

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

+ **Crl.M.C.4371/2005**

% Reserved on : 07.02.2009
Date of decision : 03.03.2009

ABHAY TYAGI ...PETITIONER

Through: Mr. Fanish K. Jain, adv.

Versus

STATE (DELHI ADMN.) & ANR. ...RESPONDENTS

Through: Ms. Santosh Kohli, APP. for State
Mr. Amar Gupta, Mr. Mayank
Mishra, advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J.

1. This petition under Section 482 of the Cr.P.C. has been filed by the petitioner for quashing of the FIR No. 235/2004 registered at P.S. Seema Puri, at the instance of the 2nd respondent, on the allegations that on an inspection conducted at the premises of the petitioner it was found that the petitioner indulged in the theft of electricity and, therefore, he was liable to be punished under Section 39 of the Indian Electricity Act 1910 (now, Section 135 of the New Act) read with Section 379 of the Indian Penal Code. The inspection was carried on 21.04.2004 and on the same day the 2nd respondent lodged a complaint which resulted in registration of the FIR.

2. After conducting investigation the Police filed a report before the Special Judge and summons were issued to the appellant. Thereafter, the petitioner filed the present petition and made the following prayers:

- i) To quash the FIR No. 235/2004, P.S. Seema Puri, Delhi under Section 39 of Indian Electricity Act, 1910 read with Section 379 IPC and other proceedings emanating out of the said FIR.
- ii) To pass any other order in favour of the petitioner which this Hon'ble Court may deem fit and proper in the facts of the case may also be passed.

3. It is the submission of the petitioner that after the enactment of Electricity Act 2003 (hereinafter referred to as the New Act) which repealed the Indian Electricity Act 1910 as well as Delhi Electricity Reforms Act 2000 no powers were left with the 2nd respondent to file a complaint before the Police or to get an FIR registered with respect to the allegations made by them in the complaint, as no cognizance could have been taken of the alleged offences specified under Section 135 to 138 which are para-materia to Section 39 of the Old Act except upon a complaint filed by an authorized officer before the Designated Court, in view of Section 151 of the New Act which reads as under:

“151. Cognizance of Offence: No Court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their

officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or License or the generating company, as the case may be, for this purpose.”

4. It is also the case of the petitioners that after the enactment of the New Act, DERC (performance standards – metering and Billing) Regulations, 2002 (DERC Regulations) which enabled lodging of a report with the local Police were also repealed in view of Section 185 of the New Act which reads as under:

185. Repeal and saving: (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal,--

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made thereunder shall have effect until the rules under sections 67 to 69 of this Act are made;

(c) the Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 (9 of 1910) as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made.

(d) all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 (54 of 1948) shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not

be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

5. The second respondent contested the petition and alleged that despite enactment of the New Act they were not debarred from filing a complaint with the local Police with respect to the theft of electricity inasmuch as punishment prescribed under Section 379 IPC for commission of theft of the electricity is for 3 years and as such it is a cognizable offence. It is submitted that merely because special Courts have been designated to deal with the offences under the Electricity Act, it does not mean that the case cannot originate on the basis of a Police report. It is also stated that legal position would not change and the only difference made is that the police will have to file its report before the Special Court and not before the ordinary court. It is also submitted that the offences under the Electricity Act have to be tried according to the procedure contained in the Cr.P.C. and, therefore, provisions of Chapter XII containing Section 154 Cr.P.C. onward becomes applicable.

6. Arguments were heard in this case at length on 07.12.2009 and following orders were passed.

2. The parties have agreed to confine the lis in this case as to whether the respondents were within their legal rights in registering an FIR in respect of the alleged inspection which act is being questioned/assailed by the petitioner in this petition filed under Section 482 of Cr.P.C. Insofar as other issues are concerned which relates to the validity/authorization of the person who conducted the investigation they need not be gone into by this Court at this juncture and can be raised before the trial Court, if a situation so arises.

3. The written submissions though have been filed by the parties but in view of the arguments which have

been addressed today they may file three pages note each confining the submission only on the issue of registration of FIR. Two judgments have been cited by the respondents:-i) Sohan Lal Vs. North Delhi Power Ltd. & Ors. 113 (2004) DLT 547 and ii) Bimla Gupta Vs. State & Anr. 136 (2007) DLT 521 which the petitioner wants to distinguish in his note. However, If any other judgment comes to the knowledge of the parties, they may also file the same along with the written note after exchanging the copies with each other.

7. In view of the aforesaid the basic issue to be decided in this petition is as to “whether FIR dated 13.06.2004 could have been registered by the Police based upon the information provided by the respondents regarding the theft of electricity in view of the then prevailing law”. This also gives rise to the second issue i.e. “as to whether cognizance can be taken of an offence under the New Act i.e. Electricity Act 2003 on the basis of a Police report and after the case is investigated by the Police based upon the registration of an FIR and before coming into force of the Electricity Rules 2005.”

8. The learned counsel for the second respondent submits that the aforesaid issue is no more res-integra in view of the judgment of this Court in **Bimla Gupta Vs. NDPL 136 (2007) DLT 521** (hereinafter referred to as Bimla Gupta’s case). It is submitted that in the aforesaid case it was held that there is no provision in the electricity Act, 2003 to suggest that cases of theft of electricity cannot originate from an FIR.

9. It has been submitted that the submissions and contentions raised by the petitioner in the instant case, were identical/ similar in all material particulars to those advanced and considered

before/ by the Court in Bimla Gupta's case where following contentions(s) were raised and considered in that case:

(i) *The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure for quashing of the aforesaid FIR and it is that not only the said FIR is bad in law as provisions of Sections 135/138 are per se not attracted, it is an act of mala fide also and without any authority of law.*

(ii) *that Section 135 of the Electricity Act, 2003 is a complete Code and proceedings are to be filed only under this Act alone. Section 135 of the said Act completely bars initiation of proceedings in any other manner, except in the manner that has been provided under the Act.*

(iii) *This provision provides that no Court shall take cognizance of offence punishable under this Act except upon a complaint whereas in the instant case instead of filing complaint, FIR was lodged invoking the provisions of Code of Criminal Procedure which is not permissible. In support of his submission that the Electricity Act, 2003 is a complete Code so far as the matters concerning electricity are concerned, he argued that the penalties of the offence provided under this Act would be deemed to be statutory one. They are, therefore, to be dealt with under the statutory provisions of this Act.*

(iv) *that under Section 151 of the Electricity Act, power of police to investigate the case has been taken away and, therefore, no FIR could be lodged, more so when the Legislature in its wisdom has laid down specific procedure in the Electricity Act and only that procedure had to be followed for taking cognizance of offences prescribed under this Act and no other mode is prescribed in the law*

10. After considering the scope and purport of the relevant provisions of the Electricity Act, 2003 viz. Section 135 to 138 (offences including theft of electricity), and Section 151 to 155 as well as the import of Section 4 (2) of the Code of the Criminal Procedure. In Bimla Gupta's case (supra) it was held:

"10.It is apparent from the reading of Section 4 that provisions of the Cr.P.C. would be applicable where an offence under the IPC or under any other law is being investigated, enquired into, tried or otherwise dealt with It is so specifically provided under Section 155 of the Electricity Act also. Thus, it is not a case where any special or different procedure is prescribed. Rather, the procedure contained the code of Criminal Procedure is

made applicable for the offences to be tried under the Electricity Act as well.”

“12.....even if Special Court as Electricity Courts are constituted, legal position would not change and the only difference it would make is that the Police will have to file its report before the Special Court and not before the ordinary Court. Therefore, simply because the Special Courts are designated would not mean that the case cannot originate on the basis of an FIR.”

“14.Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance when a complaint is filed before it, that would not mean that the Police cannot take cognizance thereof.

“15.It is stated at the cost of repetition that the offences under the Electricity Act are also to be tried by applying the procedure contained in Cr.P.C. Thus, it cannot be said that a complete machinery is provided under the Electricity Act as to how such offences are to be dealt with. In view thereof, I am of the opinion that learned Counsel for the NDPL, is right in his submission that if the offence under the Cr.P.C. is cognizable, provisions of Chapter XII containing Section 154, Cr.P.C. and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same. Maxim generalibus specialia derogant shall have no application when the provisions are read in the aforesaid manner. Sections 135 and 138 only prescribe that certain acts relating to theft of electricity, etc. would also be offences. It also enables certain persons/parties, as mentioned in Section 151, to become complainant in such cases and file complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act are also to be governed by the Code of Criminal Procedure.”

11. The respondent further submits that the aforesaid extracts from Bimla Gupta’s judgment demonstrate that the issues raised in the present petition are no longer *res integra*. The ratio deducible from the complete reading of the aforesaid judgment is that there is no prohibition or bar for the registration of FIR relating to offences under Section 135 of the Act (theft of Electricity) and that the provisions of Cr.P.C. are applicable, which

entails a duty of the Police to register FIR under Section 154 of Cr.P.C. and investigate the same. The ratio of Bimla Gupta's judgment fully applies to the present case also.

12. Despite the fact that the aforesaid Rules were enacted only on 08.06.2005 i.e. much after the enactment of the New Act and the raid conducted on the petitioner in this case, the second respondent also relied upon Electricity Rules 2005 which entitles the Police to take cognizance of the offences under Section 135 to 138 of the New Act in support of his submissions.

13. It is submitted that prior to the framing of the aforesaid Rules also the respondent was entitled to register FIR with the Local police in cases of theft of electricity under the DERC (performance standards – metering and Billing) Regulations, 2002 ("**DERC Regulations**"). The mandate of Regulation 25 (v) of the said DERC Regulations clearly provides that the licensee may lodge a report with the local police. Regulations 25 (v) of the DERC Regulations reads as follows:

"25. Procedure for booking a case for pilferage of energy

(v) In case sufficient evidence is found to establish direct theft of energy, the licensee may lodge a report with the local police along with material evidence including wires/ cable, meter, service line etc...."

14. That DERC Regulations being enacted pursuant to the Delhi Electricity Reforms Act, 2000 are applicable and applied to the facts of the present case by virtue of Section 185 of the

Electricity Act, 2003 read with Schedule, as well. It is submitted that there is no repugnancy or inconsistency between the Electricity Act, 2003 and the DERC Regulations. In any event questions of alleged inconsistency/ validity and applicability of the DERC Regulations has been considered and decided by this Hon'ble Court in the Judgment of Sohan Lal v. North Delhi Power Limited, **113 (2004) DLT 547**.

15. In view of the aforesaid it is submitted that:

- (i) The issue in the present case is no longer res-integra and is squarely covered by the judgment of this Hon'ble Court in Bimla Gupta's case. The Ratio of the said judgment applies to the present case.
- (ii) In view of the provisions of Electricity Act, 2003 particularly, section 135, Section 155 read with Section 4 of the Code of Criminal Procedure, 1973 it is incumbent upon the police to register FIR in cases of alleged theft of electricity and investigate the same as per law.
- (iii) There is no express bar under the Electricity Act, 2003 which prohibits the police from registering FIR and / or investigating the case of theft of electricity.
- (iv) The un-amended section 151 of the Act read with Regulations 25 (v) of the DERC (M&B) Regulations 2002 was in force and applicable at the time when the theft was detected in the instant case i.e. April 21,

2004 (the date of inspection) and June 13, 2004 (Date on which the Police lodged the FIR). The Judgment of this Hon'ble Court in Sohan Lal v. NDPL is conclusive on the point that DERC Regulations were valid and applicable after coming into force of Electricity Act, 2003 and at the relevant time.

- (v) The Police are competent to register the FIR in the instant case and carry investigations into the alleged theft of the Electricity.

16. Certain facts which are not disputed by both the sides but which are essential to appreciate the controversy raised by them needs reference.

03.11.2000 Delhi Electricity Reforms Act, 2000 came into force

19.8.2002 DERC in exercise of its powers under section 61 framed the DERC (Performance standards, metering and billing) regulation 2002 (DERC Regulations). As per regulations of 25 (v) of the said regulations the respondent no. 2 is entitled to lodge complaint with the local police regarding theft of electricity.

10.6.2003 Indian Electricity Act, 1910, is repealed and electricity Act, 2003 (the Act) is enacted and brought into force.

8.3.2004 Government of NCT of Delhi issued a notification, authorizing officers not below the rank of Junior Engineer dealing with distribution, commercial and enforcement function, in BSES for implementation of the functions, under section 126 of the Act.

21.04.2004 Inspection carried out by officials of the respondent no.2 in the inspection conducted at two premises of the petitioner simultaneously i.e premises under 36/7 and 36/8 Zulfe Bengal, Dilshad Garden, Delhi of the petitioner, during which it was found that the petitioner was indulging in theft of electricity.

30.4.2004 Theft bill for Rs. 14,63,90,30/- raised by the respondent no.2 on the petitioner.

17.5.2004 Civil suit (OS) 650 of 2004 filed by the petitioner against

respondent no. 2 praying for declaration that the aforesaid theft bill is illegal, null and void.

- 13.6.2004 Officials of respondent no. 2 lodge complaint with police station Seema Puri, Delhi stating the information recorded in the inspection report and on the basis thereof. Inspection report also annexed to the complaint made to the police. Based on the aforesaid information the police registers FIR NO. 235/2004 under section 39 of the Indian Electricity Act, 1910 read with Section 379 of IPC.
On this date as well as the date inspection provisions of the Act read with the DERC regulations were fully in force and applicable.
- 08.06.2005 The electricity Rules, 2005 (Rules) came into force. Rule 12 of the rules expressly, inter alia, provides that the police can take cognizance of offence punishable under the Act and have all powers as available under the Cr.PC
- 30.08.2005 The petitioner filed the present petition under section 482 of the Cr.P.C. i.e Criminal Misc. Case no. 4371 of 2005, seeking quash of the FIR.

17. I have examined the judgment delivered in Bimla Gupta's case. In the aforesaid judgment after quoting provisions contained under Sections 135, 138, 151 and 154 of the New Act, following observations have been made:

*8. It is clear that Section 135 speaks about the manner in which the cases of dishonest abstraction of energy have to be dealt with. Likewise, Section 138 also deals with the theft of electricity. Whenever a person is found to have committed offence under Section 135 and/or Section 138, cognizance thereof can be taken by the Court as provided under Section 151 thereof. Section 151 prescribes that Court shall not take cognizance of an offence punishable under this Act (which would include Section 135/138) except upon a complaint in writing made by a person specified therein. A complaint can be filed before the Court as provided under Section 200 of the Cr.P.C. On filing such a complaint procedure that is mentioned in the Sections following Section 200 is to be followed by the concerned Court. **The question for consideration is as to whether lodging of the FIR for such an offence is prohibited and filing of the complaint under Section 200 Cr.P.C. is the only mode which is to be followed? Related question which would call for consideration would be as to whether provisions of Section 379 IPC relating to theft cannot be added/invoked at all and for theft of electricity/dishonest abstraction of energy, only the provisions of Section 135 or 138 of the***

Electricity Act can be invoked?

9. Before we answer these questions, let us take stock of the provisions of the Code of Criminal Procedure as highlighted by the learned senior counsel for the NDPL. The Code of Criminal Procedure demarcates the offences into two categories, namely, cognizable and non-cognizable offences. As per Part II of Schedule I of the Code, any offence punishable with three years or more of imprisonment is a cognizable offence. Section 154 of the Code prescribes that in respect of every offence which is a cognizable one, information thereof is to be given to an officer in-charge of a police station, who shall reduce the same into writing. Thus, it is the duty and responsibility of the police authorities to register a First Information Report. Sub-section (3) of Section 154 further obligates the police authorities to investigate the same as per the manner prescribed in subsequent sections and thereafter submit its report to the Magistrate, who is empowered to take cognizance of the offence on police report, under Section 173 of the Code, on completion of investigation. Interpreting the aforesaid provision this Court in the case of *Deepa Singh v. State* 1998 IV AD (Delhi) 492 held that mode of registration of the FIR was permissible. That was a case relating to the provisions of Delhi Municipal Corporation Act. Violation of Sections 332 and 466-A of the Delhi Municipal Corporation was alleged. The Court held that ordinary Criminal Courts under Section 5 of the Act will have the jurisdiction to deal with such offences and the plea of ouster of jurisdiction of the ordinary Criminal Courts was rejected. It may be noted that Section 467 of the Delhi Municipal Corporation Act is para material with Section 151 of the Electricity Act as that provision also lays down that no Court can proceed to the trial of any offence under Section 332 of the Act except a complaint of the Commissioner, Municipal Corporation of Delhi or any other person authorised by him by general or special order in this behalf. Argument was precisely the same, namely, no complaint had been filed by the Commissioner or any person authorised by him and FIR was lodged with the police and which submitted the report to the MM and, therefore, the MM in the absence of complaint ought not to have proceeded with the trial of the case on a police report. The Court while rejecting the contention referred to the provisions of Section 4 of the Cr.P.C. which reads as under:

“4. Trial of offence under the Indian Penal Code and other laws.-(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.”

10. It is apparent from the reading of Section 4 that provisions of the Cr.P.C. would be applicable where an offence under the IPC or under any other law is being

investigated, inquired into, tried or otherwise dealt with. These offences under any other law could also be investigated, inquired into or tried with according to the provisions of Cr.P.C. except in case of an offence where the procedure prescribed there under is different than the procedure prescribed under the Cr.P.C. The Court noted that Section 466A of the Delhi Municipal Corporation Act specifically lays down that the Code of Criminal Procedure shall apply to the offences prescribed under various provisions of the said Act as if it were a cognizable offence for the purpose of investigation of such offence. It is so specifically provided under Section 155 of the Electricity Act also. Thus, it is not a case where any special or different procedure is prescribed. Rather, the procedure contained the Code of Criminal Procedure is made applicable for the offences to be tried under the Electricity Act as well. In fact, the submission of the learned Counsel for the petitioner itself is that for filing of the complaint, the procedure contained under Section 200 etc. Cr. P.C. would be applicable.

11. While brushing aside the contention that the Court could not proceed to the trial of offence under Section 322 of the Delhi Municipal Corporation Act unless there was a complaint filed before the Court, following pertinent observations were made:

“6. Learned Counsel for the petitioner submitted that since the complaint was not filed by the Commissioner or any person authorised by him, therefore, the Court could not proceed to the trial of the offence under Section 332 of the Act. In making the submission, learned Counsel for the petitioner has not given due consideration to the fact that the prosecution could be initiated upon information received by the Court from an officer of the Corporation. **Such an information can be received by the court from the Officer of the Corporation either directly or through the agency of the police.** Where the police starts investigation into the matter on the information furnished by the authorised officer of the Corporation, who is competent to file a complaint, and the police on the basis of the said information investigates the matter and finally files a report under Section 173 of the Code of Criminal Procedure, it cannot be said that the Court to which such a report is filed is not acting on the information received from the authorised officer of the Corporation. Section 467 does not lay down as to how the information should be received by the Court from the Commissioner or the person authorised by him in this behalf. It nowhere says that the information should be directly filed in the Court by the Commissioner or the person authorised by him in this behalf. thereforee, the information could also be received by the Metropolitan Magistrate through the report filed by the police under Section 173 of the Code which in turn is based on the complaint of the Commissioner or the person authorised by him”.

12. It would also be of interest to note that Section 469 of the Delhi Municipal Corporation Act provides for

appointment of Municipal Magistrates for trial of offences under the said Act. The contention was, therefore, raised that in view of the fact that only Municipal Magistrates can take cognizance, FIR could not be filed. This contention was also repelled. Though reason for rejection was on the ground that Municipal Magistrates were not appointed, even if Special Court as Electricity Courts are constituted, legal position would not change and the only difference it would make is that the police will have to file its report before the Special Court and not before the ordinary Court. therefore, simply because the Special Courts are designated would not mean that the case cannot originate on the basis of an FIR.

13. In *M. Narayandas v. State of Karnataka and Ors.* (2003) 11 SCC 251, the question arose as to whether Section 195 and Section 340 of the Cr.P.C. affect the power of police to investigate into a cognizable offence. This case has direct bearing in so far as the question mooted in the instant case is concerned. Section 195 provides for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. It also states that no Court shall take cognizance of the offences specified therein except on a complaint in writing of that Court or of some other Court to which that Court is subordinate. Section 340 of the Cr.P.C. prescribes the procedure as to how the complaint may be preferred under Section 195 of the Cr.P.C. Alleging that the accused had committed an offence under Section 195, the complainant had made a complaint to the police and police had initiated investigation thereon. The accused/respondent had contended that since the case was filed under Section 195 Cr.P.C. it was provisions of Chapter XVI Cr.P.C. which would apply and not Chapter XII Cr.P.C. (relating to investigation by the police). This contention was rejected in the following manner:

“8. We are unable to accept the submissions made on behalf of the respondent. Firstly, it is to be seen that the High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. Even otherwise, there is no substance in the submission. The question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of *State of Punjab v. Raj Singh* (1998) 2 SCC 391. In this case it has been held as follows: (SCC pp. 391-92, para 2)”

"2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondent alleging commission of offences under Sections 419, 420, 467 and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) CrPC prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 CrPC it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under Section 190(1)

CrPC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding under the Code is not in any way controlled or circumscribed by Section [195](#) CrPC. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the court would not be competent to take cognizance thereof in view of the embargo of Section [195\(1\)\(b\)](#) CrPC, but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section [340](#) CrPC. The judgment of this Court in Gopalakrishna Menon v. D. Raja Reddy ([1983](#)) 4 SCC 240 on which the high Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the court could not take cognizance on such a complaint in view of Section [195](#) CrPC."

Not only are we bound by this judgment but we are also in complete agreement with the same. Section [195](#) and [340](#) do not control or circumscribe the power of the police to investigate under the Criminal Procedure Code. Once investigation is completed then the embargo in Section [195](#) would come into place and the court would not be competent to take cognizance. However, that court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section [340](#) of the Criminal Procedure Code is followed. Thus no right of the respondent much less the right to file an appeal under Section [341](#), is affected.

14. Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance when a complaint is filed before it, that would not mean that the police cannot take cognizance thereof.

15. It is stated at the cost of repetition that the offences under the Electricity act are also to be tried by applying the procedure contained in Cr.P.C. Thus, it cannot be said that a complete machinery is provided under the Electricity Act as to how such offences are to be dealt with. In view thereof, I am of the opinion that learned Counsel for the NDPL, is right in his submission that if the offence under the Cr.P.C. is cognizable, provisions of Chapter XII containing Section [154](#) Cr.P.C. and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same. Maxim generali bus specialia derogant shall have no application when the provisions are read in the aforesaid manner. Sections [135](#) and [138](#) only prescribe that certain acts relating to theft of electricity etc. would also be offences. It also enables certain persons/parties, as mentioned in Section [151](#), to

become complainant in such cases and file complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act are also to be governed by the Code of Criminal Procedure.

18. An SLP filed against the aforesaid order has been dismissed by the Apex Court in limine vide their order dated 23.02.2007. It is well settled that dismissal in limine by the Apex Court does not make the law laid down by a Judge of the High Court as the law of the land and such a judgment can always be distinguished if a different approach is possible to be taken in law.

19. Having examined the aforesaid judgment and reading the provisions of the New Act and in particular Section 151 and provisions contained under Cr.P.C. while one cannot dispute the proposition that the Police can take cognizance of a cognizable offence and can investigate the matter in view of Section 4 of Cr.P.C. the second question i.e. taking cognizance on the basis of a Police report other than a complaint filed by an authorized officer of the Electricity Department which is the mandate of Section 151 Cr.P.C. still remains undetermined by the aforesaid judgment.

20. A perusal of the judgment in Bimla Gupta's case further goes to show that this judgment besides relying upon the provisions of Section 4 of Cr.P.C., the Court has also taken note of

the Electricity Rules 2005 which permits Police to investigate the matter but which came into force in 2006 i.e. much after the enactment of the New Act. The Rules does not provide that the same have any retrospective operation rather the applicability of these Rules have to come into force only on the date of their publication in the official gazette.

21. The second aspect relied upon by the learned Judge to support his view is the judgment delivered in Sohanlal's case (Supra) where while considering Section 185 of the New Act a view has been taken that the old Rules which permits registration of an FIR by the Police were still valid. The relevant portion of the judgment delivered in Sohanlal's case which has been referred to in Bimla Gupta's judgment does not show that the provisions of Section 151 of the New Act have been considered by the Learned Single Judge in that case which debars cognizance of an offence committed under Section 135 to 138 of the New Act. Moreover, certain special provisions which have been added about calculation of tariff etc., as provided for under Section 121 of the New Act and which also becomes the basis of the prosecution of a person commits theft of electricity or fraudulently accepts the same and which requires a detailed procedure to be followed including hearing of the concerned party before issuing a Bill cannot be looked into by the local Police. Such adjudication is required to be made by a specialized agency i.e. electricity department. Moreover once the Rules which were framed under

Delhi Electricity Rules Act 2005 which have specifically overruled by the New Act in view of Section 185 thereof the question of holding that those Rules (DECO Rules) were still in operation also requires re-consideration and, therefore, the judgment in Bimla Gupta's case also call for a consideration by a larger Bench as I am also of the considered view that the view taken in Sohanlal's case about the repeals of the Rules framed under Delhi Electricity Reforms Act does call for a reference of the issue to a larger Bench.

22. In this regard I may also refer to the judgment of Justice Ravinder Bhatt delivered in the case of Raj Kumar Vs. BSES Yamuna Power Ltd. W.P.(C) 18912/2006 where exactly similar issued had been considered, wherein it has been observed

" 11. The entire premise in Sohanlal (supra) is that there is no methodology for assessment of theft under the 2003 Act. The court juxtaposed Section 135 with Section 126, which talked of unauthorized use of electricity. In Para 42 of the judgment, the court referred to Section 185 read with the schedule, to say that the Delhi Electricity Reforms Commission Act, 2000 had been saved. The court held that the regulations were framed in exercise of powers under Section 61 of the 2003 Act, and that they constituted a complete code. The judgment in Suresh Jindal concerned with the regulations and standards applicable, in the absence of specific regulations, for meters. It was noticed that regulations under the 1948 Supply Act had been made, and were in force, whereas there was no express indication in the 2003 Act, and fresh regulations had not been framed. The Division Bench also stated that the previous regulations, concerning standards for meters, prevailed, since there were no specific provisions under the 2003 Act. The decision in Suresh Jindal therefore did not deal directly with the scope of the subject matters in these proceedings, i.e. Sections 126, 135 and 154 of the 2003 Act.

12. The premise in *Sohanlal*, i.e. that the 2002 Regulations were framed under Section 61 of the State Act are a complete code, has to be considered in the context of the formulation of the law by the Supreme Court, in *Zaverbhai*, i.e. where new offences with new procedures are enacted, the pre-existing provisions are deemed repealed, as being repugnant. Viewed from this perspective, the Regulations, particularly 25 and 26 are premised upon the definition of theft, which is as per Regulation 2(i) entirely different from Section 135; similarly dishonest abstraction of electricity has been defined in regulation 2(m) which is different from Section 126 (6) Explanation. To the extent of inconsistency, the provisions of the Act have to prevail. In particular, the inconsistencies are in:

(1) the factor to be applied while billing upon a finding of unauthorised use of electricity, under Section 126 (6);

(2) Procedure to be followed in Section 126, which is different from the procedure in Regulations 25 and 26;

(3) An entirely different procedure for adjudication of theft, judicial forum by way of special judge, extent of penalties (Section 135) and civil liability, in the event of guilt (Section 154(5)), under the 2003 Act. The regulations however, prescribe a common procedure for theft/ DAE.

(4) The Regulations do not provide recovery of penalties, but depend on Tariff Orders. Tariff orders do not have the same status as regulations, or rules, as under the State (Reforms) Act, the latter have to be placed before the State Legislature. The provisions of the 2003 Act indicate definite quantum to be recovered by way of penalties (Section 126, 135 and 154).

13. The notice of the court was not brought to Section 174 of the Act, which accorded primacy to its provisions, as well as the specific expressions in Section 185 and 185(2)(a) i.e. only those provisions of existing laws, such as in the Reforms Act, which were not inconsistent with its provisions, were saved.

14. One other fact which has to be kept in mind is that what is saved are rules (not regulations) under Section 185(2)(a) under repealed enactments, to the extent of inconsistency. Further, the State Act (i.e. the Delhi Electricity Reforms Act, 2000) to the extent of its consistency is saved, not regulations. There is no provision under the State Act/ Reforms Act, deeming the provisions of regulations to be construed as provisions of the Act.

15. In *Sohanlal*, the court also did not notice the mandate of Section 50 of the 2003 Act, which enjoins the regulatory commissions to specify an 'Electricity Supply Code' for recovery of electricity charges, inter

alia, in contingencies including tampering, etc. After the decision in Sohanlal, the Central Government, on 10th day of June 2003, in exercise of the powers conferred by Section 183 of the Act, issued Order No.790(E) dated 8th June 2005 called the Electricity (Removal of Difficulties) Order, 2005 which was brought into force on 8th June 2005. Clause 2 of the order enjoins the State Commissions to frame Electricity Supply Code, and include specific provisions for assessment of theft and amounts to be recovered pending adjudication the method of disconnecting supply in such cases, etc. Till date, the Delhi Commission has not framed such Electricity code.

16. It is evident that the 2002 Regulations, formulated when the previous law was in force, could not have catered to situations where unauthorised use of electricity had not been statutorily provided for. Likewise, the “rolled up” procedure for theft, as per Regulations 25 and 26 were in the context of the previous enactment, where the special mechanism did not exist. One of the principles of law is that where a special mechanism for adjudication of special liability is created, that can be fastened only in accordance with that procedure, or not at all, all other modes being forbidden. (Ref Taylor v. Taylor (1875) 1 Ch D 426) Nazir Ahmed v. Emperor (AIR 1936 PC 253); Ramchandra Keshav Adke v. Govind Joti Chavare (AIR 1975 SC 915); Commissioner IT -vs- Pearl Mech Engineering and Foundry Works (AIR 2004 SC 2345). There, where the Act provides for specific situations, under Section 126 and 135, those have to prevail, and all other methods dealing with those situations, are not available. Another established and binding principle is that penalties cannot be created and enforced through rules, where the parent Act deals with the situations, or is even silent. (Ref Khemka and Co. Vs. State of Maharashtra AIR 1975 SC 1549).

23. In the aforesaid case the matter was referred to Hon’ble Chief Justice for referring the issue to a larger Bench but it is informed that since a compromise was reached between the parties the issue had not gone to the larger Bench.

24. However, as the judgment in Sohanlal’s case has been relied upon by a Learned Single Judge in Bimla Gupta’s case which view has been differed by another Single Judge of this

Court and for reasons as stated above, even on this point the judgment in Bimla Gupta's case calls for a re-consideration.

25. In view of the aforesaid I do not subscribe to the view taken by the learned Single Judge in Bimla Gupta's case but refer the matter for consideration by a larger bench on the following points:

- i) Whether the Electricity Rules, 2005 are applicable in a case where the raid was conducted prior to the coming into force of the said Rules.
- ii) Whether the DERC Regulations were still applicable against the petitioner in the given facts of this case. More so, when they are inconsistent with the provisions of the New Act, i.e., Electricity Act, 2003 and further the provisions contained in the New Act lays down procedure different than the old procedure which even call for issuing of a show cause notice before determining as to whether the petitioner was guilty of committing theft.
- iii) In the circumstances is it possible for a Special Judge to take cognizance of the offence based upon a police report in such a matter despite the power contained under Section 151 of the Cr.P.C.

26. It is a matter of record that subsequently amendment has taken place in the Electricity Act whereby specific amendments have been made in Section 151 of the New Act in 2001. This shows that there was a lacuna in the New Act but the said Act made provisions which were inconsistent with the provisions in DERC Regulations as well as the Delhi Electricity Reforms Act, 2000 which was superseded by the New enactment in view of

Section 185 of the New Act.

27. In these circumstances, let the matter be placed before Hon'ble the Chief Justice for constituting a larger bench to examine the authenticity of the judgment delivered in Bimla Gupta's case.

28. In view of the aforesaid, interim orders are made absolute till the disposal of the matter by the larger bench.

MOOL CHAND GARG,J

MARCH 03, 2009
ag/anb