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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-20770-2023
Date of Decision: 27.04.2023

Madhu Gupta

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Surinder Gandhi, Advocate
for the petitioner.

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HARSH BUNGER J.

1. Petitioner (Madhu Gupta) has filed the present petition under Section 482 of the Code of Criminal Procedure praying for setting aside of order dated 24.01.2023 (Annexure P-8) passed by the Court of Additional Sessions Judge, Rohtak and order dated 15.04.2017 (Annexure P-6) passed by the Court of Additional Chief Judicial Magistrate, Rohtak, whereby the protest petition filed by the petitioner in relation to case FIR No.126 dated 08.03.2010 (Annexure P-1) was dismissed. Further prayer has been made for directing the Additional Chief Judicial Magistrate, Rohtak to accept the protest petition filed by the petitioner to summon respondents No.2 to 34 for taking cognizance of the offences allegedly committed by them.

2. Briefly, the aforesaid FIR (Annexure P-1) was lodged on the complaint of the petitioner (Madhu Gupta w/o Arun Gupta), who had alleged that on 07.12.2008, her husband had gone to Guwahati in connection with a case and after he had left, Ajay Gupta (one of her relatives), Ashok Gupta, Mohan Lal, Pardeep Aggarwal (from her Village Julana), Vipin Aggarwal, Pankaj Aggarwal and Dhani Ram Saini came to her house and threatened that they would manage long imprisonment for Arun Gupta (petitioner's husband) in the Guwahati case and they could also get him kidnapped through Guwahati extremists. It was alleged that they demanded the bag of petitioner's husband and further said that if she would hand over the bag to them then they would help her husband. It was stated that after taking the bag from petitioner, the aforesaid accused persons went away. It was further stated that there were signed cheque book of H.D.F.C. Bank, Rohtak of the current account of Shiv Traders, Rohtak and some other important papers of petitioner's husband in the aforesaid bag. It was further alleged by the petitioner that the said persons also got some papers signed by her. As per the complainant, after the said occurrence, she was filled with extreme fear and uneasiness and she did not disclose anything to anyone. Later on when her husband returned on 15.12.2018 then she told the entire occurrence to him. It is alleged that later on, the petitioner came to know that the accused persons took out the cheque book from the bag and after filling up the cheques, they withdrew around Rs.2.25 Crores from the H.D.F.C. Bank Account of her husband. As per the complainant, the said accused persons had advance information that sufficient payments were to be credited in the bank account of petitioner's husband on 8th, 9th, 10th, 11th, 12th, 13th and 14th December. It is alleged that Ajay Gupta on dates 10th and 11th and 12th and

23rd and Pardeep Aggarwal as well as Vipin Aggarwal themselves filled up the cheques in question and transferred an amount of Rs.65 Lacs in the companies of Pardeep Aggarwal. Similarly, Ajay Gupta in connivance with Ashok Gupta, Mohan Lal and Dhani Ram Saini is alleged to have credited an amount of Rs.1.75 Crores in the accounts of different persons and different companies. It was further alleged that in these transactions, somewhere employees of the H.D.F.C. Bank were also involved and they also did not disclose anything to petitioner's husband. In this way, all the aforesaid accused persons, by way preparing false documents and forging the signatures, with the intention of cheating the petitioner's husband, have misappropriated an amount of Rs.2.25 Crores. It was also alleged that one cheque had been filled up in the handwriting of Ajay Gupta and the remaining papers of cheque book filled up by Ajay Gupta, it was written that how much money was given to which firm and people.

3. After investigation of the FIR (Annexure P-1), the cancellation report dated 08.06.2015 (Annexure P-2) was submitted by the police. Thereafter, the petitioner filed a protest petition before the Court of Additional Chief Judicial Magistrate, Rohtak, which came to be dismissed vide order dated 15.04.2017 (Annexure P-6).

4. Being dissatisfied by the aforesaid order dated 15.04.2017 (Annexure P-6), the petitioner preferred a criminal revision petition before the Court of Additional Sessions Judge, Rohtak, however, the same was also dismissed vide order dated 24.01.2023 (Annexure P-8). In the aforementioned circumstances, the instant petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioner.

5. I have heard learned counsel for the petitioner and perused the paper book as well as impugned orders dated 24.01.2023 (Annexure P-8) and 15.04.2017 (Annexure P-6).

6. Learned counsel for the petitioner while reiterating the contents of FIR submits that the learned Courts below have committed error in law by ignoring the material evidence produced by the petitioner, which has caused grave miscarriage of justice to her. It is submitted that there is sufficient evidence on Court file for taking cognizance against respondents No.2 to 34. It is stated that the cancellation report submitted by the police was a result of collusion between the accused and the police officials. It is next stated that the Courts below have ignored the fact that the accused persons, by way of criminal intimidation, had forcibly taken away the bag of petitioner's husband, containing important papers, and thereby misappropriated around Rs.2.25 Crores. Accordingly, it is prayed that the instant petition be allowed by setting aside impugned orders dated 24.01.2023 (Annexure P-8) and 15.04.2017 (Annexure P-6) and further directing the Additional Chief Judicial Magistrate, Rohtak to accept the protest petition filed by the petitioner to summon respondents No.2 to 34 for taking cognizance of the offences.

7. I have considered the submissions made by learned counsel for the petitioner. The petitioner alleged that the accused persons came to her house on 07.12.2008 in the absence of her husband Arun Gupta and demanded his bag, containing blank signed cheque book of H.D.F.C. Bank, Rohtak of the current account of Shiv Traders, Rohtak and some other important papers, which was handed over by the petitioner to the said persons as they had threatened that they would get her husband imprisoned

in the Guwahati case or they would get him kidnapped through Guwahati extremists, however, in the same breath, it has also been alleged that the said accused persons had told the petitioner that if the bag is handed over to them then they will help her husband. Further it is borne out from the FIR (Annexure P-1) itself that the occurrence is alleged have taken place on 07.12.2008 and the petitioner did not disclose the same to anyone until 15.12.2018, i.e. the date when her husband (Arun Gupta) is stated to have returned from Guwahati and the petitioner had told the entire incident to him. In my considered view, the conduct of petitioner in not disclosing the alleged occurrence to anyone for almost one week is highly unnatural of any prudent person and is not believable.

8. As regards the other allegations that the accused persons had taken out the cheque book from the bag and filled up the cheques by forging signatures of petitioner's husband and thus misappropriated around Rs.2.25 Crores, suffice it to say that the said allegations were duly investigated by the police and it was reported that on the basis of material gathered during the investigation, the transactions on 10.12.2008, 11.12.2008, 12.12.2008 and 13.12.2008 through H.D.F.C. Bank, Rohtak were conducted with the consent of Arun Gupta (petitioner's husband) by his brother Ajay Gupta and the said amount was transferred in the accounts of Arun Gupta's investors and relatives of investors, who were lender to Arun Gupta. Accordingly, no fraud or bad intention on the account of Ajay Gupta was found. It was also found that the investors of Arun Gupta have still pending balance loan due against him of Rs.1,22,15,000/- and accordingly as per the investigation, the case was found to be a case of economic nature and there was no evidence of cheating, forgery or criminal breach of trust, thus

no cognizable offence was found.

9. Another fact which had come out during investigation of the aforesaid FIR (Annexure P-1) was that the accused Ajay Gupta's statement was recorded by the police on 18.09.2015 along with the supporting documents, out of which, one supporting document is stated to be the application dated 08.04.2009 written by the petitioner's husband to the Superintendent of Police, Rohtak wherein Arun Gupta had stated that he had made the payment of Rs.2,22,27,000/- to the accused but he did not receive the material against those cheques. In the said application, Arun Gupta had alleged that the accused were demanding more money from him, accordingly he requested the Superintendent of Police, Rohtak to ensure the supply of material or the return of his cheques. Then there is another complaint dated 17.06.2009 submitted by Arun Gupta (husband of petitioner) against Ashok Gupta, Mohan Lal and M/s Energy Enterprises Pvt. Ltd., Guwahati wherein Arun Gupta is stated to have admitted that he gave cheque dated 11.12.2008 amounting to Rs.20,00,000/-, cheque dated 12.12.2008 of Rs.25,00,000/- and cheque dated 12.12.2009 of Rs.25,00,000/- to the accused Pardeep Aggarwal as per compromise. Accordingly, it was observed that in view of the admissions of Arun Gupta in the said complaints, there was no substance in the allegations of snatching of bag and fabrication of blank signed cheques levelled by the petitioner.

10. After investigation, the cancellation report dated 08.06.2015 (Annexure P-2) was prepared wherein it was stated as under:-

> *"That during the investigation of the present case, the then Superintendent of Police, Head Office, Rohtak Shri Sumit Kumar, vide Zimni No.55 dated 01.10.11, recorded in his investigation report that Arun Kumar Gupta through his wife*

Madhu Gupta got filed the present case, with the intention not to return the balance amount of his investors and seeing the possibility of tax liability expected to be imposed by the Income Department on the transacted amount, committed conspiracy of making false story and a false case was found to have been filed. On the basis of evidence gathered during the investigation of the present case, the transactions on 10.12.08, 11.12.08, 12.08.08 and 13.12.10 through HDFC Bank Rohtak were conducted with the consent of Shri Arun Gupta husband of complainant Smt. Madhu Gupta, by his paternal brother Ajay Gupta and the said amount was transacted into the accounts of Arun Gupta's investors and relative of investors, who were lender to Arun Gupta. No fraud and bad intention on the part of Ajay Gupta is found. The investors of Arun Gupta have still pending balance loan due against him of Rs.12215000/-. As per the investigation till now, it is found to be a case of economic nature. No evidence of cheating, forgery, criminal breach of trust have come up in the present case. Due to which no cognizable offence is found out in the present case and it is clear cut case of give and take and the allegations leveled against the accused have not proved and they are found innocent. This report was recorded by Shri Anil Kumar, Deputy Superintendent of Police, Rohtak on 13.03.14, on which the then Superintendent of Police, Rohtak on 06.02.14, sought the legal opinion from Assistant District Attorney office of Superintendent of Police, Rohtak and on 07.02.14, the Assistant District Attorney had given the opinion as follows; From Perusal of case file report of SHO dated 13.10.14, report of SO dated 05.02.14, there is sufficient grounds are in the file for submitting the Cancellation report before the Hon'ble Court."

11. In view of the aforesaid cancellation report, the petitioner filed a protest petition before the Court of Additional Chief Judicial Magistrate, Rohtak, however, the same was dismissed vide order dated 15.04.2017

(Annexure P-6) by observing as under:-

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> *After going through the case file as well as rival contentions very carefully, this court is of the view that no case is made out for summoning of accused. Reasons for the same are hereinafter mentioned.*
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> *10. In the complaint it is only alleged that when husband of the complainant was out of station then in his absence accused no to 7 came to the house of complainant at DLF Colony, Rohtak and by criminal intimidation forcibly took the black coloured bag from her which was containing all the important documents and further misappropriated a sum of Rs.2.25 crores by fraud. It is alleged that all this was done by accused Ajay Gupta and others in collusion with Bank Manager Harish Singla. It is alleged that husband of complainant wrote letter dated 20.12.2008 i.e. Ex C64 upon the case file to Branch Manager Harish Singla to stop the transactions from his account but despite that letter he did not stop the transactions According to complainant even after on 20.12.2008 several transactions were made from his account it is alleged by the complainant that even as per report of FSL his blank signed cheques were filled by accused Ashok Gupta which proves the fraud committed by accused Ajay Gupta.*
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> *11. In the complaint it is not mentioned that as to what kind a criminal intimidation was given by accused no.1 to 7 to the complainant which induced her to deliver the alleged black coloured bag to them. It is also not alleged that as to how accused no. 1 to 7 were in the knowledge of these documents kept in the alleged black bag. It is also not alleged that from which place in the house accused traced the alleged black bag. It is highly improbable that accused no, I to 7 would come in the house of the complainant and would directly demand a black coloured bag containing vital documents. So this story itself as alleged by the complainant is neither probable nor believable. Ex.C84 is the copy of complaint*

dated 15.12.2008 moved by complainant to SP, Rohtak. In that complaint it is alleged that accused Ashok Gupta, Mohan Lal, Pardeep Aggarwal and Dhani Ram on 7.12.2008 came to the house of complainant and threatened the complainant that they would implicate her husband Arun Gupta and in false case and would got abducted him by the terrorists. In that complaint it is alleged that accused demanded one bag from the complainant and assured that they would help her husband. According to complainant, on this pretext she delivered bag to accused. Again this version is highly contradictory. On the one hand complainant alleged that accused threatened her and on the other hand she stated that accused assured her that they would help her husband. So again this story is not believable. In that complaint moved to SP, Rohtak it is stated that from 7.12.2008 to 15.12.2008 complainant did not reveal the incident to anybody because of fear. Again it is not expected from the complainant that she would not tell the entire incident to anybody including her husband from 7.12.2008 to 15.12.2008. So again the story as alleged by complainant is not inspiring.

12. As per police report, accused Ajay Gupta made the transaction by using the cheques of complainant's husband with the consent of complainant's husband. Along-with police report, police has attached the statement of accused Ajay Gupta recorded on 18.9.2015 along-with supporting documents. One of the supporting document is letter dated 8.4.2009 written by complainant's husband Arun Gupta to SP, Rohtak in that application, complainant's husband namely Arun Gupta has stated that he had made payment of Rs 2 crores 22 lacs & 27 thousand to accused but he did not receive the material against those cheques. In that application Arun Gupta alleged that accused were demanding more money from him. He requested to SP, Rohtak to get ensured the supply of material or returning of cheques. In this application he did not allege that Rs.2,22,27,000/- were taken by accused from him by exercising any fraud or forgery.

> *Another important document is complaint dated 17.6.2009 lodged by complainant's husband Arun Gupta against accused Ashok Gupta, Mohan Lal and M's Energy Enterprises Pvt. Ltd. Guwahati. In para no.6 of that complaint complainant's husband Arun Gupta himself admitted that he gave cheque dated 11.12.2008 of Rs. 20 lacs, cheque dated 12.12.2008 of Rs. 25 lacs and cheque dated 12.12.2009 of Rs. 25 lacs and cheque dated 12.12.2009 to accused Pardeep Aggarwal as per compromise. So in view of these admissions of Arun Gupta it is clear that the allegations of snatching of bag and allegation of fabrication of blank signed cheques are totally baseless. It is clear that the alleged transactions were made with the consent of complainant's husband namely Arun Kumar Gupt. For the sake of arguments even it is presumed that bank Manager Harish Singla after receiving of letter dated 20.12.2008 allowed the alleged transactions even then no criminal hability can be fixed upon him because complainant by his act and conduct rectified those transactions.*
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> *13. So on the basis of above discussion this court is of the view that no case is made out for summoning of accused in this case. Accordingly the present protest petition/complaint is dismissed. File be consigned to record room after due compliance."*

12. Against the aforesaid order dated 15.04.2017 (Annexure P-6), the petitioner filed a criminal revision petition before the Court of Additional Sessions Judge, Rohtak, which was also dismissed vide order dated 24.01.2023 (Annexure P-8).

13. After going through and considering the findings recorded by the Courts below, I am of the view that the same are as per the evidence/documents/material placed on record and no fault can be found with the same. Learned counsel for the petitioner has also failed to point out any illegality or perversity in the said findings. Accordingly, I do not find

any merit in the instant petition and the same stands dismissed.

14. All pending application(s), if any, shall also stand closed.

27.04.2023 **(HARSH BUNGER)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No