrant any compliance at this stage for the reason that the charge-sheet in the matter is already filed against the brother of respondent no. 1 who is facing criminal prosecution and whatever information was available is already part and parcel of the charge-sheet.

12 In the aforesaid background, this Court is of the opinion that the order impugned is unsustainable and as such, same is hereby quashed and set aside.

13 The petition stands allowed in terms of prayer clause 23 (a) which reads thus:

*23(a) This Hon'ble Court be pleased to issue to a writ of certiorari or writ, order or direction in the nature of certiorari calling for the record and proceedings from the file of the Chief Information Commissioner, State Information Commission, State of Maharashtra, Mumbai and after going through the legality, validity and propriety quash and set aside the impugned Order dated 01/12/2009 passed by the Chief Information Commissioner, State Information Commission, State of Maharashtra, Mumbai.*

**[NITIN W. SAMBRE, J.]**

**[SHANTANU KEMKAR, J.]**