

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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CWP-36572-2019

Date of decision: 17.12.2019

MAHENDER SINGH CHAWLA

...PETITIONER

V/S

STATE OF HARYANA & ORS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Gaurav Tyagi, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for quashing of the order dated 28.12.2018 (Annexure P-9) passed by the First Appellate Authority, District Panipat and the order dated 15.11.2019 (Annexure P-17) passed by the State Information Commission, Haryana, whereby the application preferred by the petitioner under the Right to Information Act seeking certified copies of case diary stands denied keeping in view the provisions of Section 8 of the Right to Information Act, 2005 read with the provisions of Section 172 (3) of the Code of Criminal Procedure.

It is the contention of the learned counsel for the petitioner that the petitioner had submitted an application under the Right to Information Act dated 10.09.2018 (Annexure P-1). Petitioner sought certified copy of the case diary relating to the investigation in FIR No. 243/2015 registered at Police Station Sadar Panipat dated 13.05.2015. The said information when was not supplied to the petitioner by SPIO, he filed an appeal before the First Appellate Authority. The First Appellate Authority did not respond to

the issue leading to the filing of the appeal before the State Information Commission. The State Information Commission proceeded to pass an order dated 30.10.2018 (Annexure P-7) directing the SPIO-cum-Deputy Superintendent of Police (HQ) Panipat to furnish that portion of case diary which is not covered under the provisions of Sections 8 (1) (a), 8 (1) (c), 8 (1) (g), 8 (1) (h) of the Right to Information Act to the petitioner within 15 days of the receipt of the order and to send compliance report. The Deputy Superintendent of Police proceeded to reject the application of the petitioner vide order dated 28.12.2018 (Annexure P-9) by observing that all the zimnis and information about the case relating to the FIR would fall under the purview of Sections 8 (1) (a), 8 (1) (c), 8 (1) (g), 8 (1) (h) of the Right to Information Act and, therefore, the same cannot be furnished. Petitioner, thereafter, preferred a rejoinder regarding the appeal which he had earlier preferred before the State Information Commission, which, on consideration, has been rejected by passing the order dated 15.11.2019 (Annexure P-17) denying the said information relying upon the provisions of Section 8 (1) (a), 8 (1) (c), 8 (1) (g), 8 (1) (h) of the Right to Information Act and the provisions of Section 172 (3) of the Cr. P.C.

Learned counsel for the petitioner asserts that the denial of the information to the petitioner under the Right to Information Act would not be covered by the provisions of Section 172 (3) of the Cr. P.C. as the petitioner is, as a matter of fact, a victim and, therefore, would not fall within the provisions of Section 172 (3) of the Cr. P.C, according to which, the accused or his agents are not entitled to the information and the claim relating to the case diary. His assertion is that reliance upon the provisions of Section 8 of the Right to Information Act is misplaced as none of the

clauses relied upon by the authorities including the State Information Commission would be applicable to the information, as has been sought for by the petitioner. Prayer has, thus, been made for setting aside the impugned orders and for directing respondent No. 3 to supply the information, as sought for by the petitioner in his application dated 10.09.2018 (Annexure P-1).

I have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through the records of the case as also the provisions of the Statute.

May be under the strict sense of the provisions of Section 172 (3) of the Cr. P.C., petitioner may not fall in the category of persons who are not entitled to seek certified copies of the case diary relating to the investigation but as per the provisions of Section 8 (1) (h) of the Right to Information Act, which reads as follows:-

“8(1) (h): Information which would impede the process of investigation or apprehension or prosecution of offenders;”

the information, as sought for by the petitioner, could not be supplied to him keeping in view the fact that the investigation, which has been carried out by the Investigating Agency, has been concluded and the challan having been presented, the case is under trial before the Court. In case, the information is supplied to the petitioner, it would impede the process of prosecution of the offenders as there is every likelihood that the said information, as sought for by the petitioner, would fall in the public domain which could be shared with the accused as well which may impede the prosecution of offenders. The learned State Information Commission has rightly relied upon the judgment of the Hon'ble Supreme Court which reads

as follows:-

“Appeal Case No. 7590 of 2019

Hon'ble Apex Court has observed as under:-

Object of the Act is to harmonize the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect 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; (**Institute of Chartered Accountants of India Vs. Shaunak H. Satya**, AIR 2011 SC 336; (2011) 8 SCC 781; JT 2011 (10) SC 128;(2011) 9 SCALE 639).

7. The case diaries may contain information about sources of information, details of persons who deposed against the accused or in favour, details of person who refused to depose, list of witnesses, personal information like mobile details, calls details collected, investigation on points to be carried out, investigation on points could not be carried out etc.

8. Further, the non-obstante clause in Section 22 of the RTI Act does not repeal or substitute any pre-existing law, including the provisions of the Section 172 (3) of the Cr. P.C. However, it does provide for the provisions of the RTI Act to have overriding effect over anything inconsistent with the RTI Act. The Commission noted the submissions of the

representative of the respondent SPIO that the case is under trial and is pending for adjudication before the learned trial Court. If the information is shared with the appellant, then it will come in public domain and may be available to accused as well and that may impede the prosecution of offender. The commission is of view that when a case is under trial before the Court and has not been decided the case diaries cannot be furnished to appellant at this stage.”

This Court is in agreement with the observations of the State Information Commission while passing the impugned order dated 15.11.2019 (Annexure P-17).

There being no illegality in the order passed by the State Information Commission, Haryana which would call for any interference by this Court.

The writ petition, therefore, stands dismissed.

December 17, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No