

(2003) 05 PAT CK 0011

In the Patna High Court

Case No : C.W.J.C. No. 1507 of 2003 and M.J.C. No. 829 of 2003

Hira Mani Devi @ Hira Devi

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Evidence Act, 1872 — Section 108

Citation : (2003) 3 PLJR 590

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Navin Prasad Singh, Harendra Pratap Singh and Narayan Singh, for the Appellant; R.K. Shahi and B.K. Prasad, for the Respondent

Judgement

1. When despite service of notice, there was no response from the Senior Record Officer, Electrical and Mechanical Engineering, E.M.E. Records, Secunderabad (Respondent No. 4), this Court vide order dated 8.5.2003, issued bailable warrant of arrest of Respondent No. 4 for his production before this Court on 19th May, 2003. Again on 19.5.2003, there was no response (sic) except that one Nayak Subedar Nagendra Singh, who claimed to be attached with the (sic) office of Respondent No. 4, appeared b(sic) without any show cause or affidavit from Respondent No. 4. Under such circu(sic) stances, this Court directed for initiation (sic) contempt proceeding and for issuance (sic) non-bailable warrant of arrest for production of Respondent No. 4 before this Court today. Meanwhile, Respondent No. 4 w(sic) directed to file his show cause.

2. Pursuant to the said order, Respondent No. 4 has personally appeared and file (sic) his show cause. In paragraph 4 of the sa(sic) show cause it is stated that the pres(sic) Senior Record Officer (Respondent No. (sic) took over charge of the office on 19th M(sic) 2003, before which one Major Lakhan P(sic) Singh was holding the post of Respondent No. 4.

3. Mr. Shahi, learned Senior Standing Counsel appearing for Respondent No. (sic) has submitted that, in fact, there is (sic) default on the part of the present

Respondent No. 4 and it appears that earlier due (sic) some communication gap there was (sic) response from Respondent No. 4. However Respondent No. 4 has personally appeared and has tendered his unqualified apolog(sic) and has also paid the amount of co(sic) awarded by this Court vide order dated 23.4.2003.

4. Having heard Mr. Shahi, learned Senior Standing Counsel and in the fac(sic) and circumstances aforementioned, (sic) apology tendered by Respondent No. 4 accepted and accordingly, the counter(sic) proceeding initiated vide M.J.C. No. 829 2003 is dropped. The M.J.C. is, thus, (sic) missed.

5. It is stated that Respondent No. (sic) has appeared on his own and as such prayed, the non-bailable warrant of a(sic) vide order dated 19.5.2003, is (sic) recalled.

6. In the writ petition, the Petitioner (sic) aims to be the widow of Ex. No. (sic) 960 Cfn/Elect. Ram Kumar Sharma, (sic) sought for direction to the Respondents vide her family pension, Army Group (sic) and other benefits with interest (sic) invoking the desertion/dismissal order (sic) of her husband which has been made (sic) with effect from 25th December, further, the Petitioner has sought for (sic) from the Respondents to cancel the (sic) regarding OSL/desertion and dis(sic) and to re-publish the same as miss(sic) presumed dead with effect from 25th (sic) mber 1980 regarding her husband also has prayed for quashing of the dated 2nd May, 1997 issued under signature of Left. Assistant Record (sic) for Office-in-Charge Records, E.M.E. (sic) Secunderabad whereby it has decided that the Petitioner is not (sic) family pension,

7. In short, the relevant facts are that deceased Army personnel was granted casual leave with effect from 11th (sic) mber 1978 to 24th December, 1978. the expiry of the said leave, the hus(sic) of the Petitioner left his village for(sic) Secunderabad to report duty. The Petitioner (sic) with all other family members of her (sic) and remained under the impression her husband who was serving with 9 (sic) C/o 56 A.P.O. at Secunderabad must (sic) reported. However, when she did not (sic) ve communication from her husband quite some time, i.e. for two and (sic) years she filed an application ad(sic) sed to the Chief of Army Staff, Army (sic) quarters srs, New Delhi in the year 1981 (sic) now the whereabouts of her husband,

8. It appears from the counter affidavit (sic) d on behalf of the Respondents that in (sic) meanwhile, an enquiry was conducted by duly constituted Court of Enquiry which declared her husband deserter with effect from 25th December, 1978. Having learnt that her husband is missing since he left for reporting to his duty and also about the fact that he has been declared deserter, she lodged an F.I.R. in Mahandia Thana, now under Arwal district in Bihar, on 26.4.1995. The Officer-in-Charge of the said Thana after enquiry issued a certificate (Annexure 6) that the husband of the Petitioner could not be traced out and he is missing. Accordingly, the Petitioner approached the authority concerned for grant of family pension on which the Senior Record Officer, vide letter dated 2nd August, 1996

(Annexure 7), requested 9 Dogra C/o 56 A.P.O. for holding a fresh Court of Enquiry and declare the individual as missing/presumed dead and notify P.O.R. in Part II orders and forward the same to his Office for further action.

9. From the counter affidavit it appears that 9 Dogra expressed their inability to take any action as prima facie evidence could not be established to prove that the individual did not desert the Army intentionally. Later, the matter was again initiated at the instance of the Army Headquarters and according to the counter affidavit, the directions of the Army Headquarters are still awaited.

10. Prima facie, I am unable to appreciate as to now 9 Dogra found that prima facie evidence could not be established to prove that the individual did not desert the Army intentionally when the Petitioner is claiming for revocation of the order of desertion/dismissal of her husband and to republish the same as (sic) issuing presumed dead u/s 108 of the Indian Evidence Act, 1872 which provides that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

11. In the present case, the F.I.R. was lodged and the Officer-in-Charge in his report/certificate, contained in Annexure 6, certified about the requirement as provided in Section 108 of the Indian Evidence Act. Under such circumstances, it was for the Respondents to prove that the husband of the Petitioner is still alive.

12. However, be that as it may, as the matter still appears to be under consideration by the Army Headquarters and the directions of Army Headquarters are still awaited, the writ application is disposed of with the direction to the Secretary, Ministry of Defence, New Delhi (Respondent No. 1) to ensure that the Army Headquarters take final decision with respect to the claim of the Petitioner keeping in view the provisions contained in Section 108 of the Indian Evidence Act and the certificate/report of the officer-in-charge, contained in Annexure 6, within two weeks of the receipt/production of a copy of this order.

13. learned Counsel for the Petitioner has further submitted that the dues as is admitted by the Senior Record Officer (Respondent No. 4), contained in Annexure 4, has not been paid uptill now. Respondent No. 4, who has personally appeared before this Court, has assured that he will ensure release of the amount as is found payable pursuant to Annexure 4 with statutory interest, if any, and the same shall be paid to the Petitioner within three weeks.

14. As prayed, let a copy of this order be supplied to Mr. Shahi, learned Senior Standing Counsel for its strict compliance.