

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

+ **CRL. REV. P. NO.217/2008**

Date of Decision : 07.7.2009

CHAUDHARY RANJIT SINGH

..... Petitioner

Through: Mr. Ujjwal K.Jha,
Advocate.

Versus

BSES RAJDHANI POWER LTD. & ORS.

..... Respondents

Through: Mr.J.S.Lamba, Advocate.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J.(oral)

1. This is a revision petition filed by the petitioner by virtue of which the learned Additional Sessions Judge, Special Electricity Court, Vikas Puri, New Delhi directed framing of charges against the present petitioner for an offence under Section 135 of the Electricity Act read with Section 379 of the IPC.
2. Briefly stated the facts of the case are that on 24.10.2005, an Enforcement Team of BSES Rajdhani Power Ltd. with its Manager named Sh.Sanjay Kumar raided and inspected the back side of the property bearing WZ No. 14 and 15, Golden Park, Rampura, New Delhi. It seems that some information had been received by the complainant

that direct theft of electricity was being indulged into by the occupant of the said premises. On inspection, it was found that the direct theft of electricity was being illegally committed by tapping from BSES L V Mains through 8 illegal wires (Copper and Teflon). On inquiry, Chaudhary Ranjit Singh was stated to be the user of the premises who was running the said factory for manufacturing of plastic dana and plastic bags. The connected load of 243.455 KW was found on direct theft. Enforcement Team seized the material evidence in the shape of wires, meter and proper necessary documents of inspection report itself on the site. A complaint was addressed to the SHO of P.S. Punjabi Bagh, Delhi on 25.10.2005 that a case under Section 135 of the Electricity Act read with Section 379 IPC be registered. The SHO of the P.S. Punjabi Bagh registered an FIR 929/2005 under the aforesaid Section and handed over the investigation to the SI Mukesh Kumar.

3. After investigating the matter, charge sheet was filed against one Arun Kumar who had been arrested at the time of inspection and was produced in custody before the Ilaka Magistrate. When the charge sheet was filed in Court, it directed the IO to conduct further investigation and inquiries as to why charge sheet was not filed against

the persons who were the owner of the property and running the manufacturing activity.

4. This led to filing of a supplementary charge sheet in which Ranjit Singh's name was shown in Column No.2 with the observation that the factory at the site has been demolished and there is no evidence available which could be collected by the police against the said accused who was the owner of the factory. The accused was stated to be the resident of WZ No.14 and 15, Golden Park, Rampura, New Delhi. The learned Special Judge took cognizance against the accused Chaudhary Ranjit Singh and directed framing of charge after referring to various authorities and forming an opinion that there was sufficient evidence against the petitioner to warrant the framing of charge against him.
5. The contention of the learned counsel for the plaintiff is that the cognizance could not have been taken against the said petitioner at that stage inasmuch as the factory stood demolished and that the Court could have proceeded against him under Section 319 of the Cr.P.C. at an appropriate stage when evidence came against him was brought on record.
6. The learned Special Judge negated this contention of the learned counsel for the petitioner.

7. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent.
8. The learned counsel for the plaintiff has tried to raise two-fold submissions; First submission which has been raised is that the cognizance taken by the learned Special Judge against the present petitioner is bad in law inasmuch as there was no sufficient evidence on the basis of which the learned Special Judge could have taken cognizance. This was more so on account of the fact that the investigating agency has shown the name of the present petitioner in Column no.2 which signifies that there was complete lack of evidence so far as the petitioner is concerned with regard to the alleged commission of offence under Section 135 of the Electricity Act or under Section 379 of the IPC. The learned counsel has contended that the investigating officer himself in the supplementary charge sheet has stated that the factory is lying demolished and the present petitioner is living at a different place in respect of which electricity bills were also furnished by the petitioner. Therefore, it was contended that there was no prima facie evidence against the petitioner to take the cognizance. Alternatively, it was contended that even if the cognizance was taken yet the petitioner ought to have been discharged because there was no prima facie evidence to show that he had

committed the offence of direct theft as alleged by the respondent/complainant.

9. The learned counsel for the petitioner had tried to place reliance on the judgment in **UOI Vs. Prafulla Kumar** AIR 1979 Crl. L.J. 154 which was also relied upon by our own High Court in **Sarbans Singh and Ors. Vs. State of NCT of Delhi**, 116(2005) DLT 698 as well as in case **Satish Mehra Vs. Delhi Administration** 1996 JCC 507 to contend that the petitioner deserves to be discharged.
10. I have gone through the said authorities. So far as the Satish Mehra's case is concerned which permitted the accused at the time of framing of the charge to give documents which were not seized by the investigating agency, to be taken into account by the learned Magistrate. However, later on in judgment titled **State of Orissa Vs. Debendra Nath Padhi** (2005) 1 SCC 568 that view has been over ruled by the Supreme Court itself.
11. In the later judgment, the Supreme Court has categorically stated that while considering framing of charge, the Court which has to frame the charge has to rely only on documents which are collected by the investigating agency. The documents which are sought to be produced by the accused himself before the Court cannot be taken cognizance of at that point of time so as

to discharge the accused. In other words, documents which are gathered by the police and filed in the shape of statements under Section 161 CPC or other documents like seizure memo, or weapon of offence can only be considered by the Court. In the instant case, there is no denial of the fact that the premises in question is not owned by the petitioner where he was running factory at the relevant time when the inspection was conducted by the Enforcement Branch of the supplier of electricity that the factory was in existence. It is also not in dispute that at the time of inspection, it was found that the electricity was directly being tapped from the mains. On the basis of this prima facie evidence, notwithstanding the fact that the petitioner may not be present, at the relevant time of inspection but obviously he is the beneficiary of the theft of electricity from the Mains and therefore, it cannot be said that there is no prima facie evidence against him warranting framing of charge.

12. So far as Prafulla Kumar's case is concerned, it instead of supporting the petitioner is supporting the prosecution. It is held in this case that the Judge while considering the question of framing the charge under Section 227 of the Code has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out

and if the material discloses grave suspicion which is not properly explained by the accused then charge can be framed.

13. In the present case, the petitioner is the owner of the premises. He was running the factory at the premises in question. At the time of raid, it was found that direct power was being drawn if this is not a case where the charge should be framed in charge which case it should be framed, the petitioner was the beneficiary of this fraudulent abstraction.
14. I accordingly do not agree with the contention of the learned counsel for the plaintiff, that there is complete lack of evidence which warrants that the accused deserves to be discharged.
15. So far as the contention of the learned counsel for the petitioner that a charge under Section 135 of the Electricity Act and Section 379 IPC could not be framed against the petitioner is also not tenable. This is on account of the fact that same transaction can result in the commission of offence under different enactments which is precisely what has happened in the instant case.
16. These two provisions of the different enactments lay down that fraudulent abstraction of electricity is a case of theft which warrants different punishments under

different enactments. I do not find any force in this contention of the learned counsel for the petitioner also.

17. For the forgoing reasons, I do not find any irregularity, impropriety or incorrectness in the impugned order dated 11.1.2008 by virtue of which charge has been directed to be framed against the petitioner and accordingly, the present petition is totally misconceived and the same is dismissed.

JULY 07, 2009
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V.K. SHALI, J.