

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. REVISION APPLICATION NO.129 OF 2002

Bajrang Ganu Kamble
(Since deceased through LRs)

a) Smt. Suvrna Bajrang Kamble & Anr. .. Applicant

Vs.

The State of Maharashtra .. Respondent

.....

Mr. Shekhar A. Ingawale, Advocate for the Applicant.
Ms. Vaidehi S. Mhaispurkar, APP for Respondent - State.

.....

CORAM : PRAKASH D. NAIK, J.

RESERVED ON : JANUARY 23, 2018

PRONOUNCED ON : FEBRUARY 7, 2018.

JUDGMENT :

The original applicant was prosecuted for an offence punishable under Section 145(2) of the Bombay Police Act vide Summary Criminal Case No.29051 of 1992. The original applicant has expired during the pendency of this revision application and hence an application viz. Criminal Application No.779 of 2016 was preferred by the wife and son of the said applicant for impleading them as applicants with a view to challenge the impugned judgment and order of conviction. The

said application was allowed vide order dated 5th January, 2018. The original applicant is referred to as accused for the sake of brevity.

2 The case of the prosecution is that the accused was the police constable attached to Head Quarter in Kolhapur district at Kolhapur. From 16th January, 1991 to 13th September, 1991 he remained absent from his duty without assigning any reason or informing his senior. Report was made to the superintendent of police by the officer who used to note down the attendance. Action was directed to be initiated against him. By notice dated 13th February, 1991, the accused was called to resume duty. However, he did not report for duty. After obtaining signature from the superintendent of police, it was decided to prosecute the accused under Section 145(2) of the Bombay Police Act and complaint was filed at Shahupuri Police Station on 10th December, 1991. Investigation was conducted and the charge - sheet was filed on 14th October, 1992.

3 The accused was prosecuted for the aforesaid offence vide Summary Case No.29051 of 1992 before the then Judicial Magistrate, Kolhapur. By judgment and order dated 8th November,

2000, the accused was convicted for the offence punishable under Section 145(2) of the Bombay Police Act. He was sentenced to suffer simple imprisonment for three months and to pay fine of Rs.100/- in default to suffer further simple imprisonment for ten days.

4 The accused preferred Appeal against the judgment and order of conviction before the Court of Ad-hoc Additional Sessions Judge, Kolhapur viz. Regular Criminal Appeal No.62 of 2000. Vide judgment and order dated 21st March, 2002, the same was partly allowed. The sentence of imprisonment was reduced to 15 days simple imprisonment.

5 Learned advocate for the applicant submits that both the Courts have committed error in convicting the accused for the offence punishable under Section 145(2) of the Bombay Police Act. It is submitted that there was no evidence to convict the accused for the aforesaid offence. The Court has not taken into consideration the defence raised by the accused that due to mental illness he could not attend his duties.

6 Primarily, the judgment and order passed by both the Courts are assailed on the ground that the offence under Section 145(2) of Cr.P.C. is not made out. It is submitted that the continuous absence from duty may lead to departmental action for misconduct or dereliction of duty. However, for constituting offence under Section 145(2) of the Bombay Police Act, *mens rea* is required to be proved. There is no material on record to show that the accused was assigned any particular duty which is violated by him. The withdrawal from duty is different from being absent. It is submitted that to constitute offence punishable under Section 145(2) of the Bombay Police Act, mere absenteeism is not sufficient but, what is required to be shown is that the police officer must be guilty of cowardice or he resigns his office or withdraws himself from duties thereof in contravention of Section 29. It is submitted that remaining absent on duty may be justifiable, however, violating the duty assigned to him would constitute the offence under Section 145(2) of the Act. It is, therefore, submitted that the impugned judgments be set aside.

7 Learned counsel placed reliance on the decision of this Court in the case of ***State of Maharashtra Vs. Ramanath Gangadhar Pawar***¹.

1 2009 All MR (Cri.) 389

8 Learned APP submitted that there is concurrent finding of two courts. The applicant had remained absent for long period of time without assigning any reason. The absenteeism amounts to breach of Section 145(2) of the said Act. The accused has remained absent without giving any intimation. Remaining absent amounts to dereliction of duty and also amount to withdrawing himself from duty which constitute the offence punishable under Section 145(2) of the said Act. The prosecution has put forth the evidence which supports the charge under Section 145(2) of the said Act. No ground is made out for setting aside the conviction. The accused had not justified the absence and has failed to produce any evidence to support his illness. Learned APP submitted that the evidence of P.W.1 the Assistant Inspector Annappa Rayappa Saundatti, evidence of P.W.2 Janardan Chandru Burung, Assistant Commander S.R.P. Group, Pune, the evidence of P.W.3 Mhad. Noor Mahmad Shaikh, reserve police inspector establishes his offence under the aforesaid provisions and, therefore, the judgment requires no interference.

9 The case of the prosecution is that the applicant had remained absent for a long period of time without seeking any permission. The evidence discloses that he was absent from From

16th January, 1991 to 13th September, 1991. P.W.1 Shri Annappa Saundatti, ASI Head Quarter was cross-examined and a suggestion was given to the said witness that the accused had informed his office about his mental illness during the absenteeism and that he had taken treatment from Dr.Nagarkar. Similar suggestion was given to P.W.2 and P.W.3. Analyzing the evidence of the witnesses of the witnesses it appears that the charge against the applicant is that without permission the applicant did not report the duty during the said period. Hence, he was charged for an offence punishable under Section 145(2) of the Bombay Police Act. The witnesses, however, did not depose that the accused had withdrawn himself from any assigned duty. The provision of Section 145(2) of the Maharashtra Police Act is to be read with letter and spirit. The object of the said provisions appears to be punish a person for withdrawing from the duty. There is distinction between remaining absent and violating the duty which is assigned to the police personnel. Not reporting duty without seeking permission may lead to departmental action. However, to punish a person and direct him to suffer imprisonment which would jeopardise the liberty of a person would certainly require *mens rea* for disobeying the assigned duty. The intent of prosecution under Section 145(2) is to adopt

punitive measures for withdrawing from the duty which is different from not reporting to the office.

10 In the case of ***State of Maharashtra Vs. Ramnath Pawar (Supra)*** relied upon by the learned counsel for the applicant, this Court has analysed the scope and object of Section 145(2) of the Bombay Police Act. It is observed that the said provision provides punishment in the cases where the police officer is guilty of cowardice, resigns the office or withdraws himself from duties thereof in contravention of Section 29, he is guilty of any willful breach or neglect of any provision of law or of any rule or order which being such police officer, it is his duty to observe or obey or he is guilty of any violation of duty for which no punishment is expressly provided by any other law in force. The Court observed that accused in the said case had remained absent from duty from 8th December, 1991 to 18th June, 1993, without obtaining any permission. Hence, he was prosecuted for offence punishable under Section 145(2) of the said Act. Section 29 mandates that no police officer shall resign his office or withdraw himself from the duty except the written permission from the competent authority. It is further observed that the main thrust of Section 29 is to prevent sudden exodus of police officers

from the onerous duty when there is urgent requirement of the services so as to maintain the law and order situation. The expression "withdraw himself from the duties thereof" does imply intentional avoidance of the duty. After analysing the aforesaid provisions, Court has made following observations in paragraph no.7 of the said decision:

"7 *So far as continuous absence from duty is concerned, there is no difficulty in holding that absenteeism may be the ground for proceeding against the respondent for misconduct or dereliction in duty. The departmental action could be taken against him if his habit was found to be derogatory to the discipline expected in the constabulary. For, the culpable act of the respondent, mens rea is required to be proved. There is hardly any material on record to show that the respondent was assigned any particular duty. I mean to say, the absence from duty ought to have been proved to be for the purpose of avoiding any particular work. The withdrawal from duty is quite different concept from mere absenteeism. For, category (b) as shown under sub-clause (2) of section 145 deals with the cases in which resignation is tendered to avoid the nature of work or after assigning of work and duty, the police officer withdraws from the*

same with intention to avoid the work. For example, if police officers are deputed to work as members of anti-terrorist squad and would later-on resign the post or would withdraw from such duty in contravention of section 29, then it can be said that offence under sub-clause (2) of Section 145 of the Bombay Police Act is made out. The evidence on record only shows that the respondent remained absent from the duty. Section 145 contemplates withdrawal from duties in contravention of section 29 of the Act. The expression "withdrawal from duty" does imply intentional refusal to do any particular work or cessation to perform the assigned duty. Therefore, mere absence from duty by the officers is not sufficient to attract section 29 (2) of the Bombay Police Act. Considering these aspects, the impugned acquittal does not call for any interference. The impugned judgment cannot be said to be perverse."

11 In the present case also the applicant was absent during the period as stated hereinabove. It is not the case of the witnesses that he had committed breach of duty which is assigned to him. For the reasons stated hereinabove and in the light of the observations made in the aforesaid decision, the accused ought not to have been convicted for offence punishable

under Section 145(2) of the Bombay Police Act (Maharashtra Police Act). The impugned judgments and orders are, therefore, required to be set aside.

12 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Revision Application is allowed;
- (ii) The judgment and order dated 8th November, 2000, passed by the Judicial Magistrate, Kolhapur in Summary Criminal Case No.29051 of 1992 convicting the accused Bajrang Ganu Kamble for the offence punishable under Section 145(2) of the Bombay Police Act as well as the impugned judgment and order dated 21st March, 2002, passed by Ad-hoc Additional Sessions Judge, Kolhapur, in Regular Criminal Appeal Nos.62 of 2000, are quashed and set aside and the accused is acquitted of the said offence.

(PRAKASH D. NAIK, J.)