$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 3rd September, 2020***

\+ **CRL.M.C. 1542/2020 & Crl.M.A. 8397-98/2020**

KUNAL DHAWAN ..... Petitioner

Through Mr. Vikas Pahwa, Sr. Adv. with Ms.Ruchika Wadhawan, Adv.

versus

STATE OF NCT OF DELHI & ANR. .... Respondents

Through Mr. Izhar Ahmed, APP for the State Mr. Gurpreet Singh, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (ORAL)

The hearing has been conducted through video conferencing.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of summoning order dated 25.07.2018 and proceedings in CC No.12442/2018.

2. Learned APP for the State and learned counsel for the respondent No.2 have opposed the present petition by stating that respondent No.2, namely, the Indian Medical Association (Regd.) (hereinafter referred to as IMA) is a society duly registered under the provisions of the Societies Registration Act,

1860 vide Certificate No. 325 of 1934-35 issued by the Registrar of Societies on 19.05.1934. IMA is the national association and organisation of "Doctors of Modern Scientific Medicine" formed in 1928 which looks after the interest of the doctors as well as the well being of the community at large. The respondent No.2 is the largest professional association of medical doctors in the country and all top academicians and educationalists in the medical profession are members of the answering opposite party. The membership of Respondent No. 2 includes Vice Chancellors, eminent professors, Directors of medical institutions, eminent specialist, doctors, ministers and registered medical practitioners.

3. It is also submitted that the petitioner i.e. accused No.2 acting for and on behalf of M/s Rosario Cosmetics Pvt. Ltd., i.e. accused No.1 (a company registered under the relevant provisions of the Companies Act, 1956, primarily engaged in the business of manufacturing and marketing of its own FMCG brands), approached respondent No.2 in the month of March, 2015 and made tall claims and alleged assertions about the varied brands being manufactured and marketed by accused No.1-Company, in the area of health, hygiene and sanitization and in view of same requested the respondent No.2 to validate and authenticate the products so manufactured and marketed by

them as the respondent No.2. The Complainant Society being renowned and known organization within the medical fraternity of the country, whose predication for legal, social and moral standards is unparalleled. The respondent No.2 entered in to a Memorandum of Understanding (MoU) dated 08.04.2015, wherein the complainant Society authorized the accused No.1-Company i.e. M/s Rosario Cosmetics Pvt. Ltd. to use the IMA mark in relation to various products being manufactured and marketed by it under the brand name HYGIA for the period starting from 08.04.2015 to 31.07.2017. The said MoU before it expired was renewed from 01.08.2017 to 31.12.2019 vide MoU renewal letter dated 03.08.2017.

4. Learned counsel for respondent No.2 further submits that the petitioner was employed as the Chief Executive Officer with accused No.1 Company and also held share-holding in the accused No.1 Company. Furthermore, the petitioner was in charge of hiring and termination of employees along with day to day management of the accused No.1 Company. The petitioner represented to the complainant Society that he was the officer in charge and signatory of the accused No.1 Company and also the person responsible for the day to day conduct of the affairs of the accused No.1 Company and assured that all payments in pursuance of the abovementioned MoU would be

made to the respondent No.2/Complainant Society in time. However, in complete contradiction to the assurances made by the petitioner herein and to the utter shock and dismay of the respondent No.2/Complainant Society, certain cheques issued by the accused No.1 Company were dishonoured and the castle of faith so created by the Accused herein was shattered. In view thereof, when the accused herein were confronted, they specifically and categorically, not only admitted to the said financial liability but also agreed that all the pending payments shall be made by them within a period of six months and assured that the cheque dated 31.03.2018 shall be duly honoured as and when presented for encashment. However, when the same was presented for encashment by respondent No.2, the said cheque was also returned unpaid by the bank with remarks/reason "FUNDS INSUFFICIENT" vide returning memo dated 03.04.2018. Accordingly, after completing all the formalities finally the respondent No.2 filed the present complaint in terms of Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (as amended up to date).

5. The case of the petitioner is that as per the Memo of Parties of the complaint made before the Trial Court, the petitioner never held the position of Director. The cheque in question was issued at the time of renewal of MoU

for the period from 01.08.2017 to 31.12.2019 whereas earlier MoU was signed for the period from 08.04.2015 to 31.07.2017. As per the case of the respondent No.2, the accused promised that payment would be made within six months and issued cheque dated 31.03.2018 will get honoured, however, the second cheque got dishonoured.

6. Learned Senior Counsel for the petitioner submits that the petitioner had resigned on 31.03.2017 as CEO/Consulting Agent and the cheque dated 31.03.2018 was dishonoured on 03.04.2018 pursuant to renewal agreement for the period between 01.08.2017 to 31.12.2019 i.e much later than the petitioner resigned.

7. It is further submitted that in the summoning order, the Trial Court erred in observing that accused being Directors are responsible for day to day affairs of the company. Accordingly, the summons were issued to the accused including the petitioner herein based upon the wrong averments made by the respondent No.2 herein.

8. Learned Senior Counsel for the petitioner has drawn attention of this Court to the resignation pursuant to which finances were settled vide settlement dated 29.03.2017 (Annexure A-12) which is reproduced as under:

" **<u>FULL AND FINAL SETTLEMENT</u>**

Received a cheque vide no.951275 dt.29.03.2017 drawn from State Bank of Patiala of Rs.9,75,261/- (Nine lacs seventy five thousand two hundred sixty one only) from M/s Rosario Cosmetics Pvt. Ltd. towards my Full and final settlement of all my duties pertaining to Professional Charges or any other claim in connection with my said agreement with the management.

Details of payment

1. Professional Charges for the month of Mar.17 Rs.10,000,00/-
2. Sales Commission Charges for the month of Mar.17 Rs.6,494/-
3. Reimbursement of travel exp./entertainment exp. Rs.56,289/-

Total amount payable Rs.10,62,783/-

Less TDS 10% on Professional/Sales Commission Rs.87,522-

Net amount payable Rs.9,75,261/-

I have received all my dues towards full and final settlement. I will not raise any claim or demand in future, whatsoever against the company. Further to that, myself Kunal Dhawan has handed over all document and information to the management and nothing pending from my side."

9. It is not in dispute that the petitioner was not a director in the company in question and was signatory pursuant to MoU dated 08.04.2015 for the period from 08.04.2015 to 31.07.2017. The cheque in question dated 31.03.2018 was issued pursuant to renewal of agreement vide letter dated 03.08.2017 for the period from 01.08.2017 to 31.12.2019, whereas the petitioner herein had already resigned on 31.03.2017 as CEO/Consulting Agent. Thus, by no stretch of imagination, it can be said that during that period the petitioner was responsible for the day to day affairs of the company leave aside being the director of the said company.

10. In view of above, I am of the view that the petitioner is not liable/responsible for the dishonoured cheque pursuant to renewal of agreement given for the period 01.08.2018 to 31.12.2019.

11. Keeping in view the aforesaid facts, I hereby quash the summoning order dated 25.07.2018 and the proceedings emanating therefrom qua the petitioner herein.

12. The NBWs issued against the petitioner shall be cancelled.

13. The present petition is, accordingly, allowed and disposed of.

14. Pending applications also stand disposed of.

15. The order be uploaded on the website forthwith.

SURESH KUMAR KAIT, J

SEPTEMBER 03, 2020/rk