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

\+ **CRL.M.C. 516/2020 & CRL.M.A. 2171/2020**

REJI NICHOLAS & ANR .....Petitioners

Through: Ms. Sreelekshmi Sylesh, Adv. (through VC)

versus

STATE (NCT OF DELHI) & ORS .....Respondents

Through: Mr. Sunil Kumar Gautam, APP for the State with SI Mahesh Rawat, PS Safdarjung Enclave.
Mr. Tushar Singh and Ms. Akshra Arshi, Advs. for R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% 25.08.2025

1. The present petition is filed seeking quashing of FIR No. 340/2019 dated 28.12.2019 registered at Police Station Safdarjung Enclave for the offence under Section 406 of the Indian Penal Code, 1860. The FIR was registered on a complaint given by one Praveen Dutt stated to be the authorised representative of M/s Silvermaple Healthcare Services Private Limited (hereafter '**complainant company**')

2. Briefly stated, the complainant company is a master franchisee of Direct Hair Implantation ('**DHI**') which is an international brand owned by DHI Medical Group. The DHI group is stated to be a global leader in hair restoration. It is alleged that in January 2012, Petitioner No. 1 formed a company

called M/s. Medi Sprouts India Private Limited/Petitioner No. 2, and under its name, Petitioner No. 2 took the franchise of the DHI brand from the complainant company through a Sub-Franchisee Agreement dated 24.01.2012. Petitioner No. 1 is the owner and Managing Director of Petitioner No. 2 company and was also a signatory to the Sub-Franchisee Agreement. The agreement was subsequently renewed in the years 2014 and 2017. The said agreement enabled Petitioner No. 1 to start Hair Transplant services from his clinic in Kochi which was set up in the exclusive name of DHI. It is alleged that Petitioner No. 1 was responsible for the clinic management, patient handling, marketing and for following safety protocols. It is further alleged that Petitioner No. 1 was responsible for collecting money from the patients and for paying 50% of revenue share to the complainant company.

3. It is alleged that in December 2018, 16 hair transplant procedures were performed in the clinic of the accused company out of which 14 patients got infected. It is alleged that pursuant to the same, the complainant company suspended the operations of the Kochi clinic of Petitioner No. 2 on 24.01.2019. It is alleged that thereafter the complainant company sent its medical director and operation manager at the clinic of Petitioner No. 2 to investigate the cause of the spread of the infection. It is alleged that the invoices handed over by the accused revealed that they had been overcharging the patients and underreporting the same to the complainant company. It is alleged that Petitioner No. 2 company cheated the complainant to the tune of ₹1 crore. It is alleged that Petitioner No. 1 was underreporting the sales to the

complainant.

4. It is further alleged that Petitioner No. 2 company sold hair transplant procedures by misrepresenting to the patients that they were using DHI procedures. It is alleged that Petitioner No. 2 was performing the procedures during the validity of the Sub-Franchisee Agreement through non-DHI personnel and that too without using DHI protocols.

5. Chargesheet in the present case has been filed under Sections 406/420/120B/34 of the IPC.

6. The learned counsel for the petitioners submits that Petitioner No. 1 has only been roped in the present case for vexatious reasons. She submits that the complainant company had entered into a Sub-franchisee agreement with Petitioner No. 2 company which granted Petitioner No. 2 company a non-transferable and non-assignable license to use the licensed marks for the purpose of marketing, promotion and sale of the services and products. She submits that for the same, Petitioner No. 2 company in terms of the Sub-Franchisee Agreement, was paying revenue to the complainant company. She consequently submits that there was no entrustment of property so as to attract the ingredients of Section 406 of the IPC.

7. She further submits that the breakout of infection in the clinic of Petitioner No. 2 company occurred on account of the inferior products supplied by the complainant company. She submits that the complainant company conducted a unilateral audit of the account of Petitioner No. 2 company, and based on the same, it was alleged that Petitioner No. 1 was underreporting the sales to the complainant company. She submits that the said

allegations have not been substantiated with any material to indicate that the petitioner was underreporting the sales to the complainant company. She consequently submits that the essentials of Section 420 of the IPC have not been made out.

8. It is pointed out that the matter is now listed for arguments on charge. On being asked, the learned counsel for the petitioners submits that the present matter be heard and decided by this Court.

9. While the exercise of power under Section 482 of the Code of Criminal Procedure, 1973 (‘**CrPC**’) is not barred when there is an alternative remedy, a litigant cannot be allowed to circumvent or subvert the due procedure of law on mere apprehension of a long-drawn litigation.

10. It is pertinent to note that the petitioners have invoked the jurisdiction of this Court under Section 482 of the CrPC. The Hon’ble Apex Court in the case of ***Indian Oil Corporation v. NEPC India Limited and Others*** **: (2006) 6 SCC 736** has discussed the scope of jurisdiction under Section 482 of the CrPC to quash criminal proceedings. The relevant portion of the same is reproduced hereunder:

> *“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 :*

2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) ***A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.***

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) ***The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.***

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

(emphasis supplied)

11. From a perusal of the chargesheet, it is apparent that the petitioner was the owner and Managing Director of Petitioner

No. 2 company and the Sub-Franchise agreement was signed by Petitioner No. 1 in his capacity of being the Managing Director. Petitioner No. 2 company, in accordance with the Sub-Franchisee Agreement, was under an obligation to share the monthly sales report and share 50% of the revenue with the complainant company. After the breakout of infection in the clinic run by the accused company in Kochi in 2018, the complainant sent its medical director to investigate the cause of the spread of infection.

12. It is the case of the complainant company that at such time, a perusal of the invoices handed over by Petitioner No. 2 company pertaining to the infected patients revealed that the Petitioner No. 2 company had been charging higher than what had been reported to the complainant company. Thereafter, the complainant company published a notice on its website informing the suspension of operations at the Kochi clinic with effect from 24.01.2019. Pursuant to the same, the complainant company received email from one Mr. Sharakh Assis informing them that he had underwent a hair transplant procedure on 23.01.2019 for ₹2,20,000 on being represented that the transplant was being performed by employing DHI procedures. It was revealed that Petitioner No. 2 company was performing unauthorised procedures at its clinic under the name of DHI through non-DHI doctors. The details of the said session was also not informed to the complainant company. Similarly, on 28.12.2018, a session for moustache transplantation was conducted by Petitioner No. 2 company for a sum of ₹1,00,000/-, the details of which were not reported to the complainant

company. Similar complaint was also received by the complainant company from one Mr. Anoop Balakrishnan.

13. During the course of investigation, a notice was sent to Petitioner No. 1 on 02.01.2020 to provide the details of the patients treated at the clinic and to provide other details, *inter alia*, the bank account statement of Petitioner No. 2 company, certified copies of GST returns for the period 2012-2019, details of infected patients. However, since no details were supplied by Petitioner No. 1, another notice under Section 91 of the CrPC was sent to him to which he replied that pursuant to the floods in Kerala in 2018-2019, his house was flooded and all the documents were lost irrevocably. Petitioner No. 1 also admitted to performing one procedure through non-DHI doctor.

14. During the course of the investigation, the complainant company provided the details of 16 patients where it was revealed that Petitioner No. 2 company underreported the sales for as many as 16 clients and cheated the complainant company to the tune of several lakhs of rupees. During the course of the investigation, the bank statements of Petitioner No. 2 company were obtained from different banks. Upon reconciling the names mentioned in the sales report with the entries in the bank statement, the names of 108 individuals emerged in the bank statement which *prima facie* appeared as receipts of customers for which no record was made in the sales report. Upon serving a notice to the complainant company, it was ascertained that there existed no records insofar as the said 108 names were concerned.

15. During the course of investigation, the petitioner allegedly admitted to performing three unauthorised hair transplant

procedures. Further, during the course of investigation, it was found that an unreported Moustache transplantation had also been performed at Petitioner No. 2 company, and the same had not been reported to the complainant company. The investigation revealed that the petitioners were underreporting the sales to the complainant company. It was also found that Petitioner No. 1 in collusion with accused Sandeep Mahapatra and one Georgi George misused the brand name of the complainant's company and also misled the patients who approached them for hair transplants to believe that they were using DHI procedure to perform the transplants.

16. In the present case, the petitioner essentially seeks quashing on the ground that the only allegation against Petitioner No. 1 is that he underreported the sales to the complainant company, and that the same has not been substantiated by any material to indicate that Petitioner No. 1 was underreporting the sales. It has been argued that the Sub-Franchisee agreement vested with Petitioner No. 2 company, the right to use the licensed marks for the purpose of marketing, promotion and sale of the services and products and that for the same, Petitioner No. 2 company in terms of the Sub-Franchisee Agreement, was paying revenue to the complainant company. It has been argued that the essentials under Section 406/420 of the IPC are *prima facie* not attracted since there was no entrustment of any property and that no material has been put forth to corroborate that Petitioner No. 1 was underreporting the sales to the complainant company.

17. This Court does not find any merit in the contentions

raised by the petitioners. For the same, this Court deems it apposite to examine Sections 405/420 of the IPC which read as under :

> *405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*
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> *xxx xxx xxx*
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> *420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

18. The Hon'ble Apex Court in the case of ***Delhi Race Club (1940) Ltd. v. State of U.P.*** **: (2024) 10 SCC 690** while delineating the essentials of Sections 406 and 420 of the IPC observed as under:

> *36. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:*
> *In order to constitute a criminal breach of trust (Section 406 IPC)*
> *(1) There must be entrustment with person for property or dominion over the property, and*
> *(2) The person entrusted:*
> *(a) Dishonestly misappropriated or converted property to his own use, or*
> *(b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:*
> *(i) Any direction of law prescribing the method in which the trust is discharged; or*
> *(ii) Legal contract touching the discharge of trust (see : S.W. Palanitkar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 : 2002 SCC (Cri) 129]).*

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are:
(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;
(2) Fraudulently or dishonestly inducing any person to deliver any property, or
(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see : Harmanpreet Singh Ahluwalia v. State of Punjab [Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620]).

19. The petitioner has emphasised that the offence under Section 406 of the IPC is not *prima facie* attracted in the present case as there was no entrustment of property. It is pertinent to note that the allegations against Petitioner No. 1 is that he being the Managing Director of Petitioner No. 2 company was responsible for the clinic management, patient handling, marketing and for following safety protocols. Petitioner No. 1 was also the signatory to the Sub-Franchisee Agreement. In terms of the Sub-Franchisee Agreement, Petitioner No. 2 company was vested with the right to use the licensed marks for the purpose of marketing, promotion and sale of the services and products and was required to pay 50% revenue share to the complainant company.

20. A perusal of the chargesheet indicates that during the course of investigation, it was revealed that the accused were underreporting the sales to the complainant company thereby retaining the amount liable to be paid to the complainant company. Whether the act of accused would attract liability under Section 406 of the IPC or not would be examined during the course of the trial, however, at this stage, it cannot be stated

that the allegations do not attract the provisions of Section 406 of the IPC or have been made without any basis.

21. Insofar as the contention in relation to the offence under Section 420 of the IPC is concerned, from a perusal of the FIR and the chargesheet, it is apparent that specific allegations have been made against Petitioner No. 1 that he being the Managing Director of Petitioner No. 2 company overcharged the patients and underreported the sales to the complainant company. A perusal of the chargesheet also *prima facie* reveals that the brand name of the complainant company was misused and that several patients were misled to believe that the hair transplants were being performed by using DHI procedures. Whether the alleged acts of accused would attract conviction or not would be tested during the course of the trial, however, at this stage, it cannot be said that the allegations against Petitioner No. 1 do not constitute any offence or that the complaint was given for vexatious reasons.

22. *Prima facie*, the allegations and the investigation carried thus far disclose an element of criminality and commission of a cognizable offence. The same do not seem so improbable or perverse that they merit the exercise of the jurisdiction of this Court under Section 482 of the CrPC.

23. This Court does not consider it apposite to comment further on the facts at this stage when charges are yet to be framed.

24. The learned Trial Court after considering the material on record will consider whether *prima facie* case is made out for the purpose of framing of charge.

25. In view of the above, no case is made out for quashing of the FIR.

26. The present petition is accordingly dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

AUGUST 25, 2025