IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(I) CWP-8126-2016
Reserved on: 23.12.2025
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STATE OF PUNJAB AND ANOTHER

-PETITIONERS

V/S

STATE INFORMATION COMMISSION, PUNJAB, CHANDIGARH, THROUGH ITS SECRETARY AND ANOTHER

-RESPONDENTS

(II) CWP-18515-2016

STATE OF PUNJAB AND ANOTHER

-PETITIONERS

V/S

STATE INFORMATION COMMISSION, PUNJAB, CHANDIGARH, THROUGH ITS SECRETARY AND ANOTHER

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sahil R. Bakshi, A.A.G., Punjab
for the petitioners.

Mr. H.C. Arora, Advocate, with
Mr. Gagandeep Sandhu, Advocate
for the respondent No.2.

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KULDEEP TIWARI, J.

1. Both these writ petitions are amenable for being decided through a common verdict on account of theirs encapsulating similar facts, besides theirs being engendered by a common legal issue.

2. The instant writ petitions assail separate orders dated

08.02.2016 passed by the State Information Commission, Punjab, whereby a penalty of ₹25,000/- has been fastened upon petitioner No.2 under Section 20 of the Right to Information Act, 2005 (hereinafter referred to as "the RTI Act"), and compensation to the extent of ₹20,000/- has also been awarded in favour of respondent No.2/applicant under Section 19(8)(b) of the RTI Act, payable from the funds of the public authority.

FACTUAL MATRIX

3. The concise and compendious factual matrix germane to the disposal of the instant writ petitions is that respondent No.2, who was an accused in a criminal case, submitted an application dated 05.12.2012 under the RTI Act seeking copies of the daily diaries maintained by the Station House Officers posted at Police Station Jagraon during the period 2004-2005. However, the S.H.O., Police Station City Jagraon-cum-Public Information Officer, vide letter dated 04.01.2013, declined to furnish the said information by invoking the provisions of Section 8 of the RTI Act. Thereafter, respondent No.2 submitted another application dated 20.02.2013 under the RTI Act seeking the following information:-

> *"Attested copy of Case Diary (Zimni), Daily Dairy (ROZNAMCHA) Related FIR No. 240 dated 21.07.04 & 242/05 Dated 22.07.2005 and Personal Dairy of the then SHO City Jagraon according order of Chief Information Commissioner in case CC No. 3209 of 2009 (copy enclosed) with also latest order dated 31.01.2013 in case AC No.20 of 2013 (Copy enclosed)"*

4. In response to this application, the S.H.O.-cum-Public Information Officer, vide letter dated 12.03.2013, supplied attested copies

of the DDR pertaining to FIR No.240 dated 31.07.2004. However, the information relating to the case diary (zimni) and the daily diary (roznamcha) was again declined by invoking the provisions of Section 8 of the RTI Act. The non-supply of the desired information triggered respondent No.2 to file an appeal before the State Information Commission, which was registered as AC No.521 of 2013. Subsequently, respondent No.2 filed another similar application dated 31.05.2013 under the RTI Act, which is stated to have been received in the office of the Senior Superintendent of Police, Ludhiana (Rural) on 08.06.2013, whereby he sought inspection of the police file relating to FIR No.240/04 and FIR No.242/05 registered at Police Station City Jagraon, wherein he was an accused.

5. It is pertinent to record that, when the application(s) seeking inspection of the police file and supply of the requisite documents was submitted, the trials arising out of both the FIRs (*supra*) were in progress.

6. Upon receipt of the application, the office of the Senior Superintendent of Police, Ludhiana (Rural), on the same day, i.e. 08.06.2013, forwarded the same to the concerned S.H.O., who was the custodian of the apposite record. The S.H.O., vide letter dated 28.06.2013, reported that the FIRs were pending adjudication and sought clarification as to the specific portion of the police files that respondent No.2 intended to inspect. Upon receiving clarification from respondent No.2 on 10.07.2013 that he wanted to inspect the complete file, the S.H.O., vide letter dated 22.07.2013, informed the office of the Senior Superintendent

of Police that the information sought was exempt from disclosure in view of the provisions of Section 8 of the RTI Act and Section 172(3) of the Cr.P.C., and hence the complete police file could not be made available to the accused or his agent for inspection, particularly when the trial was in progress. The said report was thereafter forwarded to respondent No.2 on 30.07.2013. Deriving grievance from non supply of desired information and refusal to inspect the police file, respondent No.2 preferred an appeal dated 12.08.2013 before the Inspector General of Police, Zonal-2-cum-Appellate Authority, Jalandhar. However, he remained unsuccessful as the appellate authority, by passing order dated 01.10.2013, declined his request for inspection and supply of the information sought. Undeterred, respondent No.2 thereafter approached the State Information Commission, Punjab, by filing a second appeal, which was registered as AC No.2313 of 2013.

7. Both the appeals (*supra*) preferred by respondent No.2 before the State Information Commission were subsequently clubbed together and disposed of vide separate orders dated 08.02.2016, which are presently impugned before this Court.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

8. Learned counsel for the petitioners, while reiterating the sequence of events, raised multiple legal issues. It is submitted that police case diaries/zimni stand explicitly protected from disclosure in view of the statutory prohibition embedded in Section 172(3) of the Cr.P.C., and that the exemptions carved out under Section 8(1)(h) of the RTI Act

subserve the fundamental purpose underlying Section 172(3) of the Cr.P.C. It is, therefore, contended that the overriding effect contemplated under Section 22 of the RTI Act cannot be invoked to empower any informant or applicant to demand access to a police case diary/zimni of a case, trial whereof is in progress.

9. Advancing arguments on merits, learned counsel submits that the penalty contemplated under Section 20 of the RTI Act is personal in nature and can be imposed only upon the designated Public Information Officer. In the present case, petitioner No.2 (in CWP-8126-2016), namely the then Senior Superintendent of Police, was never designated as the Public Information Officer and had merely exercised the statutory power of transferring the application under Section 6(3) of the RTI Act. Consequently, fastening penal liability upon him is wholly erroneous. Elaborating further, learned counsel submits that the record unequivocally demonstrates that upon receipt of the application from respondent No.2, the office of the Senior Superintendent of Police forwarded the same on the very same day to the concerned S.H.O.-cum-Public Information Officer, who thereafter made multiple communications in response to the request for information.

10. Concluding his arguments, learned counsel submits that the impugned orders awarding compensation to respondent No.2 from public funds have been passed in a mechanical manner without recording any finding regarding actual loss or detriment suffered by the applicant, as envisaged under Section 19(8)(b) of the RTI Act.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENT NO.2

11. *Per contra*, learned counsel for the respondent No.2 submits that Section 172 of the Cr.P.C. and Section 8(1)(h) of the RTI Act operate in separate domains and cannot be read together. It is contended that, to ensure a fair trial, an accused has the right to seek information under the RTI Act. A Public Information Officer, while adjudicating an RTI application seeking copy of police case diary, is guided solely by the provisions of the RTI Act, and the restriction under Section 172 Cr.P.C. is not applicable, particularly in view of the non-obstante provision under Section 22 of the RTI Act.

12. It is further submitted that no reasons were assigned by the Public Information Officer to demonstrate how disclosure of the police case diary would impede the ongoing investigation or trial. Therefore, the denial of information, in the absence of independent reasoning and in a mechanical manner invoking Section 8(1)(h) of the RTI Act, is legally unsustainable.

13. Placing reliance upon ***LPA-1377-2007 (Director of Income Tax (Investigation) and anr. vs. Bhagat Singh and anr.) and W.P.(C) 295/2011 (B.S. Mathur vs. Public Information Officer of Delhi High Court),*** rendered respectively by the Division Bench and Single Bench of the Delhi High Court, learned counsel submits that once an investigation is complete, relevant information can be disclosed under the RTI Act. It is incumbent upon the Public Information Officer to demonstrate how disclosure would impede investigation, and mere invocation of Section

8(1)(h) is insufficient.

14. Reliance is also placed upon ***W.P.(C) 12428/2009 (Deputy Commissioner of Police vs. D.K. Sharma),*** to contend that an applicant has the right to seek information concerning his own criminal case under the RTI Act post-trial, and such a right cannot be said to be barred by the provisions of the Cr.P.C.

ISSUES EMERGING FOR CONSIDERATION AND ADJUDICATION

15. At the outset, it is imperative to note that, subsequent to the conclusion of trial in both FIRs (*supra*), respondent No.2 has been provided with the information sought under the RTI Act. Accordingly, his grievance concerning the non-supply of information now stands effectively redressed.

16. Having heard the rival submissions advanced by learned counsel for the contesting parties and having meticulously perused the record, the following issues emerge for consideration and adjudication:-

> ***(i) Whether an accused, by invoking the provisions of the RTI Act, is entitled to access a police case diary/zimni relating to his own criminal case, particularly in circumstances where the investigation or trial thereof is still in progress;***
>
> ***(ii) Whether the penalty imposed upon petitioner No.2 under Section 20 of the RTI Act and the compensation awarded to respondent No.2, payable from public funds, are legally sustainable and justified in the facts and circumstances of the present case.***

ANSWERS TO THE HEREINABOVE FORMULATED ISSUES

17. Before commencing to pen down an answer to the issue No. (i), it is deemed apposite to refer to some significant statutory provisions and judicial precedents, which are germane to the present dispute.

18. The RTI Act was enacted by Parliament in the fifty-sixth year of the Republic of India with the express object of promoting transparency and accountability in the functioning of every public authority. The RTI Act confers upon every citizen the right to access information under the control of public authorities, subject to certain exemptions and restrictions prescribed therein. In the present matter, the information sought by respondent No.2 under the RTI Act was denied by the public authority invoking the statutory exemptions under Section 8(1)(h) of the RTI Act and the prohibition contained in Section 172(3) of the Cr.P.C.

19. Section 8(1)(h) of the RTI Act exempts the Public Information Officer from disclosing any information, disclosure whereof would impede the process of investigation, apprehension, or prosecution of offenders. Section 22 of the RTI Act provides that the provisions of the RTI Act shall have an overriding effect over any other law in force, or any instrument having effect by virtue of any law other than this Act. Sections 8(1)(h) and 22 are reproduced hereinafter:-

> *"**8. Exemption from disclosure of information**.—(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*
>
> *XX XX XX*

> *(h) information which would impede the process of investigation or apprehension or prosecution of offenders;*
>
> *XX XX XX*
>
> ***22. Act to have overriding effect**.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."*

20. Section 172 of the Cr.P.C., which is extracted hereunder, mandates that every police officer conducting an investigation is obliged to maintain a diary recording the time at which information is received, the time at which the investigation commences and concludes, the places visited by him during the course of the investigation, and statement of the circumstances ascertained through his investigation. While sub-section (2) permits a criminal court to summon police diaries of a case under inquiry or trial and to utilize them, not as evidence but to assist the court in its proceedings, sub-section (3) unequivocally provides that neither the accused nor his agents are entitled to call for or inspect such diaries merely because they are referred to by the court. It further stipulates that if the police officer, who made the diaries, uses them to refresh his memory or if the court uses them for the purpose of contradicting such police officer, then the provisions of section 161 or section 145 of the Indian Evidence Act, 1872, as the case may be, shall apply.

> *"**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.

[(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1B) The diary referred to in sub-section (1) shall be a volume and duly paginated.]

(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 (1 of 1872), shall apply."

21. It is pertinent to note that the constitutional validity of sub-section (3) of Section 172 of the Cr.P.C. was challenged on the ground that it denies an accused the right to a fair and transparent trial. The Hon'ble Supreme Court, through its decision rendered in ***"Mukand Lal vs. Union of India", 1988 (2) R.C.R. (Criminal) 583***, upheld the constitutional validity of the provision and rejected the accused's claim to an unfettered right to make roving inspection of entries in the case diary. It was observed that public interest requirement from the stand point of the need to ensure a fair trial for an accused is more than sufficiently met by the power conferred on the court, which is the ultimate custodian of the interest of justice and can always be trusted to be vigilant to ensure that the interest of accused persons standing the trial, is fully safeguarded. It

was further observed that public interest requirement from the perspective of enabling the investigating agency to investigate the crime against the society in order that the interest of the community to ensure that a culprit is traced and brought to book is also safeguarded. The relevant observations are extracted hereunder:-

> *"We fully endorse the reasoning of the High Court and concur with its conclusion. We are of the opinion that the provision embodied in sub-section (3) of Section 172 of the Cr.P.C. cannot be characterised as unreasonable or arbitrary. Under sub-section (2) of section 172 Cr.P.C. the Court itself has the unfettered power to examine the entries in the diaries. This is a very important safeguard. The Legislature has reposed complete trust in the court which is conducting the inquiry or the trial. It has empowered the court to call for any such relevant case diary, if there is any inconsistency or contradiction arising in the context of the case dairy the Court can use the entries for the purpose of contradicting the Police Officer as provided in sub-section (3) of Section 172 of the Cr.P.C. Ultimately there can be no better custodian or guardian of the interest of justice than the Court trying the case. No court will deny to itself the power to make use of the entries in the diary to the advantage of the accused by contradicting the police officer with reference to the contents of the diaries. In view of this safeguard, the charge of unreasonableness or arbitrariness cannot stand scrutiny. The petitioners claim an unfettered right to make roving inspection of the entries in the case diary regardless of whether these entries are used by the police officer concerned to refresh his memory or regardless of the fact whether the court has used these entries for the purpose of contradicting such police-officer. It cannot be said that unless such unfettered right is conferred and recognised, the embargo engrafted in sub-section(3) of section 172 of the Cr.P.C. would fail to meet the test of reasonableness. For instance in the*

case diary there might be a note as regards the identity of the informant who gave some information which resulted in investigation into a particular aspect. Public Interest demands that such an entry is not made available to the accused for it might endanger the safety of the informants and it might deter the informants from giving any information to assist the investigating agency, as observed in ***Mohinder Singh v. Emperor, AIR 1932 (Lahore) page 103 (104):***

> *"The accused has no right to insist upon a police witness referring to his diary in order to elicit information which is privileged. The contents of the diary are not at the disposal of the defence and cannot be used except strictly in accordance with the provisions of Sections 162 and 172. Section 172 shows that witness may refresh his memory by reference to them but such use is at the discretion of the witness and the Judge, whose duty it is to ensure that the privilege attaching to them by statute is strictly enforced."*

and also as observed in ***Mahabirji Birajman Mandir v. Prem Narain Shukla, AIR 1965 Allahabad 494.***

> *"The case diary contains not only the statements of witnesses recorded under Section 161 Cr.P.C. and the site plan or other documents prepared by the Investigating Officer, but also reports or observations of the Investigating Officer or his superiors. These reports are of a confidential nature and privilege can he claimed thereof. Further, the disclosure of the contents of such reports cannot help any of the parties to the litigation, as the report invariably contains the opinion of such officers and their opinion is, inadmissible in evidence."*

4-5. The public interest requirement from the stand point of the need to ensure a fair trial for an accused is more than sufficiently met by the power conferred on the court, which is the ultimate custodian of the interest of justice and can always be trusted to be vigilant to ensure that the interest of accused persons standing the trial, is fully safeguarded. This is a factor which must be accorded

> *its due weight. There would be no prejudice or failure of justice to the accused person since the court can be trusted to look into the police diary for the purpose of protecting his interest. Therefore, the public interest requirement from the perspective of safeguarding the interest of all persons standing trial, is not compromised. On the other hand the public interest requirement from the perspective of enabling the investigation agency to investigate the crime against the society in order that the interest of the community to ensure that a culprit is traced and brought to book is also safeguarded. The argument inspired by the observations in Raj Narain's case [1975] 3 SCR 333 and S P Gupta's case [1982] 2 SCR 365 (at pp. 622, 624) in the context of claim for privilege in regard to section 123 of Evidence Act, which have no direct bearing, is also effectively answered in the light of the foregoing discussion as the 'Public Interest' aspect is also taken care of. In the ultimate analysis, it is not possible to sustain the plea of the petitioners, which is rooted in the mistrust of the court itself, that the provision is unreasonable and arbitrary. There is also another dimension of the issue. Section 172 embodies a composite scheme. The duty cast under Clause (1) and the rider added by Clause (3) thereof form integral part of the scheme. Clause (3) cannot be struck down in isolation whilst retaining Clause (1). The legislature in its wisdom has cast this obligation only subject to the rider. Clause (3) cannot be viewed in isolation. Under the circumstances, we concur with the view of the High Court and repulse the challenge. These are the reasons which impelled us to dismiss the petitions."*

22. In ***"Sidharth vs. State of Bihar", (2005) 12 SCC 545,*** the Hon'ble Supreme Court specifically held that confidentiality must always be maintained in the matter of criminal investigation and it is not desirable to make available the entire case diary to the accused, as the police officer who is conducting the investigation may come across a

series of information which, although he is bound to record in the case diary, cannot be divulged to the accused. It was further held that if the case diary is made available to the accused, it may cause serious prejudice to others and even affect the safety and security of those who may have given statements to the police. This verdict was subsequently relied upon by the Supreme Court in ***"State of NCT of Delhi vs. Ravi Kant Sharma and others", (2007) 2 Supreme Court Cases 764***. The relevant observations recorded in ***Sidharth's case*** (*supra*) read as follows:-

> *"27. Lastly, we may point out that in the present case, we have noticed that the entire case diary maintained by the police was made available to the accused. Under Section 172 of the Criminal Procedure Code, every police officer making an investigation has to record his proceedings 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. It is specifically provided in sub-clause (3) of Section 172 that 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 Cr.P.C. or the provisions of Section 145 of the Evidence Act shall be complied with. The court is empowered to call for such diaries not to use it as evidence but to use it as aid to find out anything that happened during the investigation of the crime. These provisions have been incorporated in the Code of Criminal Procedure to achieve certain specific objectives. The police officer who is conducting the investigation may come across a series of information which cannot be divulged to the accused. He is bound to record such*

> *facts in the case diary. But if the entire case diary is made available to the accused, it may cause serious prejudice to others and even affect the safety and security of those who may have given statement to the police. The confidentiality is always kept in the matter of criminal investigation and it is not desirable to make available the entire case diary to the accused. In the instant case, we have noticed that the entire case diary was given to the accused and the investigating officer was extensively cross-examined on many facts which were not very much relevant for the purpose of the case. The learned Sessions Judge should have been careful in seeing that the trial of the case was conducted in accordance with the provisions of Cr.P.C."*

23. A harmonious construction of Sections 8(1)(h) and 22 of the RTI Act, read together with Section 172(3) of the Cr.P.C., clearly demonstrates that these provisions function in tandem. Section 8(1)(h) of the RTI Act complements and subserve the underlying objective of Section 172(3) of the Cr.P.C. The provisions of the Cr.P.C. expressly curtail the disclosure of police case diaries to an accused while an investigation or trial is pending, and the exemption enshrined in Section 8(1)(h) of the RTI Act ensures the enforcement of this prohibition. Furthermore, the legislative intent behind Section 172(3) of the Cr.P.C. is to preserve the confidentiality of investigation records. The restriction imposed through Section 172(3) of the Cr.P.C. inherently indicates that disclosure of police case diary would impede the ongoing investigation or trial, and there comes exceptions carved out under Section 8(1)(h) of the RTI Act to achieve the same object.

24. Therefore, the act of the Public Information Officer declining the respondent No.2 access to police case diary of a criminal case, trial

whereof was in progress at the relevant time, is legally sustainable. Accordingly, the answer to the issue No. (i) is in the negative.

25. Insofar as the issue No. (ii) is concerned, since this Court has already answered the issue No.(i) in the negative and held the act of the Public Information Officer in denying the information sought to be valid, the impugned orders imposing penalty upon the Public Information Officer/petitioner No.2 (in both writ petitions) are set aside. Moreover, since the respondent No.2 has also now already received the information sought, no compensation, as awarded vide the impugned orders, is required to be paid.

(KULDEEP TIWARI)
JUDGE

March 11, 2026
devinder

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No