

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Writ Petition No.716 of 2014
[Smt. Kanta widow of Tryambak Khandale of Akola Distt. Vs. State of Mah. & two others]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. O.Y. Kashid, Adv., for the Applicant.
Mr. T.A. Mirza, APP for respondents.

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**CORAM : A.B. CHAUDHARI AND
P.N. DESHMUKH, JJ.**

DATE : 12th February, 2015.

01. Heard learned counsel for the rival parties.

02. Mr. Kashid, learned counsel for the petitioner, vehemently argued that the respondents are not taking proper steps to search the missing son of the petitioner. According to him, the son of the petitioner was asked to join at Nanded. But then, there is no proof that he had actually joined at Nanded and, therefore, there is doubt as to whether really the respondents have seriously taken steps to trace out the son of the petitioner. He further submitted that it is necessary to have the investigation by some superior agency in order to trace out the son of the petitioner.

03. Per contra, Mr. Mirza, learned APP for respondents, has invited our attention to the Affidavit of

Respondent No.3 who is Commandant of the State Reserve Police Force and who has filed the affidavit with full responsibility. Mr. Mirza submits, referring to the averments in the affidavit of the Commandant, that the son of the petitioner, after joining the service in the State Reserve Police Force right from 1990, had a typical habit of remaining absent for one or the other reason. Mr. Mirza then submitted that the Commandant has made serious investigation despite the fact that son of the petitioner was removed from Govt. job and that is clear from his affidavit. Despite efforts, the son of the petitioner could not be found. The Police Station, Civil Lines, Akola, had issued a letter on 17th August, 2006 that there is no information or a report lodged with any Police Station from Akola about the missing person, i.e., the son of the petitioner.

04. We have heard learned counsel for the rival parties. We have perused the Affidavit-in-Reply filed by Shri Prakash Ramchandra Joshi, In-charge Commandant, State Reserve Police Force Group No.6, Dhule. It is better to quote the following paragraphs from the said affidavit, which read thus:-

“4. I say and submit that, Ex APC/626 Mohan Tryambak Khandale was habitual to remain absent on duty without taking prior permission from the authority. He was absent on duty on various occasion for the following dates in his service.

- (1) 8.12.1990 to 13.12.1990 (Absent from sick)
- (2) 20.7.1991 to 29.7.1991 (Absent)
- (3) 10.11.1991 (Absent)

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- (4) 12.5.1992 to 7.12.1992 (Absent)
- (5) 26.10.1992 to 1.6.1992 (Absent from sick)
- (6) 4.10.1993 to 22.12.1993 (Absent from sick)
- (7) 2.4.1994 to 5.6.1994 (Absent but E.L. Converted).
- (8) 6.6.1994 to 27.6.1994 (Unauthorized Absent)
- (9) 27.8.1994 to 30.9.1994 (Unauthorized Absent)
- (10) 20.11.1994 to 1.12.1994 (Unauthorized Absent)
- (11) 17.1.1995 to 13.2.1995 (Unauthorized Absent)
- (12) 30.9.1995 to 9.12..1995 (Unauthorized Absent)
- (13) 9.1.1996 to 9.2.1996 (Unauthorized Absent)
- (14) 25.11.1996 to 10.6.1997 (198 days) (continued till 2.8.1997) copies attached as Annexure I.
- (15) 30.9.1997 to 28.10.1997 (unauthorized Absent)
- (16) 7.11.1997 and then did not resumed on duty.

“5. I say and submit that Ex APC/626 Mohan Traymbak Khandale was on casual leave from 19.11.1996 (A/N) to 25.11.1996 (A/N) he should have resumed his duty on 25.11.1996 evening but he did not resume his duty on 25.11.1996 and remained absent up to 2.8.1997. Notices has been issued to the APC/626 Mohan Tryambak Khandale for resumption to his duty as on 30.11.1996, 13.01.1997, 26.02.1997, 22.03.1997, 28.04.1997 and 06.05.1997 respectively through Police Station Officer, Taluka Police Station, Akola but he did not resume his duty notices are annexed herewith and marked as AnnexureR-A collectively.

6. I say and submit that, Ex. APC/626 Mohan Tryambak Khandale was habitual to remain absent. It is against the Bombay Police Act, 1951 of Section 29. Hence, charge was framed on 8.7.1997 vide office letter No. Sama-6/SRPF/Astha/1/5568/97 regarding indiscipline behaviour and absent for

duty. Charge sheet was served to Mohan Tryambak Khandale on 25.7.1997 and Departmental Enquiry was opened on 3.9.1997 vide Office letter No. Sama-6/SRPF/Astha/DE/7264/97 dated 3.9.1997. During Departmental Enquiry on 18.9.1997 his primary answer was recorded and he was directed by notice through Police Station, Akola to remain present on 23.2.1998. The copy of the notice is annexed herewith and marked as AnnexureR-B. On 23.2.1998 he did not come and the statement of witness have been recorded and the proceedings was completed, he was removed from Govt. service on 28.8.1998 vide letter No. Sama-6/Astha/DE/5871/98 dated 28.8.1998.

7. I say and submit that during above mentioned departmental enquiry on 3.8.1997 he resumed on his duty and he was present up to 21.9.1997. From 22.9.1997 to 29.9.1997 he was taken six days casual leave. After completion of leave he did not resume his duty in time and remained absent till 27.10.1997. APC/626 Mohan Tryambak Khandale has made request to continue him on his job vide his request letter dated 28.10.1997. The copy of the request letter is annexed herewith and marked as AnnexureR-C. He resumed his duty on 28.10.1997 and he was ordered to go to Nanded for internal security bandobast duty, but he remained unauthorized absent for that important bandobast duty. Meanwhile, on 7.11.1997 he has taken sick pass from TR Company SRPF Group No.VI Dhule is annexed herewith and marked as AnnexureR-D. The Medical Officer SRPF Group No. VI Dhule has given a rest certificate upto 22.11.1997. He was not permitted to take rest at his home but he left the Headquarter unauthorizedly and since then he did not come back to Headquarter."

05. From perusal of the above paragraphs, we are satisfied that the Commandant made all efforts to trace out the missing son of the petitioner, but could not

succeed. As a matter of fact, the son of the petitioner having been removed from service after Departmental Enquiry, the Commandant has no concern thereafter. Still he made efforts to find out the whereabouts as is clear from para 11 of his Affidavit-in-Reply. We quote para 11 as under:-

“11. I say and submit that, Shri Tryambak Malhari Khandale has been informed vide this office letter dated 15.9.1998 that information and photos has been sent to Director of Doordarshan, Worli, Mumbai and also to search his son at his level. The letter dated 15.9.1998 annexed herewith and marked as Annexure-R-H.”

06. In the light of the above and looking to the habit of son of the petitioner to remain absent from duty unauthorizedly on number of occasions and authorizedly on some occasions, there is a reason to believe that the son of the petitioner vanished on his own and did not desire to communicate with anybody including his parents. In such a situation, this Court is unable to help the petitioner, except for expressing the sympathy. That being so, we do not entertain the present petition and dispose of the same.

07. Criminal Writ Petition No. 716 of 2014 is disposed of.

Judge

Judge

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