

IN THE HIGH COURT FOR THE STATES OF
PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc.No. 14918 of 2007 In
Criminal Misc. No. 14912 -M of 2007

Tej Pratap Mamik & Anr. Vs. State of Haryana & Ors.

Application under Section 482 Cr.P.C. for exemption from filing certified/legible copies of Annexures P-1 to P-6 with permission to place on record true/translated copies of the same.

RESPECTFULLY SHOWETH:

1. That the petitioners are filing accompanying petition under Section 482 Cr.P.C.
2. That the petitioners are not possessed of certified/legible copies of Annexures P-1 to P-6. However, true/translated copies of the same are being filed for the kind perusal of this Hon'ble Court.

It is, therefore, respectfully prayed that filing of certified/legible copies of Annexures P-1 to P-6 may kindly be dispensed with in the interest of justice, with permission to place on record true/translated copies of the same.


(J.S. Rattu, Rahul Mehra)
Advocates

(Vikas Gupta & Jagjit Singh Lalli)
Advocates
Counsel for the petitioners

CHANDIGARH
DATED : 01/03/2007

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

Criminal Misc. No. 12917-M of 2007

1. Tej Pratap Mamik

Son of Late Shri H.S. Mamik
Aged 67 years;

2. Gaurav Mamik

Son of Shri Tej Pratap Mamik
Aged 34 years,
Both residents of W-118, Western Avenue, Sainik Farms, New
Delhi - 110 062.

.... PETITIONERS

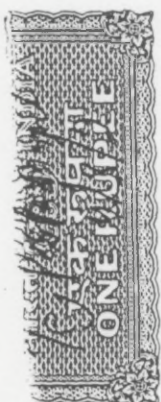
VERSUS

1. State of Haryana;
2. Suman wife of Shri Surendra Singh, resident of Village Smalkha, behind Telephone Exchange, New Delhi, presently residing at Village Doondaheera Tehsil and District Gurgaon.
3. Beena Devi widow of Shri Rajendra Jha, resident of Village Smalkha, behind Telephone Exchange, New Delhi, presently residing at Village Doondaheera Tehsil and District Gurgaon.

.... RESPONDENTS

Petition under section 482 Cr.P.C.

praying for quashing of private complaint No.47 of 2006 (Annexure P-4) pending in the Court of Ms.Roopam Singh, JMIC, Gurgaon, falling within the jurisdiction of P.S. Udyog Vihar, Gurgaon, and summoning order (Annexure P-5), vide which petitioners have been summoned to stand trial under Sections 403/406/509/506/120-B IPC, along with all the subsequent proceedings.



It is further prayed that further proceedings arising out of above complaint may be stayed during the pendency of this petition.

Respectfully Showeth :-

1. That Petitioner No. 1 Mr. Tej Pratap Mamik is a senior citizen of 67 years of age, a reputed businessman and exporter of high fashion garments belonging to a very respectable and well to do family. He passed his Senior Cambridge in the year 1955, graduated from National Defence Academy and joined Indian Air Force as a commissioned officer from where he retired as Wing Commander in the year 1980. Having served nation, petitioner is leading his retired life far away from the mundane affairs of this world. Petitioner No.1 in his retired life is a keen avid golfer. He devote his entire time in his old age to golf and he has recently won Mercedes Golf Championship tournament held at Pune and to represent India, he will be Member of 3 Member contingent, which will represent India in World Cup Mercedes Golf Championship.

2. That Petitioner No. 2 Mr. Gaurav Mamik is son of Petitioner No. 1 and is a graduate in Fashion Production from Fashion Institute of Technology, New York, U.S.A. M/s Fashion Express, a leading Export House, is a proprietorship concern, which is owned, managed and run by Mrs. Manju Mamik, wife of petitioner No.1 and mother of petitioner No.2.

3. That M/s Fashion Express has about 120 employees some of whom are mischief mongers and are

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working prejudicial to the interest of the firm, aided and abetted by "BHARTIYA KAMGAR SENA" affiliated to Shiv Sena, Mumbai (Maharashtra). Some of the disgruntled employees of the firm had filed a complaint dated 08.11.2005 said to have been filed on 09.11.2005 before the Labour and Conciliation Officer, Circle 1, Gurgaon against the firm complaining discrimination in the distribution of Diwali Bonus and other ex-gratia payment to its workers with copies of the complaint to the Hon'ble Chief Minister of Haryana, Labour Commissioner Chandigarh, Deputy Labour Commissioner Gurgaon and the Company. This complaint was fixed for 14.11.2005 for consideration before the said Officer. Complaint dated 08.11.2005 followed by subsequent complaints were heard at various levels on different dates and were ultimately sent for objective review. No action was taken by the Labour Department as per its Memo No. ID/7808 dated 06.03.2006. Instead the workers were advised to prefer a General Demand Notice in terms of Section 2(k) of the Industrial Disputes Act, 1947 as the dispute was not covered by the said Act or any other law for the time being in force. Copies of the complaint and the report of the Labour Department, when translated into English, are attached as **Annexures P-1 and P-2.**

4. That the aforesaid workers through Union Bhartiya Kamgar Sena mentioned above submitted a General Demand Notice dated 11.07.2006 before the firm and is also said to have sent five copies thereof to Labour and

Conciliation Officer, Circle 1, Gurgaon for necessary action. The firm was called to reply and the matter was adjourned to 20.07.2006 for further hearing. The said General Demand Notice was also sent to the Labour Commissioner for consideration. Most of the demands raised by the workers were found untenable and unreasonable and therefore were not found actionable. However, some demands were referred for further examination and adjudication. These facts supported by various documents referred to above suggest the existence of some dispute between Labour and Management, which is being adjudicated.

5. That in the background of the above, some of the disgruntled workers came out with a well thought out plan to falsely implicate the relatives of the sole proprietor of the firm owner of the namely Mr. Gaurav Mamik Petitioner No. 2. A false typed complaint was made by some of the workers to the Deputy Commissioner, Gurgaon which is dated 11.11.2005 and which appears to bear two diary numbers 93/14.11.05 and below the typed date number 2237/16.11.05. According to this bogus complaint, on 10.11.2005 at about 2.00 p.m. some workers including some lady employees had gone to meet the owner of the firm, Mr. Gaurav Mamik Petitioner No. 2, to his office when he allegedly abused the workers, threatened them and criminally intimidated them. In this false complaint the occurrence is alleged to have taken place in the office of Mr. Gaurav Mamik, Petitioner No. 2 and through this complaint the workers wanted action against him only.

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6. That the typed complaint referred to above and other complaints viz., No. 34-P dated 06.01.2006 and 1617P dated 16.11.2005 were investigated by the local police. The Investigating Officer submitted his report saying that no incident of sexual harassment or criminal intimidation took place. Rather, it was found that the aim of the alleged complaint was to harass the owner of the firm and was simply due to the discriminatory distribution of bonus, etc., which matter was already under consideration of the Labour Court. No further action by the police was taken as the complaints were found to be false. Copies of the above alleged complaint dated 11.11.2005 made to the Deputy Commissioner, Gurgaon, and report of the Investigating Officer are attached as **Annexures P-3 and P-4.**

7. That a perusal of the first complaint dated 08.11.2005 addressed to the Labour and Conciliation Officer, Circle 1, Gurgaon reveals that on 31.10.2005 the workers expressed a desire to go on strike but they were pacified by the author(s) of the complaint dated 08.11.2005. Instead a meeting of the workers was called in Sati Mata Temple, Gurgaon on 06.11.2005 wherein it was decided that legal action be taken against the firm in connection with the distribution of the Diwali bonus. The signatories of this complaint were also authorised to talk to the firm in order to negotiate a settlement and further that in case they need during the pendency of the case, they were free to approach the Trade Union leader and appoint them and lawyer(s) to pursue

the matter further. In pursuance of this authority the signatories to the complaint dated 08.11.2005 lodged false complaints to bring the firm to their knees by false implication in frivolous cases.

8. That on 14.02.2006 a complaint was filed by Shri Ashwani Tanwar, Advocate Gurgaon before Ms. Roopam Singh, JMIC Gurgaon which complaint is duly thumb marked by Suman and signed by Beena, employees of the firm as joint Complainants with one and the same residential address. Copy of the complaint dated 14.02.2006, when duly translated into English, is attached as **Annexure P-5**. In this complaint reference is also made to earlier complaint of 08/09.11.2005 before the Labour and Conciliation Officer, Circle 1, Gurgaon as also to the alleged incident dated 10.11.2005. However, for reasons best known to the Complainant, no reference is made to earlier complaint dated 11.11.2005 addressed to the Deputy Commissioner Gurgaon wherein also the incident dated 10.11.2005 is given in details.

9. That the complaint-dated 11.11.2005 is admittedly the first complaint lodged with the authorities about the details of the alleged incident of 10.11.2005. In this entire complaint neither the presence of Petitioner No. 1 Mr. Tej Pratap Mamik is shown at the time and place of the alleged incident of 10.11.2005 nor any culpability is attributed to Petitioner No. 1. All the allegations, though false, were attributed to Petitioner No. 2 Mr. Gaurav Mamik only. In this first complaint it is categorically stated that the

agitated workers, of their own volition, gathered and trouped to the office of Petitioner No. 2 Mr. Gaurav Mamik who allegedly abused them filthily, threatened and criminally intimidated them and caused sexual harassment to the lady workers without naming them. However, in the complaint before the court dated 14.02.2006 material improvement is done so as to include and falsely involve even the Petitioner No. 1. In paragraphs 4, 5 and 6 perusal of which clearly indicate their false implication. Improvements and discrepancies clearly point out the malafide intentions of the workers to falsely implicate the Managing Director and the Director i.e. Petitioner No. 1 and 2 so that they could be pressurised into accepting the illegal demands of the workers.

10. That brushing aside the reports of the Labour Department, the local police and inherent discrepancies and improvements with regard to the first complaint dated 11.11.2005 and the impugned complaint dated 14.02.2006, the Learned Trial Court was pleased to summon both the Petitioners No. 1 and 2 as accused vide impugned order of summoning, true typed copy whereof is attached as **Annexure P-6**. In the said summoning order, the Learned JMIC Gurgaon observed as under :

"I am of the opinion that the accused have committed an offence punishable under sections 403 / 406 / 509 / 506 / 120-B I.P.C."

The words prima facie are missing and the summoning order looks and sound as order of conviction of the Accused.

11. That in obedience to the above order of the Learned Magistrate, both the Petitioners (Accused in the complaint case) voluntarily appeared before the Learned Trial Court. Instead of taking bail in the said false private complaint case, both the Accused were sent to judicial custody and they were released only on the next date of hearing. Even in the bail order a harsh and unnecessary condition was imposed that both the Petitioners (Accused) shall not leave India without permission of the Learned Trial Court knowing fully well that they are Exporters of Fashion Garments having offices in India and Abroad.

12. That the entire complaint lodged against the Petitioners and the proceedings emanating therefrom in the Court of the Learned JMJC Gurgaon are sheer abuse of the process of the court and being aggrieved by the same, the Petitioners venture to prefer this petition on the following, amongst other, grounds: -

GROUNDS

A. BECAUSE in view of the utter falsity of the complaint filed by the workers, aided and abetted by unapproved Union leaders against the respectable and highly civilised Petitioners, the Learned Trial Court ought not have summoned the Petitioners to face trial. The proceedings going on before the Learned Trial Court on

the basis of false and manipulated complaint are sheer abuse of the process of law and court and are therefore liable to be quashed.

B. BECAUSE the Complainants and other workers of the firm are not entitled to any Diwali bonus, gifts or other ex-gratia payments to them. Award of the same depends on the good conduct of the employees and is a purely discretionary matter with the firm. A bare perusal of the complaint filed by two lady employees does not show any entrustment to the Petitioners nor any criminal misappropriation or violation of any trust created by the Complainant with the Accused/ Petitioners. As such no offence under section 403 and 406 I.P.C. are even prima facie disclosed. Since the employees are not entitled to any bonus, etc., as of right under the Payment of Bonus Act, no offence even under the said special legislation is also disclosed. This has also been supported by the Labour Department and other Executive authorities which recommended no action on the complaint being sought to be quashed.

C. BECAUSE in complaint dated 8/11/2005 (Annexure P1) submitted to the Labour and Conciliation Officer, Circle-1, Gurgaon, in para 1, it has been specifically stated that organization where the complainant workers are employed as per tradition are being given 20% ex gratia amount as Diwali bonus along with sweets and one attractive gift and the further grouse is that the

above said tradition has been violated by adopting an arbitrary attitude. The Diwali bonus is no right of the employee and non-payment of the same, which is as per the tradition, would not make any case against the petitioners, as no offence under Section 403/406 IPC is made out against them, for which they have been summoned by the court of learned Judicial Magistrate 1st Class, Gurgaon, in mechanical manner.

- D. BECAUSE it will be pertinent to mention here that complaint (Annexure P-1) has not found favour with the labour authorities.
- E. BECAUSE a perusal of the first complaint dated 11.11.2005 lodged by the Complainant/Workers would show that the allegations of indecent behaviour, criminal intimidation, etc., are attributed to Petitioner No. 2 Mr. Gaurav Mamik only whereas the complaint filed in the court dated 14.12.2006 show substantial improvements and material discrepancies alleging participation of Petitioner No. 1 Mr. Tej Pratap Mamik also in the alleged incident dated 10.11.2005. All the allegations are self-contradictory and figment of the imagination of the Complainant to falsely implicate and harass the innocent Petitioners. As regards offences under section 506 and 509 I.P.C. are concerned, anyone inimical or having motive could raise such frivolous allegations without any basis. The allegations in the complaint when considered in the light of the

background given above would show the utter falsity of the same for which innocent Petitioners seek the indulgence of this Hon'ble Court against unscrupulous and criminal elements.

- F. BECAUSE it is a fit case where this Hon'ble Court would be pleased to exercise the inherent jurisdiction of this Hon'ble Court under section 482 Cr P.C. and quash the said private complaint as the same is malafide, motivated, malicious, false and frivolous.
- G. BECAUSE the dispute mainly was regarding discriminatory distribution of Diwali bonus, gifts, ex-gratia payments to the workers by the firm and on account of the firm not acceding to their unreasonable demands, two illiterate workers were abetted by the Union leaders to lodge false complaints to illegally pressurize the Petitioners who are innocent respectable businessman of repute.
- H. BECAUSE the Hon'ble Supreme Court in the case of Chandrapal Singh & Ors Vs. Maharaj Singh reported in 1982 (1) SCC page 466 has specifically held that '*Chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court*'. The workers of the firm in the instant case thought that by filing false and fictitious criminal case against the firm, they would cause gross inconvenience and harassment to the Petitioners and would be able to strike a handsome deal

in the bargain. The instant complaint sought to be quashed is a weapon to blackmail the Petitioners who have refused to accede to the illegal demands of the Workers/Complainant and who did not succumb to the pressure tactics being used against them. The summoning of the Accused/ Petitioners to face trial on the basis of such a frivolous complaint is contrary to the letter and spirit of law and militates against justice, equity and good conscience. The false complaint is therefore liable to be dismissed.

- I. BECAUSE complaint-dated 11.11.2005 is admittedly the first complaint lodged with the authorities about the details of the alleged incident of 10.11.2005 in which neither the presence of Petitioner No. 1 Mr. Tej Pratap Mamik is shown at the time and place of the alleged incident of 10.11.2005 nor any culpability is attributed to him. However, in the complaint before the court dated 14.02.2006 material improvements and discrepancies are made with malafide intent so as to include and falsely implicate even the Petitioner No. 1, a respectable senior citizen and a former Wing Commander of the Indian Air Force.
- J. BECAUSE the alleged incident is said to have taken place on 10.11.2005. In the complaint (Annexure P-3) which was submitted to Deputy Commissioner, Gurgaon on 11.11.2005, no allegation was levelled, which constitute offence under Sections 506/509 IPC,

as in the same only allegation levelled is that firm wants to create fiction. The allegations of abuse are against Gaurav Mamik - petitioner No.2. It is later, at much bleated stage that an attempt has been made to implicate Tej Pratap Mamik - petitioner No.1.

- K. BECAUSE even otherwise, payment of bonus, if any, was due on 30.11.2005 and no cause of action has arisen in favour of the workers for demand of bonus on 8.11.2005.
- L. BECAUSE offence, if any, is to be dealt with a special Act i.e. Payment of Bonus Act, 1965. This fact is evident from the reply submitted by the firm.
- M. BECAUSE the Hon'ble Supreme Court in the case of *Ram Biraji Devi Vs. Umesh Kumar Singh reported in 2006(5) SCALE 638* has held that the case in which there is a civil dispute between the parties and there is a civil liability inter-se, no criminal liability can be fastened against any of the party, unless and until the essential ingredients of the offence are present in the case. The Hon'ble Supreme Court in this case quashed the FIR on the ground that the cognizance taken by the Magistrate was clearly an abuse of the process of the court and interference by the court was expedient in the interest of justice. The instant case is also one of self created Labour dispute between the workers and the firm, which has been blown out of proportion and has been given a cloak of a criminal offence for the purposes

of extortion of money and also an attempt to blackmail arm twist and pressurize the Petitioners to agree to their illegal demands.

N. BECAUSE the instant case falls under the categories mentioned in the case of *State of Haryana Vs. Bhajan Lal reported in 1992 Suppl 1 SCC Page 335*. The Hon'ble Court would be pleased to exercise the jurisdiction of quashing to prevent the abuse of the process in court and also to secure the ends of justice. The instant proceedings instituted by the Complainant / Workers clearly manifest the malafide and malicious attempt for an ulterior motive to threaten the Petitioners to succumb to their illegal demands of paying equal Diwali bonus, gifts and ex-gratia payments to all the employees of the firm irrespective of whether they draw salary or wages not exceeding Rupees Three Thousand Five Hundred or not.

O. BECAUSE the preponderance of probability and balance of convenience are more in favour of the Petitioners than against them. The complaint sought to be quashed does not disclose even prima facie any case against the Petitioners.

13. That the Petitioners crave for the leave of this Hon'ble Court to adduce such evidence as is available with them and to urge any further pleas to substantiate their averments to secure the ends of justice.

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14. That this is the first petition being preferred before this Hon'ble Court and no such petition has been filed in this Hon'ble Court or the Hon'ble Supreme Court of India earlier at any point of time.

PRAYER

It is, therefore, respectfully prayed that the present petition may kindly be allowed and private criminal complaint No. 47 of 2006 (Annexure P-4) pending in the Court of Ms. Roopam Singh, Judicial Magistrate Ist Class, Gurgaon, falling within the jurisdiction of Police Station Udyog Vihar, Gurgaon, and summoning order (Annexure P-5), vide which the petitioners have been summoned to stand trial under Sections 403/406/509/506/120-B IPC, along with all the subsequent proceedings be quashed.

It is further prayed that further proceedings arising out of the above said complaint may kindly be stayed during the pendency of the present petition.

(J.S. Rattu, Rahul Mehra)
Advocates

(Vikas Gupta & Jagjit Singh Lalli)
Advocates
Counsel for the petitioners

CHANDIGARH
DATED : 01/03/2007

Settled By

(Kanwaljit Singh Ahluwalia)
Senior Advocate

IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

CR. M. NO. ¹⁴⁹¹⁷ OF 2007

IN THE MATTER OF:

SHRI TEJ PRATAP MAMIK & ANOTHER

.... PETITIONERS

VERSUS

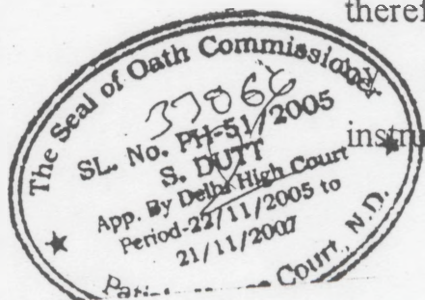
STATE OF HARYANA & OTHERS

..... RESPONDENTS

AFFIDAVIT

I, Tej Pratap Mamik, son of late Shri H. S. Mamik, aged 67 years, resident of W - 11 / 8, Western Avenue, Sainik Farms, New Delhi - 110 062 do hereby solemnly affirm and state as under: -

1. That I am one of the Petitioners in this case and as such am fully conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That I have gone through and fully understood the contents of the accompanying petition under section 482 of the Code of Criminal Procedure 1973 for quashing of the private complaint case no. 47 of 2006 pending in the Court of Ms. Roopam Singh, JMIC, Gurgaon and further proceedings emanating therefrom. The said petition has been drafted by my Learned Counsel under my instructions.



3. That the contents of the same are not being reproduced herein for the sake of brevity and the same be read as part of this Affidavit.
4. That I say that the contents of the accompanying petition are true, no part of it is false and nothing has been concealed therefrom. The legal averments made are true upon legal advice received and believed to be true by me.
5. That I further state that the Annexures to the Petition are true copies of their respective originals.
6. That it is the first petition under section 482 of the Code of Criminal Procedure 1973 and no such petition has been filed in this Hon'ble Court or Hon'ble the Supreme Court of India.

[Signature]
DEPONENT

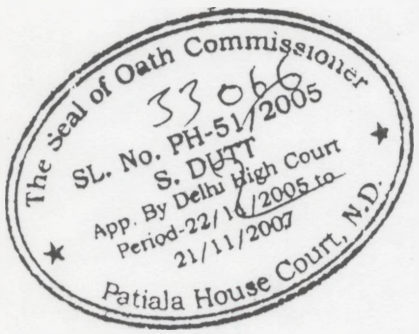
Identified the deponent who was signed in my presence

VERIFICATION

Verified at New Delhi on this the 1st day of March 2007 that the contents of the above affidavit are true and correct to the best of my knowledge; no part of it is false and nothing has been concealed therefrom.

DEPONENT

[Signature]



IDENTIFIED THAT THE DEPONENT
 Smt./Kmt.....*[Signature]*
 W/o D/o.....*[Signature]*
 notified by Shri/Smt.....*[Signature]*
 solemnly affirmed before me at *Delhi*
as Sl. No.*33066*
 the contents of the affidavit which
 have been read and explained to him and
 are true and correct to his knowledge

ATTESTED

[Signature]
S. DUTT
Oath Commissioner, Patiala House Court

To

The Labour & Conciliation Officer
Circile-1 Gurgaon.

Subject: Regarding tense situation in the Organization of M/s Fashion Express, 100 Udyog Vihar Phase-1 due to discriminated policy adopted at the time of distribution of the Diwali Bonus by the management.

Sir,

The applicants submits as under:

1 That, M/s Fashion Express Industrial organization , plot No. 100, Udyog Vihar Phase -1, Gurgaon, has been paying 20% Exgratia amount as Diwali Bonus to the workers working in the above said Organization as per the tradition existing since long and along with it sweets and one attractive gift is also being given to all the workers without any discrimination.

2 That this time the Management of the above said organization has violated the above said tradition and by adopting an arbitrary attitude, the exgratia amount which has been given as Diwali Bonus to the workers, has not adopted the equal policy and adopted discriminated and arbitrary policy, distributed 20%

percent to some worker and to some worker this amount was 15,12,10 & 8.33% in a sealed envelope on 31.10.2005 but on coming into light the above said discriminated policy, the workers became very aggressive and all the workers, who had received this amount, refunded the amount received by them to the management and requested the Management to adopt the policy of equality, to which they refused to accept.

As such due to the circumstances created, the Management refused to give the Diwali Gift and sweets and alongwith its imposed this condition that if the workers will accept the bonus arbitrarily distributed by the Management, only then the Diwali gift and sweets will be given, otherwise not.

4 That due to the above mentioned arbitrary attitude of the Management, neither the workers could get the Diwali Bonus nor could they get the Diwari Gift and sweet and for this reason Diwali was not celebrated at the house of any of the worker.

5 That here we want to mention it clearly that due to the above said tense situation created, one lady worker Smt. Usha (Folder) suffered a heart attack and who is admitted in the All India Institute of Medical Sciences. Similarly the other women workers are having the tension in their hearts and brains and this some thing can be happened with any one.

6 That the Management of the organization is adamant to blackmail the workers by adopting all sorts of nefarious tactics to accept the arbitrary Bonus Distribution. For example , cases of two worker are before you. Out of them one worker Ram Kumar Jha is tried to get advance money from the Management for solving his some domestic problem but the management ha snot given the advance amount to him to fulfill his requirement. Now the Management is ready to give him advance money on this condition that first he should accept the b onus amount. Similarly the son of one Lady worker namely Smt. Bimla Sehgal is ill and for his

treatment she has been demanding advance money from the management but the management is ready to give the advance money only on this conditions that first she should accept the Bonus amount.

7 That due to the above said arbitrary attitude of the Management on the day of distribution of Bonus i.e. 31.10.2005, tense situation was created in the Industry and all the workers shown their desire to stop the working in the Organization but in any way, the applicants - signatories pacified the workers by making them understand and the working of the organization continued as it is.

8 That due to the discrimination in the distribution of the Diwali Bonus by the Management, all the workers held a general meeting on 06.11.2005 in the complex of Sati Mata Mandir Group, in which all the workers took the decision unanimously to take legal action immediately in the matter of Diwali Bonus and in the above said meeting, the authority was given to the applicants/

signatories for negotiation, to contest, and to compromise in respect of the Bonus. And the applicants were also authorized that if they think it necessary then for the parivi of the above said case then can authorize any Trade union leader or Advocate.

On the basis of the above said facts and details, the applicants respectfully pray that you intervene in the matter immediately and all the workers may be given 20% Exgratia amount as Diwali bonus and also the Diwali Gift and sweets.

Place: Gurgaon

Applicants

Dated: 08.11.20005

Copy to:

- 1 Hon'ble Chief Ministry, Haryana Govt. Chandigarh
- 2 Hon'ble Labour Commissioner, Chandigarh
- 3 Hon'ble Dy. Labour Commissioner, Gurgaon.
- 4 M/s Fashion Express, Plot no. 100, Udyog Vihar, Phase-1, Gurgaon.

Govt. of Haryana
Labour Department

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To

The Labour Commissioner, Haryana

To

Dy. Labour Commissioner, Gurgaon,
No. I.D. 7808
Dated; 63.06

Subject: Report on the complaint about the tense situation and sexual harassment in the organization due to the discriminated policy adopted at the time of distribution of the Depawali Bonus by the Management of M/s Fashion Express 100 Phase-I, Udyog Vihar, Gurgaon.

Please refer to your letter no. 723 on the above noted subject matter.

In your report dated 15.2.2006 you have recommended to sent the issue raised by the Union to the Labour Court for decision . In the opinion of this office, on the basis of the only alleged complaint of the Union, it is not proper to send such kind of point for decision to the labour Court under the Industrial Disputes Act, 1947. In this situated, you are requested that you kindly advise the concern red union , if the policy of discrimination is being adopted by the management in the payment of the bonus, then

they should submit their demand letter under Section 2
(k) of the above said Act as per law.

Sd/-

For Labour Commissioner

Haryana.

Dated: 11.11.2005

P 3

To

The Deputy Commissioner,
Gurgaon.

Subject: Regarding complaint of extending threats to get the workers killed and sexual harassment to the ladies workers by Shri Gaurav Mamik Manager of M/s Fashion Express at Plot no. 100, Udyog Vihar, Phase-I, Gurgaon.

Sir,

The applicants submits as under;

1 That the applicants are working in M/s Fashion Express, plot no. 100, Udyog Vihar, Gurgaon.

2 That the Management of the above said organization has been giving 20% Ex-Gratia amount on the occasion of Diwali as Diwali Bonus and Diwali Gift and sweets. But this time the Management neither paid Ex-gratia amount to the applicants as Diwali Bonus nor given the Diwali Gifts and sweets. In this respect the applicants have given a consolidated complaint dated 09.11.2005 to the Labour and Conciliation officer, Gurgaon and for the solution of the same the Hon'ble Labour and Conciliation Officer has fixed the dated 14.11.2005.

3 That on filing the complaint by the applicants against the Management before the Labour and conciliation Officer, the Management became annoyed and due to this reason, with the intention to create friction in the applicants, on 10.11.2005 they asked to Designers Shri Bharat and Kumar Ruchika to write a false complaint against one Worker Shri Jitender Bhagat and if they do not do so, asked them to tender their resignation forthwith.

4 That when the applicants got the information of this incident on the same very day i.e. 10.11.2005, then at about 2 PM they went to the office of Shri Gaurav Mamik owner of the company for talks on the above subject but instead of listen to the applicant, Shri Gaurav Mamik became very aggressive and he hurled very filthy abuses to them by calling the names of mother-sister and said that "I am the owner of the Company, I have huge money with me, Whatever I want , I will do, you are as a ^{ant} ~~gun~~ before me, whenever I want , I will finish you, You make complaints against me, I will get you killed

through goondas". On this some lady workers asked Gaurav Mamik not to hurl abuses, then Shri Mamik said to the lady workers that " MEIN TUMAHARI PUNGI BAJA DUNGA AND GUNDE BULA KAR TUMEHA NANGA KARKE SARI COMPANY MEIN GUMA DUNGA" (I will commit a nasty act with you and will call the goons and you will be walked naked in the entire company.

5 That due to the above said bevhaiour of Shri Gaurav Mamik, the owner of the company, the atmosphere of fear and terror has been created in all the workers and the modesty of the lady workers has been defamed and they are feeling unsecured themselves for their safety.

6 That the Company management, is involved in the anti labour practice from the very beginning and hundred of workers have been removed from service in a illegal manner and amount of provident fund of hundred of workers has been misappropriated.

On the above said details and grounds, Sir it is prayed that immediately intervene in the matter and strict actions may be taken against the guilty Shri Gaurav Mamik. Shall be grateful to you.

Sd/- by

Ram Narain Yadav and 54 others.

Sir,

The investigation of complaint No. 34-P dated 6.1.06, 1617 P dated 16.11.05 and Complaint Dasti (by hand) dated 11.11.05 was conducted by me the S.I. During the investigation the statement of the employees and lady employees of the company was recorded. The investigation was also conducted secretly. But none of the employees has said this in his statement that any threat was given to any of the employee by the Management of the Company or has done any sexual harassment with any employee (lady employee). The matter was only this that earlier the Company used to pay Exgratia amount on the Diwali and gifts and on the last Diwali the management made the ex gratia on the basis of the work and salary because the Bonus is applicable only to the employees who are getting Rs. 3500/- as salary. Those employees who were entitled for bonus, the bonus was distributed to them. For encouraging the remaining employees, there were distributing the Exgratia money keeping in view their work and pay, on which some employee of leadership type made obstacle in it and

asked the employees not to take the exgratia and on the contrary said ill-will to the Management of the Company. From checking the record it was found that , whenever any employees was in difficulty , he was given full cooperation and financial help by the company. The recent example is of employee namely Vimla , suddenly whose son burnt and the company helped to the maximum. The employees has gone to the Labour court in protest where the proceedings are pending. None of the employee could produce any evidence regarding the threats and sexual harassment, nor any lady employee made any complaint of such nature in their statements. The purpose to level these charges, is only to harass the company and to make their case strong. The matter was only in respect of distribution of bonus which is pending before the labour Court. Rest of the charges were found false. The complaint does not require any police action. Report is submitted .

Sd/- Illegible
PS Udyog Vihar
Gurgaon.

In the Court of Ms Roopam Singh JMJC, Gurgaon.

1 Suman wife of Shri Surender Singh (2) Beena Devi wife of Shri Late Rajinder Jha, residents of behind the Telephone Exchange , Village Samalkha, New Delhi, presently at Village Dundaheda Tehsil and District Gurgaon.

... Complainants

Versus

1 Gaurav Mamik (Director/Manager) son of Shri Tej Partap Mamik
2 The Partap Mamik (Managing Director/General Manager) M/s Fashion Express Plot no. 100, Udyog Vihar, Phase-I, Gurgaon.

... Accused

Police Station Udyog Vihar,
Gurgaon.

Complaint under Section 403.406/509/506/120 -B IPC.

Sir,

The complainants submits as under:

1 That the complainants are workers in M/s Fashion Express.

2 that the General Manager and Manager of the Company had to give 20 per cent Bonus/Gift . He had not given our bonus amount and has misappropriated out money.

3 That we had given the ifnroamtion regarding it to the Labour officer o n 01.11.2005 and the Labour officer

fixed 14.11.2005 or hearing and thereafter the General manager became very angry.

4 That on 10.11.2005 The manager Shri Gaurav Mamik on getting the information of the complaint called all of us in his meeting hall and started hurling filthy abuses to Somwati and Kusum lat who are working with us and on hearing his voice the General Manager (MD) also came there and they both said that we are the owners of the Company. I have huge money with. I may do what ever I like, you are just like a ant before me and we will get you finish like an ant and I will get you killed. There , Finishing Incharge Ravinder son of Shri Chhote Lal and many other people and laides said that you do not hurl filthy abuses to the ladies, they both said, who are you to tell this, The General manager pointed with hands and by using unbecoming language said that , I will put in shackles and by calling goons, your blouses will be torn and will get walk in naked position in the entire company , what will you do to me , and will get you killed and I have seen so many like you, then what is your status. The

accused misbehaved with us and hurled such filthy abuses, it is not possible to explain the same.

5 That the owner of the company and his son used to make sexual harassment with us and used to hurl filthy abuses to us and use unbecoming language and makes taunts on us so that the complaints may leave the company under compulsion.

6 That both the above said accused sued to extent threats to us to kill us. We have apprehension that, both by hatching a in criminal conspiracy can kidnap us and can get us killed. One complaint was given to the SSP Gurgaon on 06.01.2006 regarding this incident but till today no action has been taken. On getting the information of it, the Manager and General Manager were behaving with us in a indecent manner

7 That the Manager and General manager in collusion with each misappropriated our money and used unbecoming language and by indicating in a indecent manner, used to do sexual harassment and are extending threats of killing and can commit any serious offence by hatching a criminal conspiracy.

8 That the above said incident has happened in your jurisdiction , therefore your honour has the full right to hear the above noted complaint.

9 That a court fee of Rs. 10/- has been affixed on the above complaint.

Therefore, it is prayed to your honour that above said accused persons be summoned and legal action be taken, and justice be done to the complainants.

Complainants

RTI Suman Sd/- Beena

Dated; 14 February 2006 (1)Suman wife of Shri Surender Singh (2) Beena Devi wife of Shri Late Rajinder Jha, residents of behind the Telephone Exchange , Village Samalkha, New Delhi, presently at Village Dundaheda Tehsil and District Gurgaon.

List of Witnesses:

- 1 Somwati C/o
- 2 Kusum Lata Ashwani Tanwar
- 3 Ravinder Kumar Advocate- Gurgaon.
- 4 Concerned Clerk Office of Additional Supdt. Police, Gurgaon.
- 5 Concerned Clerk Office of Labour Officer, Gurgaon.
- 6 Other concerned witnesses.

Suman etc. Versus Gaurav Mamik etc.

Present: Shri Ashwani Tanwar, counsel for complainant.

ORDER:

This order of mine shall dispose of an issue whether the accused are liable to be summoned under sections 403/406/509/506/120B IPC.

2 The brief facts of the complaint are that the complainant is an employee of M/s Fashion Express. The General Manager and Manager of the company to give 20% bonus/gift of the employees of the company but they did not give the same and misuse the money regarding which a complaint was made on 9.11.2005 before Labour Officer who fixed on 14.11.2005 as a date for personal hearing. By this complaint, the General manager and Manager of the company were taking personal grudge against the complainant. On 10.11.2005 accused no.1 called employees in the meeting and started abuses them. He also threatened the complainant and other employees to put to death. The accused also harassed them sexually. Hence, the present complaint.

3 In order to prove his case, complainant examined herself is PW-1, Veena Devi as PW2, Somawati as PW-3, and Ravinder Kumar as PW-4 and also placed on court file some

documents. Evidence of complainant was closed on 13.2.2006 by Ld. Counsel for complainant.

4 I have heard Ld. Counsel for complainant and have also gone through the case file very carefully.

5 After careful perusal of the contents of complaint and testimony of the complainant as well as documents on the court file, I am of the opinion that the accused have committed an offence punishable under sections 403/406/509/506/120-B IPC for 14.6.06 on filing of PF/copies of complainant and summon forms etc. within seven days.

Announced in open court.

Judicial Magistrate 1st Class

3.500

Gurgaon

Note: Both pages of this order have been checked and signed by me.

JMIC/ Gurgaon.