

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 333 OF 2018****JOAN MASCARENHAS E. D'SOUZA.,****... Petitioner****Versus****THE PUBLIC INFORMATION OFFICER,
SUPDT. OF POLICE (NORTH) AND 2
ORS.****, ... Respondents**

Adv. Kapil D. Kerkar for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for the Respondent
nos. 1 & 2.**Coram:- C. V. BHADANG, J.****Date:- 13th February 2019.****Oral Order:**

By this petition, the petitioner is challenging the order dated 9/2/2017 passed by the State Information Commission (the Commission, for short) in Penalty proceedings no.30/2010.

2. The petitioner happens to be the wife of Mr. Domingos D'Souza, who is one of the accused in Crime no.281/2009 of P.S. Mapusa, registered under sections 504, 323, 356, 379 r/w section 34 of I.P.C.

3. The petitioner filed an application dated 4/11/2009 addressed to the Superintendent of Police (North)/P.I.O seeking following information under the Right to Information Act (RTI) :

1. Copy of the complaint filed by Francis Fernandes and Mrs. Poonam Patre against Mr. Domnic D'Souza in the Crime Case

No.281/2009.

2. Medial Report copy of Mr. Domnic D'Souza.
3. Medical Report of Mrs. Poonam Patre.
4. Whether Francis Fernandes, Poonam Patre and Lethi Goltekar were arrested.
5. Arrest details of Francis Fernadnes, Poonam Patre and Lethi Goltekar along with the respective case no.
6. Copy of the Investigation Officer's Say on the Bail application of Francis Fernandes and Poonam Patre.
7. Details of the relevant sections under which Francis Fernandes and Poonam Patre applied for bail.
8. Copy of the Station Diary pertaining to the incident.

4. The P.I.O refused to give the information on the ground that the investigation was in progress and the information was thus exempted under section 8 (1) (h) of the Act. The P.I.O was of the opinion that furnishing of the information at that stage would hamper the investigation.

5. The petitioner challenged the said order before the First Appellate Authority, which partly allowed the application furnishing a copy of the F.I.R and found that in so far as rest of the documents are concerned, the petitioner can approach the Sub Divisional Magistrate.

6. The petitioner carried the matter in a second appeal before the Commission in Appeal no.28/SC/2010. The Commission by a judgment and

order dated 22/10/2010 allowed the appeal and directed the first respondent/PIO to furnish the information to the petitioner within 15 days from the receipt of the order. While allowing the appeal the Commission also issued a show cause notice to the first respondent under section 20(1) of the Act, as to why action for imposing penalty should not be taken against him for causing delay due to deliberate denial of the information.

7. The first respondent filed his reply to the show cause notice claiming that the complaint on the basis of which the offence was registered was in respect of outraging of modesty of a woman, threats, abuse and assault which was a grave and serious offence. The investigation was at a preliminary stage and therefore it was felt that furnishing of the information to the petitioner who was the wife of the accused and a third party, would impede the progress of the investigation.

5. The Commission after hearing the parties accepted the explanation furnished by the first respondent and by the impugned order dated 9/2/2017 has discharged the show cause notice. Hence this petition.

6. I have heard Shri Kerkar ,the learned counsel for the petitioner and Ms. Linhares, the learned Additional Government Advocate for the

respondent nos.1 and 2. Perused record.

7. It is submitted by Shri Kerkar the learned counsel for the petitioner that the Commission having earlier issued a show cause notice finding that there was deliberate denial of the information, could not have discharged the show cause notice, by the impugned order. It is submitted that the first respondent has failed to show that the denial was bonafide. It is submitted that the first respondent could not show as to how the furnishing of the information could impede the investigation. The learned counsel pointed out that as per the second proviso to section 20 (1) of the Act, the burden of proving that the P.I.O acted reasonably and diligently is on the concerned P.I.O, which burden has not been discharged.

8. Ms. Linhares, the learned Additional Government Advocate has supported the impugned order. It is submitted that after the second appeal was allowed, the information was furnished within a period of 15 day as directed. It is submitted that the P.I.O was of a bonafide view that looking to the stage of the investigation, the furnishing of the information at that stage would impede the investigation.

9. I have considered the submissions made and I do not find that any

case for interference is made out. The contention that once the Commission having issued the show cause notice could not have discharged the same, is only stated to be rejected. While deciding the second appeal the view expressed by the Commission can only be said to be a *prima facie* view which will be subject to the final order passed in the show cause notice under section 20 (1) of the Act. I have carefully gone through the nature of the information sought. In my considered view the P.I.O had taken a plausible view that the furnishing of the information at that stage could impede the investigation albeit the said view was reversed in second appeal by the Commission. However, that by itself would not indicate that the denial of the information was without any reasonable cause or the information was withheld malafidely. In that view of the matter, no case for interference is made out. The petition is without any merit and is dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-