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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL M C 2059/2008 & CRL M A 7669/2008

DALBIR SINGH Petitioner
Through Mr. A.K Gupta, Advocate

versus

B.S.E.S. RAJDHANI POWER LIMITED Respondent
Through Mr. Sunil Fernandes with
Mr. Rajat Jariwal, Advocates

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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

ORDER
06.02.2009

1. This petition is directed against the impugned order dated 30th November 2007 passed by the learned Additional Sessions Judge ('ASJ') Special Electricity Court in Complaint Case No. 421/06 holding that a prima facie case was made out to try the Petitioner for the offence under Section 135 (2) of the Electricity Act 2003 ('Act'). It also challenges an order passed on the same date by the learned ASJ framing notice against the Petitioner for the offence under Section 135 (b) of the Act. The prayer in this petition is that the learned ASJ should be directed to hear the Petitioner on charge and pass orders accordingly.

2. The facts in brief are that an inspection was conducted by the officers of the respondent BSES Rajdhani Power Limited ('BRPL') in the premises of the Petitioner at WZ-30A, Ground floor, Channa Mal

Park, East Punjabi Bagh, New Delhi. According to the officers of BRPL the inspection revealed that the Petitioner was indulging in dishonest abstraction of energy ('DAE') and that the total connected load being used illegally by the Petitioner by tampering the meter was 49.376 KW as against the sanctioned load of 44.76 KW. On that basis the aforementioned complaint was filed in the court of the learned ASJ, Special Electricity Court, Delhi. On 30th November 2007 the learned ASJ passed the following order:

“30.11.07

Present: Counsel for the complainant deemed APP, along with AR Sh. Pankaj Tandon.

Accused Balbir Singh present on bail.

Second accused Hari Singh impleaded as the registered consumer of consumption was stated to have already expired. The fact of death of Sh. Hari Singh was directed to be verified through concerned PS but it appears that verification report has not yet been submitted. Accused Balbir Singh states at bar that Hari Singh was his father and he has already placed death certificate of Sh. Hari Singh. His statement is recorded on oath to this effect. Proceedings against Hari Singh dropped as abated.

This is a case of dishonest abstraction of energy according to the prosecution case. In view of the inspection report and other material referred to in the speaking order, a prima facie case to try accused for an offence under Section 135 (2) of the Electricity Act is made out. Notice of offence is given to him to which pleads not guilty. Matter be put up on 28.2.2008 for prosecution evidence.”

As already mentioned on the same date, notice was also framed against the Petitioner for the aforementioned offence.

3. The submission of learned counsel for the Petitioner is that in terms of Section 154 of the Act the procedure envisaged under the Code of Criminal Procedure 1973 ('CrPC') for trial of warrant cases was mandatorily required to be followed by the learned ASJ particularly since the offence under Section 135 is punishable with imprisonment for term which may extend to three years. It is submitted that under Section 154 (3) of the Act a discretion is vested in the Special Court to try the offence under Section 135 of the Act in a summary way in accordance with the procedure prescribed in the said CrPC and further that the provisions of Section 263 to 265 CrPC shall, "so far as may be, apply to such trial." Although the first proviso to Section 154 (3) states that where it appears to the Special Court in the course of summary trial that the nature of the case is such that it is undesirable to try it in summary way, it can proceed to rehear the case as "warrant case", according to counsel for the petitioner, the Special Court has to necessarily give reasons why it is not proceeding to try the case as a summary case. He sought to place reliance upon the judgment of the Supreme Court in *Transmission Corporation of A.P. v. Ch. Prabhakar AIR 2004 SC 3368*. Learned counsel for the Petitioner further contends that the Special Court could not have taken cognizance of the offence straightway without the case being committed to it by the learned Metropolitan Magistrate (MM). He sought to place reliance upon the judgment of the Supreme Court in *Gangula Ashok v. State of Andhra*

4. Learned counsel appearing for the Respondent BRPL submits that the Special Electricity Courts were granted powers under Section 153 of the Act with a view to having a separate judicial forum exclusively for the trial of cases involving theft and illegal abstraction of electricity. Under Section 153 (3) of the Act “a person shall not be qualified for appointment of a Judge of a Special Court unless she was, immediately before such appointment of Additional District & Sessions Judge.” Under Section 155 of the Act, the Special Court would “save as otherwise provided in this Act, be governed by the CrPC in relation to all proceedings before the Special Court”. It is submitted that the procedure under Section 154 (3) of the Act is departure from the procedure for trial of warrant cases under the CrPC. By inserting the words “save as otherwise under CrPC” in Section 155 of the Act, the Parliament intended that the Special Court should try the cases before it in a summary manner and leave it to the discretion of that Court to proceed with the case as a warrant case if it was of the opinion that the trial of such case in a summary way was not desirable. Reliance is placed upon the decisions of the Supreme Court in *Suresh Nanda v. CBI* (2008) 3 SCC 674, *Punjab State Electricity Board v. Basi Cold Storage*, *Khara AIR 1994 SC 2544*, *Damji Valji Shah v. Life Insurance Corporation of India AIR 1966 SC 135* and *Keshavji Ravji & Co. v. CIT* (1981) SCC 315. Reliance is also placed to an order dated 28th January 2009 passed by this Court in Crl Revision Petition No. 626 of 2008 (titled *Rajender v. BSES Rajdhani Power Limited*)

where it was held that it was only if during the course of trial the Special Court formed an opinion that the trial of the case in a summary way was not desirable, that it was required to give reasons and proceed with it as a warrant trial. Learned counsel for the Respondent further adds that the judgment of the Supreme Court in *Transmission Corporation of A.P. v. Ch. Prabhakar* is being reconsidered by a larger Bench of the Supreme Court.

5. This Court proposes to first deal with the submission of learned counsel for the Petitioner that the Special Court could not have proceeded with the trial without cognizance of the offence first being taken by the learned MM and the case thereafter being committed by the learned MM to the Special Court. Section 151 of the Act, which is relevant for the purpose, reads as under:

“151. Cognizance of offences – 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 authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:

Provided that the court may also take cognizance to an offence punishable under this Act upon a report of a police officer under Section 173 of the Code of Criminal Procedure 1973:

Provided further that a special court constituted under Section 153 shall be competent to take

cognizance of an offence without the accused being committed to it for trial.”

6. The two provisos to above provision were introduced by the Amendment Act 2007 effective 28th May 2007. The said amendment is really clarificatory in nature and would apply to all pending complaints as well. Section 151 bars the Court from taking cognizance of offence except by such a complaint in writing made by the appropriate Government or appropriate Commission or “licensee or the generating company.” Section 154(1) mandates that every offence punishable under Sections 135 to 140 and Section 150 shall be triable only by the Special Court within whose jurisdiction such offence has been committed. Considering the fact that Section 154 (3) the Special Courts are expected to proceed with the trial of the complaints under Sections 135 to 140 and Section 150 in a summary way, it is inconceivable that the Parliament intended that the cognizance of the offence should first be taken by the learned MM and thereafter the case committed to the Special Court. Further Section 155 begins with the words “Save as otherwise provided in this Act” when it talks of the applicability of the CrPC. Therefore on a collective reading of Sections 135, 151, 154 (3) and 155 it is plain that as regards the trial of the complaint case under the Act, the intention of the Parliament is that it is the Special Court will take cognizance of the offences and proceed to try the case, to begin with, in a summary way.

7. The decision in *Gangula Ashok v. State of Andhra Pradesh* was in the context of the Scheduled Castes and Scheduled Tribes (Prevention

of Atrocities) Act 1989 ('SC/ST Act'). There is no provision in the SC/ST Act similar to either Section 151 or Section 154 (3) of the Electricity Act. The scheme of SC & ST Act is distinct from the scheme of the Electricity Act. The two provisos inserted in Section 151 in 2007 remove any manner of doubt in regard to the powers of the Special Court constituted under Section 153 to take cognizance of offences without the cases having to be committed to such court for trial. As far as the present case is concerned, on the date that the order framing notice was passed, i.e., 30th November 2007, the amendment Act of 2007 introducing the provisos to Section 151, was already notified. There was, therefore, no illegality committed by the Special Court in taking cognizance and proceeding with the trial without the learned MM first committing the case to it for trial.

8. The next issue to be considered is whether the Special Court was required to give reasons for proceeding with the trial in a summary way in terms of Section 154 (3) of the Act. Section 154 (3) reads as under:

“(3) The Special Court may, notwithstanding anything contained in sub-section (1) of Section 260 or Section 262 of the Code of Criminal Procedure 1973 (2 of 1974), try the offence referred to in [sections 135 to 140 and section 150] in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial:

PROVIDED that where in the course of a summary trial under this sub-section, it appears to

the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to rehear the case in the manner provided by the provisions of the said Code for the trial of such offence:

PROVIDED FURTHER that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.”

9. A plain reading of the above provision reveals that the intention of the Parliament was that cases concerning theft or illegal abstraction of electricity, attracting the offence under section 135 to 140 and Section 150 of the Act, should be tried, to start with, in a summary way. Since the substantive portion of the above provision itself empowers the Special Court in this regard, it is unnecessary for the Special Court to give reasons for trying the case in a summary way. The procedure under Section 154 (3) is indeed a departure from the procedure of trial of warrant cases under the CrPC. Section 154 (3) contains a non-obstante clause which indicates that it is a departure from the normal procedure. Even Section 155 of the Act which otherwise makes the entire CrPC applicable, begins with the words “save as otherwise provided in this Act”.

10. In *Transmission Corporation of A.P. v. Ch. Prabhakar* whether as a result of the Indian Electricity Act (Andhra Pradesh Amendment)

2000 which inserted Section 49 C in the Indian Electricity Act 1910, the existing complaints pending in the court of the learned MM should be transferred to the Special Courts, in which case the right of the effected persons to file an appeal to the Sessions Court would be taken away. The issue was therefore addressed in the context of Article 20 (1) of the Constitution and the prejudice that might be caused to an aggrieved litigant by not providing effective remedy by way of appeal if the cases came to be transferred to the Special Courts. Notwithstanding the fact that the said decision is being reconsidered by a larger Bench of the Supreme Court, in the facts and circumstances of the present case, it is not seen how the said judgment can come to the aid of the Petitioner here. The issue in the present case is not that the complaint has been transferred from the court of the learned MM to the Special Court. Here the complaint has proceeded only in the Special Court even to begin with.

11. For the aforementioned reasons, this Court does not find any merit in this petition and it is dismissed as such. The pending application also stands dismissed.

S. MURALIDHAR, J.

FEBRUARY 6, 2009

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