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

\+ CRL.M.C. 3866/2019 & & CRL.M.A. 11265-11266/2019

HUA SENG CHEW ..... Petitioner

Through: Mr. Siddharth Aggarwal, Adv. with Mr. Shri Singh, Adv.

versus

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

Through: Mr. Kewal Singh Ahuja, APP for State with SI Ritu Roy, PS Rajinder Nagar.

M. N. Hariharan, Sr. Adv. with Mr. Achint Singh Gyani, Mr. Vaibhav Sharma, Advs. for R-2.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

% **10.01.2020**

Vide the present petition, the petitioner assails the impugned order dated 31.05.2017 of the learned trial Court of the MM-03, Central, THC in CC No.6595/2017, in which the petitioner herein was summoned for the alleged commission of offences punishable under Sections 405/406 of the Indian Penal Code, 1860 on the complaint made by the complainant arrayed as the respondent no.2 under Section 190 of the Cr.PC, 1973 alleging to the effect that the petitioner herein inter alia along with other directors of Educomp Raffles High Education Ltd., was the director of the said company at the relevant time, that is during the period from May, 2015 to 2017 when the provident fund contributions of employees of the said company named Mr. Krishan Kant Kukreti and Mr. Sunil Mishra were allegedly misappropriated by the petitioner. The impugned order *inter alia* takes into account vide para 5 thereof that the complainant had placed on record DIR Form-12 showing that the respondent nos.1 & 2 to the said complaint were working as the director in EHREL. The respondent no.1 to the said complaint is the present petitioner.

On behalf of the respondent no.2 learned Senior counsel for the respondent no.2 fairly states that the DIR Form- 12 placed as Annexure A to the complaint that was filed shows the petitioner herein Mr. Hua Seng Chew as having been the director of the EHREL but that he had ceased to be the director thereof w.e.f. 31.10.2014 having resigned in terms of Section 168 of the Companies Act and it has further been submitted that the present petitioner was re-appointed as a director on 08.02.2017 as per the certified copy of the Ex.CW1/1 exhibited before the learned trial Court.

In as much as the averments made in the complaint itself vide para 8 state to the effect:

> *"8. That accused no.1 & 2 had in fact deducted an amount of Rs.83,160/- (approx) from the basic salary of Sunil Mishra from* ***May, 2016 to January, 2017*** *on the pretext of contribution to provident fund but they dishonestly and fraudulently misappropriated it for their own will. Accused persons have not only caused wrongful gain to themselves but also wrongful loss to ERHEL and its employees."*

which bring forth the period of the alleged commission of the offence as being from May, 2016 to January, 2017 during which period, the petitioner herein was not a director of the said company with he having been ceased to be a director thereof w.e.f. 31.10.2014, it is apparent that the impugned order summoning the petitioner for the alleged commission of the offences punishable under Sections 405/406 of the Indian Penal Code, 1860 in relation to CC No.6595/2017 as pending before the MM-03, Central, THC has to be set aside and is thus set aside.

The petition is disposed of.

ANU MALHOTRA, J

JANUARY 10, 2020
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