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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-44268 of 2014 (O/M)

Date of decision : 20.5.2016

Gobind Gulati alias Gopi and others Petitioners

Versus

State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.V.S. Kher and Mr. Hemant Saini, Advocates,
for the petitioners.

Ms. Supriya Arora, Assistant A.G. Haryana.

Dr. Anmol Rattan Sidhu, Senior Advocate, with,
Mr. Pratham Sethi, Advocate, for respondent No. 2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

This petition has been filed under Section 482 Cr.P.C. for quashing the order dated 28.10.2014 (Annexure-P-17), passed by the learned Judicial Magistrate 1st Class, Faridabad, vide which an application dated 27.10.2014 (Annexure-P-15), filed by complainant/respondent No. 2 herein under Section 156 (3) Cr.P.C., was allowed, and the criminal complaint dated 27.10.2014

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(Annexure-P-14), titled as Smt. Suneeta Versus Govind Gulati alias Gopi and others, was sent to the Station House Officer, Police Station Sector-7, Faridabad, to register an FIR. The petitioners also seek quashing of the said FIR No. 641, dated 8.11.2014, registered under Sections 420, 384, 406, 467, 468, 471, 506 120-B IPC at Police Station Sector-7, Faridabad (Annexure-P-18) alongwith consequential proceedings arising therefrom.

The perusal of allegations made in the complaint filed before the learned Illaqa Magistrate by Smt. Suneeta partner of M/s Yash Construction, 1334, 1st Floor, Sector-3, Ballabgarh, Faridabad, shows that complainant-Company deals in the construction work. The accused-Company, namely, M/s BPTP Limited, Gurgaon, got a work of the construction, executed from the complainant-Company to the extent of Rs. 4 crores, for which payment of Rs. 1.78 crores was made. The balance amount of Rs. 3,32,48,547/- was to be paid alongwith interest at the rate of 24% per annum from August, 2013. Since the accused earlier kept on refusing and thereafter plainly refused to pay balance payment, therefore, the complainant submitted a complaint dated 15.5.2014 before the Police Commissioner, Gurgaon. Accordingly, the police called both the parties and asked them to enter into a compromise. Thereafter, the accused alongwith 4/5 musclemen came to the office of complainant at Sector-3, Ballabgarh and under threat to kill them on gun point,

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forcibly obtained the signatures of husband of complainant on blank papers and gave them three post dated cheques amounting to Rs. 34,76,774/- and told them that their accounts are settled and if the balance amount is claimed, they will be killed. It is alleged in the complaint are that the signatures of the husband of the complainant on blank papers have been obtained under threat and the compromise is forged.

The learned Judicial Magistrate 1st Class, Faridabad, vide impugned order dated 28.10.2014 (Annexure-P-17), sent the same to the police station for registration of case and investigation under Section 156 (3) Cr.P.C., on the basis of which FIR in question (Annexure-P-18) was registered.

I have heard the learned counsels for the petitioners, the learned State counsel, the learned senior counsel for respondent No. 2 and have also carefully gone through the file.

It is not disputed that M/s BPTP Limited, Gurgaon/accused-Company, of which petitioners are Directors and Office Bearers, had given an order to M/s Yash Construction, of which Smt. Suneeta (complainant) wife of Ugrasen Kaushik, is the partner. The work order is dated 22.6.2011 (Annexure-P-1). The total cost of the project was Rs. 2.60 crores. It comes out that in the agreement, there was an arbitration clause for settlement of dispute. It also comes out that on 11.9.2013, M/s Yash Construction through

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their advocate issued a notice to M/s BPTP Limited, Gurgaon, raising a claim of Rs. 2,68,13,345/- plus damages. The notice was duly received by said M/s BPTP Limited on 18.11.2013. On 16.11.2013, M/s Yash Construction through its partner Ishwar Dutt Kaushik filed a complaint before the Commissioner of Police, Sector-12, Faridabad (Annexure-P-4), wherein, while stating about the dispute and complaint regarding non payment of Rs. 2,68,13,345/- plus damages, it was stated that on 10.10.2013, a meeting was held in Towar 'M', Sector-82, Faridabad, at about 11:00 AM, where accused No. 2 to 6, mentioned in the complaint, alongwith some 5 to 7 unknown bouncers came present and suddenly accused No. 5 and 6 started using filthy language and threatened the complainant to throw him from top floor of the building and that one of the unknown bouncer placed a pistol on the table and accused No. 2 to 6 threatened the complainant and asked him to forget about the payment, otherwise no-one would know about the whereabouts of the complainant. It further comes out that a meeting was held between the parties on 26.6.2014, signed on 9.7.2014 (Annexure-P-6), at M/s BPTP, Gurgaon, i.e. office of the accused, of which the accused are office bearers, whereby M/s BPTP had agreed to pay Rs. 34,76,774/-. Certain other conditions were also incorporated. The said minutes of meeting was signed by Mr. U.S. Kaushik, for M/s Yash Construction and Mr. Sunil Gupta and Mr. Ashok Rastogi, for

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M/s BPTP Limited. It also comes out that at the time of meeting, from the side of M/s Yash Construction Mr. Ugarsen Kaushik, Partner (husband of the complainant Suneeta), Mr. Manoj Kaushik, Site Engineer and Mr. Niranjana Sharma, Advocate, were also present. Then, there are disputed writings dated 18.7.2014 (Annexures-P-7 and P-8), executed by the partner of M/s Yash Construction, vide which cheque bearing No. 216842, dated 21.8.2014 for Rs. 24,73,582/- was handed over and Rs. 19 lacs were respectively paid. On the same day, vide writing (Annexure-P-9), M/s Yash Construction undertook to withdraw all the criminal complaints, lodged with the Faridabad police. The said writings are hand written and not typed. These are the writings, which the complainant claims that these were obtained by getting his signatures on blank papers.

The criminal act alleged before this Court is the incident of 15.5.2014, wherein the accused, after being called and advised by the police to settle their dispute, are alleged to have entered the office of the complainant at Sector-3 Ballabgarh, and at gun point obtained the signatures of Ugarsen Kaushik (husband of the complainant) on blank papers, who is also stated to be real brother of I.D. Kaushik, partner of M/s Yash Construction and at the same time handed over three post dated cheques for Rs. 34,76,774/- to the husband of the complainant and also gave threat to the husband

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of the complainant to kill them. The complaint has been filed by Smt. Suneeta, wife of Ugarsen Kaushik, as partner of M/s Yash Construction.

This Court finds that in view of the conditions in agreement, the payment or balance thereof is a civil dispute and arbitration clause is already there between the parties in the said agreement, whereby the work order was placed. Now, this Court is to only see whether the occurrence, as alleged on 15.5.2014, actually took place ?

When the entirety of the circumstances is examined, it comes out that the State in its reply has taken the plea that it is a civil dispute, whereas the complainant-respondent No. 2 herein in the reply admitted that there was a dispute regarding the payment. Some defects regarding the construction work were pointed out. The complainant-respondent No. 2 has justified the FIR in question, stating that the forgery is to be decided during the investigation. However, there are several facts, which show that the said incident of accused coming with musclemen and threatening the complainant and obtaining the signatures of Ugarsen Kaushik (husband of the complainant) is not acceptable and has been incorporated in the complaint to make out a criminal case, so as to put pressure on the accused to settle the terms as per the desire of the complainant. Ugarsen Kaushik himself did not file any complaint. His wife was not

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present at the time when the alleged occurrence took place i.e. on 15.5.2014. It is mentioned in the complaint itself that the Police Commissioner, Gurgaon, and higher authorities called both the parties on 15.5.2014 and asked them to enter into a compromise, to which accused agreed and also agreed to make the balance payment. It was thereafter that the petitioners/accused visited the office of the complainant alongwith 4/5 musclemen. The earlier complaint by Mr. I.D. Kaushik, as discussed above, shows that same type of incident was stated to have taken place in the year 2013. Normally, when a person comes with the musclemen and with a gun, he may obtain the signatures of the other party on blank papers, but he will never hand over post dated cheques to the opposite party. It is not disputed on behalf of respondents that the said cheques were encashed on 9.7.2014, 18.7.2014 and 21.8.2014 respectively i.e. between 2/3 months of the said occurrence.

First of all, the accused will never hand over the post dated cheques to the opposite party at gun point and then ensure that these cheques are honoured. Certainly if these cheques are given, the party handing over the cheques will certainly require some writing. The complaint was filed much later i.e. on 28.10.2014 i.e. after more than 5 months of the occurrence and after encashing the cheques. If some occurrence had taken place, the complainant or her husband would have immediately approached the police

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alongwith the said cheques, stating that these cheques have been handed over to them at gun point and opposite party has obtained some writing. However, the complainant and her husband decided to encash those cheques first and thereafter made the complaint. The writings mentioned above are in the hand of partner of M/s Yash Construction. The fact that no immediate complaint to the effect that said cheques were forcibly handed over to the complainant was made, makes it evident that it is a concocted story to put criminal law in motion, so as to put pressure on the accused to agree to the terms to be dictated by the complainant and firm M/s Yash Construction.

Therefore, from the foregoing discussion, it comes out that complaint filed by Smt. Suneeta before the Court as well as the registration of FIR thereto in pursuance to the order dated 28.10.2014 (Annexure-P-17), passed by the learned Judicial Magistrate 1st Class, Faridabad, is nothing, but misuse of process of Court. Accordingly, the present petition is allowed and the complaint dated 27.10.2014, titled as Suneeta Versus Govind Gulati alias Gopi and others, (Annexure-P-14), the impugned order dated 28.10.2014 (Annexure-P-17), passed by the learned Judicial Magistrate 1st Class, Faridabad, under Section 156 (3) Cr.P.C., ordering the registration of a case and the FIR No. 641, dated 8.11.2014, registered under Sections 420, 384, 406, 467, 468, 471, 506, 120-B

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IPC at Police Station Sector-7, Faridabad (Annexure-P-18) alongwith consequential proceedings arising therefrom are hereby stand quashed.

(KULDIP SINGH)
JUDGE

20.5.2016
sjks