

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl. M.C. No 1499/2009

% Judgment reserved on : 14.09.2010
 Judgment delivered on: 08.10.2010

Sh. Kapil Mahajan Petitioner.
 Through: Mr.S.K. Pruthi, Adv.

Versus

The State Respondent.
 Through: Mr. Sunil Fernandes,
 Adv. for BSES.

And

Crl. M.C. No. 1500/2009

Sudhir Mahajan ...Petitioner
 Through: Mr. S.K. Pruthi, Adv.

Versus

The State Through: Mr. Sunil Fernandes,
 Adv. for BSES.

And

Crl. M.C. No. 1501/2009

Smt. Pushpa Mahajan Petitioner
 Through: Mr. S.K. Pruthi, Advocate

Versus

The State

.....Respondent

Through: Mr. Sunil Fernandes,
Adv. for BSEs.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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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 |

KAILASH GAMBHIR, J.

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1. This common order shall dispose of three separate petitions bearing number CrI. M.C. No. 1499/2009, 1500/2009 and 1501/2009.

2. By these petitions filed under Article 226/227 of the Constitution of India read with Section 482 Cr.P.C., these three petitions assail a common order dated 3rd March, 2008 passed by the Court of Metropolitan Magistrate, Delhi and the order dated 9.2.2008 passed in

revision by the Court of the learned Additional Sessions Judge.

3. The bone of controversy in all these three petitions is a joint inspection report dated 22.10.1997. The premises of the petitioners were inspected by the joint inspecting team and all the three petitioners were found indulging in Fraudulent Abstraction of Energy (FAE) and theft bills against all the petitioners were raised by the respondent. Since the petitioners failed to deposit the theft bills, a separate FIR against all the petitioners was registered, based on the complaint filed by the respondent, and after investigation the police filed a report under Section 173 Cr.P.C. Vide order dated 3rd March, 2008 the learned Magistrate directed framing of charges against the petitioners under first part of Section 39 of the Indian Electricity Act, 1910. So far charge under Section 44 and Section 39 Part II of the Indian Electricity Act are concerned, the learned Magistrate found that no charge is made out against the petitioners. Feeling aggrieved with the said

orders of the learned Magistrate, the petitioners preferred revision petitions u/s 397 Cr.P.C. and vide common order dated 9.2.2009 the same were dismissed. Feeling aggrieved with the same, the petitioners have filed the present petitions.

4. Mr. S.K. Purthi, counsel for the petitioners vehemently contended that in the joint inspection report, nowhere the joint inspection team has pointed out that there was any dishonest abstraction of the electricity energy through the deployment of any artificial means by these petitioners and in the absence of the same no charge under Section 39 Part I of the Indian Electricity Act, 1910 could be framed against the petitioners. Counsel further submitted that merely because the connected load was found to be more than the sanctioned load or that shunt capacitor was not installed, it would not lead to an inference that the petitioners were abstracting the electricity energy in a fraudulent manner. The contention of the counsel for the petitioners was that if the connected load is found more

than the sanctioned load then the respondent can always charge the misuse charges, but the same cannot be held to be a theft of energy.

5. Drawing attention of this Court to the joint inspection report, counsel pointed out that so far K No. 131015/IP of registered consumer M/s Elite Shelttter Inds. is concerned, the inspection team gave the following findings:-

"The load report was prepared vide performa No. 16964 dated 22.10.97 and load found connected 72.634 KW on I.P. and 2.670 KW on IL meters. The M.T.D. report prepared vide performa No. 256/38306 dtd. 22.10.97. DESU's yellow paper seal No. 0021232 pasted on M.S. box was found tempered. The existing meters LS/Line against above K.Nos. were removed by zone as per the directions of SDM and XEN(D)NGL."

Mr. Pruthi stated that hence so far as the first connection is concerned, the only discrepancy found by the joint inspection team was that DESU's yellow paper seal No. 0021232 pasted on M.S. box was found tampered. Mr. Pruthi further stated that the same was only a paper seal and its tampering could not lead to commission of an

offence envisaged under Section 39 of the Indian Electricity Act.

6. So far the connection bearing K.No. O/O 7841851/IP with respect to registered consumer Shri Hari Ram is concerned, the team found as follows:-

"The load report was prepared vide Performa No. 16965 dt. 22.10.97 and load found connected 86.250 KW on I.P. and 9.140 KW on I.L. meters. The detailed M.T.D. report prepared vide Performa No. 256/38.307 dt. 22.10.97. The consumer has indulged in F.A.E. as the half seals of the meter 4D-30950, found fictitious. There is a cavity on L.H.S. in the above meter between load half seal service. Accordingly the existing meter and service line removed by the Zonal staff as per the directions of SDM/XEN(D)NGL."

The counsel submitted that the case of F.A.E. was made out against the petitioner in the above inspection report only on the ground that half seals of the meter 4D-30950 were found fictitious and also because a cavity was found on L.H.S. (left half seal) in the meter between load half seal service. The contention of counsel for the petitioner was that even if half seal of the meter was found fictitious then the same by itself would not result in

ascertaining illegal extraction of the energy from the said meter.

7. And as regards K. No. O/O – 1201133/IP registered consumer No. Shri Joginder Singh, the team made the following observations:-

"The consumer has indulged in F.A.E. as the consumer tempered the DESU's yellow paper seal No. 0033255 found pasted on M.S. Box. The half seal of the I.L. meter L.H.S. found missing scratches also found on reading digits/dial plate."

As regards the third connection, counsel stated that again the joint inspection team found the tampering in the yellow paper seal besides some scratches that were found on reading digits. The contention of counsel for the petitioner was that if the said report of the joint inspection team is taken as correct and as a gospel truth even then no case is made out against the petitioner under Section 39 of the Indian Electricity Act.

8. Based on the said report counsel submitted that in none of the three cases, the joint inspection team pointed

out any fraudulent abstraction of energy on the part of the petitioners by adopting any artificial means and, therefore, the case of the petitioners is squarely covered by the judgment of the Supreme Court in ***Jagarnath Singh vs. H. Krishna Murthy AIR 1967 SCC 947.*** The petitioner also placed reliance on the judgment of this Court in ***Swaran Dhawan Vs. State (NCT of Delhi) 99 (2002) DLT 416.***

9. Mr. Sunil Fernandes, counsel for the respondent very fairly admitted to the contention of counsel for the petitioner that mere tampering of the seals would not make out the case of FAE to invoke Section 39 of the Indian Electricity Act. Counsel, however, submitted that as per the joint inspection report, it is not merely the tampering of the seals but there is more tangible evidence found by the team which shows that the petitioner was indulging in FAE. Mr. Fernandes further submitted that so far the first meter is concerned, no doubt the allegation against the petitioner is that a yellow paper seal was found tampered but so far the second and third meters are concerned, certainly there is

enough evidence to show that the petitioner was found indulging in FAE as cavity on the left hand seal was found fictitious in the meter and through the said cavity the petitioner was in a position to stop the running of the disc. As regards the third meter, the counsel submitted that half seal (LHS) of the industrial load meter was found missing and scratches were also found on the dial plate and reading digits, which again establishes that the petitioner was indulging in FAE. Counsel further submitted that even the rivets were found tampered and it can be inferred from it that the petitioner was indulging in FAE. Counsel further submitted that the raiding team on inspection found that the seals of poly phase metres were found to be fictitious and did not tally with the authenticated sample monogram. It was also found by the Joint Raiding Team that MT Cone was found missing, shunt capacitor was found missing, cavity was observed at the left side of the meter and the meter disc stopped running on a load of 100W as well as on consumer load coupled with the fact that the connecting

load was found to be on a much higher side than the sanctioned load. Counsel further submitted that all the three meters were inter connected and any tampering in one meter would effect all of the three meters. Counsel further submitted that these are the findings of the facts which can only be gone into during the course of the trial.

10. Supporting the order passed by both the courts below the counsel for the respondent further submitted that after careful consideration of the material placed on record by the prosecution, the learned trial court framed charges against the petitioners under Section 39 Part I of the Indian Electricity Act, 1910. Counsel further submitted that a bare perusal of the Joint Inspection Report, Inspection Report, Load Report, etc. and the statements given by the prosecution under Section 161 Cr.P.C. would show that the petitioners have committed an offence under the first Part of Section 39 of the Indian Electricity Act. Mr. Fernandes invited attention of this Court to para 7 of the impugned order passed by the learned Additional Session Judge

wherein the learned Judge has referred to the order dated 3rd March, 2008 passed by the learned Magistrate highlighting various tangible acts committed by the petitioner, which includes that the meter cover was found missing, rivets were found tampered, one cavity was found on LHS between load seal and rivets, disc of the meter was found stopped on a load of 100 watt as well as consumption load. Counsel further submitted that the Revisional Court also upheld the order of the Ld. Magistrate framing charges against the petitioner under Part I of Section 39 of the Indian Electricity Act and therefore the concurrent view of both the courts below does not call for interference by this court while exercising jurisdiction under Article 227 of the Constitution of India.

11. I have heard learned counsel for the parties at considerable length and gone through the records.

12. It is a settled legal position that the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be examined meticulously at

the stage of framing of charge. The sifting of evidence at the stage of framing of charges is permissible only for a limited purpose, to find out as to whether a prima facie view of the case is made out against the accused persons or not. It is also equally true that the court is not expected to frame the charges mechanically but has to exercise its judicial mind after giving careful consideration to the case set up by the prosecution.

13. Before advertng to the facts of the case at hand, it would be important to reproduce Section 39 of the Indian Electricity Act,1910 :

“39. Theft of energy. - Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which shall not be less than one thousand rupees. or with both: and if it is proved that any artificial means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.”

(emphasis supplied)

14. The main plank of argument taken by the

counsel for the petitioners was that the inspection team failed to point out that there was any dishonest abstraction of the electricity energy through the deployment of any artificial means and in the absence of the same no charge u/s 39 Part I of the Indian Electricity Act, 1910 can be framed against the petitioners. It was also submitted that merely because the connected load was found to be more than the sanctioned load, that by itself would not lead to an inference that the petitioners were abstracting the electricity in a fraudulent manner and so for the load higher than the sanctioned load is concerned, the respondent can always charge the misuse charges.

15. Counsel for the respondent on the other hand, placed reliance on the observations of the joint inspection team which in their inspection found that the meter cover was found missing, half seals of the meter were found fictitious, disc meter was found stopped, MT Cone cover was found missing, rivets were found tampered, the genuineness of the seals could not be tallied due to the non-

availability of sample monogram and no shunt capacitor was found installed on the IP connections. Based on the said joint inspection report, the counsel submitted that Part I of Section 39 of the Electricity Act is clearly attracted against the petitioners and the contentions raised by the counsel for the petitioners can only be examined by the trial court during the course of the trial.

16. The FIR in the present case against the petitioners was registered under Section 39/44 I.E. Act/379 IPC but the Ld. Magistrate, after careful consideration of the material on record did not find circumstances justifying framing of charge against the petitioner u/s 44 of the Indian Electricity Act. The court also found that the case of the prosecution is well covered within the first part of Section 39 of I.E. Act. So far proving the dishonest intention on the part of the accused persons was concerned, the trial court felt that the same needs to be examined after evidence is led by both the parties. The Revisional Court also examined the contentions raised by the petitioners in detail

and taking into consideration the totality of the facts came to the conclusion that there is a prima facie case to proceed against the petitioners based on the joint inspection report submitted by the raiding party. So far the contention of the counsel for the petitioner that the joint inspection team did not find deployment of any artificial means for the illegal abstraction of electricity energy so as to attract Section 39 of the Indian Electricity Act is concerned, the legal position is well settled that in the case of deployment of artificial means, the burden of proof shifts on the consumer to prove that through such deployment of artificial means there was no dishonest abstraction of electricity energy. The Ld. Magistrate was conscious of this fact as he clearly observed that the case is made out against the petitioner under Part I of Section 39 of the Indian Electricity Act and as regards to the question that whether there was a dishonest abstraction or not, the same can only be determined during the course of the trial.

17. A number of judgments were cited by the

counsel for the petitioners to accentuate the argument that no case under section 39 of the Electricity Act against the petitioners can be made out. The judgment in ***Swaran Dhawan Vs. State*** (supra) has been rightly distinguished by the learned trial court, (the case cited by the counsel for the petitioner even before this court), wherein the court found that the disc of the meter was moving in right direction and no other artificial means were found but in the facts of the present case as per the inspection report ,the disc was found stopped on a load of 100 W as well as on the consumer load besides the fact that all the three connections were found interconnected and they were drawing connected load more than the sanctioned load. Counsel for the petitioner also placed reliance on the judgment of this court in the case of ***Ramesh Chandra & Ors. vs. State Of Delhi 68(1997) DLT 257*** which also would not be of any help to the petitioner as the facts of the case at hand are different from this case as in Ramesh Chandra's case only half seals of the meters were found

tampered whereas in the present case the meter disc was also found stopped alongwith the connected load being more than the sanctioned load. Also, the charge framed in that case was u/s 39/44 of the Electricity Act, 1910 which requires the discovery of deployment of artificial means whereas in the present case the learned trial court being mindful of this fact has framed the charge only under part I of section 39 of the I.E Act. The judgment of this court in ***Devi Charan Gupta vs. State 80(1999) DLT 801*** cited by the petitioner, relied upon the case of ***Ramesh Chandra(supra)*** and hence would also not aid the petitioner in any way. Yet another judgment cited by the counsel is of the Apex Court in ***Jagarnath Singh vs. H.Krishna Murthy(supra)*** which case was an appeal against conviction and hence the Hon'ble Supreme Court delved deep into the merits of the case , which is not the situation in the present case where we are at the stage of framing of charge. The counsel for the petitioner vehemently relied on the judgment of this court in the case

of **Col. R.K Nayar (retd) vs. BSES** MANU/DE/7685/2007 where the petitioner had challenged the speaking order which made a case of DAE against the petitioner. The judgment would not be applicable to the present case as there the petitioner himself had written a letter to the DVB complaining about the tampering of the meter, a fact which the DVB did not deny and hence the petitioner could not have been nailed down for the tampering. Also, the fact that the inspection report was not properly made, the court was of the view that it was a sham as there were no signatures of the officials or of the petitioner on the report. Hence, the view of the court in that case cannot be squarely pasted in the present case. The judgment of this court cited by the petitioner in **J.K Steelomelt (P) Ltd. Vs. BSES** MANU/DE/7684/2007 is on the same lines and is hence not applicable to the facts of the present case as well.

18. At this juncture, this court would like to sound a word of caution with regard to the practice that has evolved, that of citing judgments even when there is only a

paraphrase that supports a case. This court acknowledges the theory of precedents but is mindful of the admonition of Lord Denning which has become locus classicus :

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

The Apex Court has also time and again reminded that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. It would be pertinent to refer here to the judgment of the Apex Court in ***Sarva Shramik Sanghatana (KV) vs. State of Maharashtra (2008) 1 SCC 494*** where it cited the following passage from *Quinn v. Leathem* with approval:

"... Now, before discussing Allen v. Flood and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of

the expressions which may be found there are not intended to be expositions of the whole law, but [are] governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

19. Hence, in the final analysis, the facts of this case are unique to its own and hence cannot be equated with that of another case.

20. The Apex court in the case of ***State of Haryana vs. Bhajan Lal 1992 Supp (1) SCC 335*** settled the law as to when criminal proceedings can be quashed by the High Court under Section 482 CrPC. At the stage of framing of the charges roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such a stage. At that point, the trial court has to confine itself to the material produced on record by the investigating agency and it is only in a case where after taking into consideration the entire material placed on record by the prosecution, the trial court comes to the conclusion that no offence can be

made out against the accused. The truthfulness and the sufficiency of the material thus produced on record can be tested by the trial court only during the course of trial and not at the stage of framing of the charges. This court, therefore, does not find merit in the submission of the counsel for the petitioner that even after prima facie taking into consideration the report of the joint inspection team, no offence under part 1 of Section 39 of the Indian Electricity Act can be made out against the petitioner.

21. In view of the aforesaid, I do not find any merit in the present petitions and this court is hesitant to give any view on the merits of the case as such a view would prejudice the case of either of the parties. However, taking into consideration the concurrent view of both the courts below and the prima facie material placed on record by the prosecution, I am of the considered view that there is no illegality or infirmity in the orders passed by both the courts below. The present petitions do not merit any intervention by this court while exercising jurisdiction under Article 227

of the Constitution of India.

22. Keeping in view the totality of these facts, this court does not find the present cases to be fit cases for quashing the charges at this stage.

23. Hence, in the light of the above discussion, the present petitions are dismissed.

October 08, 2010

KAILASH GAMBHIR, J