

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

+ **Crl.Rev.P.419/2007**

% Date of reserve: 06.07.2009
Date of decision: 15.07.2009

G.B.S. BHALLA ...PETITIONER
Through: Mr. B.D. Batra, adv.

Versus

STATE & ORS. ...RESPONDENTS
Through: Mr. Arvind Kr. Gupta, APP for the
State.
Mr. M.S. Vinaik, adv. for the
respondent no.5 (BSES RPL).

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 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 order shall dispose of the aforesaid revision petition filed under Section 401 read with Section 482 of the Code of Criminal Procedure (Cr.P.C.) read with Section 156 of the Electricity Act, 2003(hereinafter referred to as 'the New Act') challenging the correctness, legality and propriety of the orders dated 09.01.2007, 25.01.2007, 13.02.2007 and 11.05.2007 passed by learned ASJ dismissing the application filed by the petitioner to drop the proceedings and review of the order passed in Complaint Case No.70/2007 titled as BSES Rajdhani Power Ltd. Vs. Sh. Mukul Bhalla &

Ors.)

2. Briefly stating the facts of the case are that on 04.02.2006, BSES Rajdhani Power Ltd. (hereinafter referred to as “respondent No.5”) enforcement team conducted an inspection at premises bearing Flat No.3095, D-3, Vasant Kunj, New Delhi belonging to the petitioner. On the basis of this inspection respondent No.5 filed a complaint on the same day with the police alleging stealing of electricity on the basis of which FIR No.43/2006 was registered at P.S. Vasant Kunj. It is thereafter the challan was prepared and filed on 02.08.2006 by the investigating agency. On the basis of challan summons were issued to the petitioner for appearance vide order dated 09.01.2007 to face charges u/s 135, 138 & 150 of Indian Electricity Act, 2003 as well as under Section 379 of IPC. The contents of the complaint read as under:

To,
The SHO
Vasant Kunj, Police Station
New Delhi
New Delhi dated 04.02.2006

Subject: Lodging of FIR u/s 135, 138 & 150 of
Indian Electricity Act, 2003 and u/s 379 IPC.

Sir,

On dated 04.02.2006 at about 11.50, BSES Rajdhani Power Ltd. Enforcement team inspected the premise NO.3095, D-III, Vasant Kunj having K. NO.2551G2330182 Registered Consumer Sh. G.B.S. Bhalla. The joint team observed that Meter of this premise is not found installed in the meter box installed on the ground floor of the building. The joint team reached inside the premise No.3095 and observed that meter is tampered and in open condition and found lying in one of the room of this premise. Two person naming Kunal S.o Shyam Sunder R/o P-33, Budh Vihar, Rohini and Deepak S/o Vijay Kumar R/o RZD-34 Nihar Vihar, New Delhi are operating the meter NO.22159594 and installing illegal elements in the meter. Kunal is found holding mobie NO.9312697795 and after checking the call register of this phone it is observed that consumer Sh. G.B.S. Bhalla has called him on his mobie NO.9312697795 through his residential phone No.011-26895402 on different dates as follows:

On dated 2/2/06 at 12.18.34 hrs.
On dated 3/2/06 at 14.53.43 and 15.16.08 hrs.
On dated 4/2/06 at 09.46.58 and 10.50.08 hrs.

PCR is called by dialing 100 by Sh. O.P. Kaushik, I.O. vigilance of BSES Rajdhani Power Ltd. Police came at site and whole thing is briefed to them.

You are hereby requested to lodge FIR against Sh. G.B.S. Bhalla, Flat No.3095, D-III, Vasant Kunj, New Delhi, Sh. Kunal s/o Shyam Sunder, R/o P-33, Budh Vihar, Rohini, New Delhi and Sh. Deepak, S/o Vijay Kumar, R/o RZD-34, Nihal Vihar, New Delhi u/s 135, 138 & 150 of Indian Electricity Act, 2003, 379 of IPC and other relevant sections.

3. The present petition has been filed on behalf of the petitioner to assail the order taking cognizance of the offence and summoning order passed by the trial Court on the basis of a police report filed by the local police.

4. It is the case of the petitioner that the cognizance taken by the Special Judge in this matter is violative not only of the provisions contained under Electricity Act, 2003 but also of Cr.P.C. It is submitted that:

- i) As required by the provisions of the Electricity Act, 2003 cognizance could have been taken by the Special Judge only on the basis of the provisions contained under the new Act before the Court concerned.
- ii) The Trial Court has committed an illegality in having taken cognizance of the offence only on the basis of police report even though no complaint was pending before it after recording the presence of APP.
- iii) Even though the Trial Court has stated that the cognizance has been taken in accordance with the provisions of Section 210 Cr.P.C., but it was not the case where firstly the complaint was filed and then the challan was filed and thus, the cognizance taken by the Special Judge is illegal.

5. It has been submitted that the order of Special Judge is illegal

and contrary to legal provisions and therefore orders passed by the Special Judge cannot be sustained and liable to be quashed.

6. Lastly, it is also the case of the petitioner that the Trial Court committed an error by giving preference to rules over the legislative mandate given by the legislature by dismissing the application moved by the petitioner vide order dated 11.05.2007, *inter alia*, on the basis of rule 12 sub rules 1 to 5 of the Electricity Act and as such it is submitted that the cognizance of the offence alleged to have been committed by the petitioner is illegal and is violative of the provisions contained under the Electricity Act and the Cr.P.C. and as such the subsequent orders passed by the learned ASJ against the petitioner are also not justified.

7. Learned Counsel appearing for the petitioner has also filed the written synopsis and has relied upon the following judgments:

- i) 2004 (3) JCC 1546 (SC) Gangadhar Janardan Mhatre Vs. State of Maharashtra.
- ii) 2006 (2) JCC 769 (SC) Minu Kumar & Anr. Vs. The State of Bihar And Ors.
- iii) AIR 1989 (SC) 1 State of Bihar Vs. Murad Ali Khan
- iv) AIR 1961 (SC) 751 State of U.P. & Ors. Vs. Babu Ram Upadhya
- v) (1984) 2 SCC 50 Babaji Kondaji Garad Vs. Nasik Merchants Cooperative Bank Ltd., Nasik and Ors.
- vi) AIR 1993 SC 1048 Hotel Balaji and Ors Vs. State of Andhra Pradesh and Ors.
- vii) AIR 1965 SC 666 Avtar Singh Vs. State of Punjab.

8. On the other hand, the second respondent submitted that theft of electricity is an offence which is covered by various provisions of IPC and is a cognizable offence and, therefore, the police was competent to have lodged an FIR and investigate. It is submitted that there is no bar for the police to take cognizance and to file a police report if the cognizable offences were disclosed.

9. I have heard the arguments. The issue raised on behalf of the

petitioner is now well settled. In Bimla Gupta & Anr. Vs. State & Anr.

136 (2007) DLT 521, learned Single Judge of this court also made the following observations:-

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 4 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 Act 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. therefore, 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.

10. In the aforesaid judgment, the learned Judge also relied upon the judgment of the Supreme Court in M. Narayandas v. State of Karnataka and Ors. 2003(11) SCC 251, where 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 and has made the following observations:

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:

"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.

11. In a judgment delivered by a Division Bench of this Court comprising of Hon'ble the Chief Justice and Sanjeev Khanna, J in Crl.M.C.4371/2005 decided on 24.03.2009, where the precise question raised by this Court in an earlier judgment, delivered in the case of Abhay Tyagi decided on 03.03.2009 were considered, the Division Bench upheld the order passed by A.K. Sikri, J in *Bimla Gupta's case (supra)* by making following observations:

13. The SLP preferred against the decision in Bimla Gupta was dismissed in limine. In Bimla Gupta A.K. Sikri,J also referred to the Electricity Rules of 2005 and the Regulations of 2002, validity of which has been upheld by Sanjay Kishan Kaul,J in Sohan Lal's case (Supra). However, in view of the foregoing discussion it is not necessary for us to express any opinion on the question of applicability of the Regulations, 2002. The Rules of 2005 are obviously inapplicable in the facts of the present case as the FIR was registered in 2003.

14. In our opinion, Bimla Gupta's case (supra) lays down the correct position of law and does not require any reconsideration. In that view of the matter, we need not express any opinion on the points raised by the learned single Judge in his referring order. The only other contention raised in this petition is that the inspection was not carried by the authorized officer. The petitioner is entitled to raise this and other contentions before the trial Court at the appropriate stage. Therefore, we do not see any reason to entertain the present petition and the same is hereby dismissed.

12. In view of the aforesaid, taking cognizance by the police with respect to stealing of electricity being a cognizable offence cannot be said to be illegal merely because the New Act provides for filing of a complaint as a basis of taking cognizance as held by the Division Bench.

13. In view of the aforesaid, there is no illegality in having taken cognizance by the learned ASJ of the offence allegedly committed by the petitioner of stealing electricity for which a report was lodged with

the police and the challan by the police was filed after investigation.
The revision petition, therefore, is dismissed.

14. TCR be sent back forthwith.

JULY 15, 2009
anb

MOOL CHAND GARG, J.