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

+ **CRL.M.C. 3577/2011**

MUKESH GUPTA

..... Petitioner

Through **Mr. Suneet Bhardwaj, Adv.**

versus

STATE & ANR.

..... Respondent

Through **Mr. Manish Srivastava, Adv. for R-2/
BYPL.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

31.10.2011

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Crl.M.A. 12701/2011

Exemption allowed subject to just exceptions.

CRL.M.C. 3577/2011

1. By this petition the Petitioner seeks quashing of order dated 3rd April, 2008 summoning the Petitioner for offence punishable under Section 135 of the Indian Electricity Act, 2003 (in short I.E. Act).
2. Learned counsel for the Petitioner contends that the Petitioner is neither the owner nor occupier of the premises. The premises is owned by the Petitioner's sister-in-law and her husband Naresh Gupta who have not been summoned. Earlier also complaints were filed by the Respondents

Crl.M.C. 3577/2011

Page 1 of 8

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wherein allegations were made against Naresh Gupta and thus the order of summoning needs to be quashed on this limited ground itself. It is further contended that a bare perusal of the seizure memo shows that in the column of signature of user, the signatures are not of the Petitioner but of the person who prepared the inspection report. Photos and video CDs of the inspection were prepared and the Petitioner does not figure in the said photos and CDs. Despite repeated directions of the Learned Trial Court, case diaries are not being produced. It is further contended that the presumption as available under Section 135 (1) of the I.E. Act is not available, as the Petitioner is not a consumer. There is no privity of contract between the Petitioner and the Respondent. Merely by stating in the complaint that the Petitioner was found at the spot does not satisfy the ingredients of Section 135 of the I.E. Act. The Petitioner has stated that he had sold the premises to one Pawan Verma and thus he has no concern with it. Reliance is place on *M/s. Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors. AIR 1988 SC 128* to contend that no role is attributed to the Petitioner and merely by examining two witnesses who have not described the role of the Petitioner and have not placed any corroborative evidence, no summons could have been issued to the Petitioner. The Petitioner should not be asked to undergo the entire trial to show the inconsistencies in the complainant's case. There

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is no averment as to how the Petitioner benefited from the said stealing and thus criminal liability cannot be fastened upon him.

3. Learned counsel for the Respondent on the other hand contends that a bare perusal of Section 135 I.E. Act shows that whosoever is found dishonestly using or tapping the electricity is liable to be prosecuted and convicted for offence under Section 135 I.E. Act. There is no necessity that the person found on the premises should be the owner or a registered consumer. A perusal of the complaint shows that prima facie offence under Section 135 I.E. Act is made out against the Petitioner. As per the complaint and the inspection report, the Petitioner was found indulging in direct theft of electricity at that time. The statements of the complainant's witnesses are supported by the contemporaneous document i.e. the inspection report. The signatures on the inspection report are not of the Petitioner as he refused to sign on the same and thus the names were written.

4. I have heard learned counsel for the parties. Section 135 (1) I.E. Act provides as under:

“Section 135 - Theft of electricity

(1) Whoever, dishonestly,--

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or

method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.”

5. Thus a perusal of Section 135 (1) I.E. Act shows that whosoever dishonestly taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee is said to have committed the offence of illegal abstraction of energy which is punishable with imprisonment for a term of three years or with fine or with both. The allegations as set out in the complaint against the Petitioners are that on 31st January, 2007 at about 20.00 hours an inspection was carried out at premises DA-18, Daya Nand Block, Shakarpur wherein it was found that the Petitioner along with co-accused was found dishonestly indulging in direct theft of electricity by tapping the BSES L.V. Main. There was no meter at the site. Diagram was prepared by the inspecting team and detailed inspection report was also prepared. It is alleged that the Petitioner along with co-accused who were

4

the illegal user of the electricity at the above said premises committed the said offence. Thus, a perusal of complaint and Section 135 (1) I.E. Act shows that a case of direct theft cannot only be registered against registered consumer but against anybody who is indulging in directly tapping the energy.

6. I also do not find any merit in the contention of the learned counsel for the Petitioner that the Petitioner does not fall within the ambit of the consumer and thus the presumption under proviso to 135 (1) I.E. Act is not available. Section 2 (15) of the I.E. Act defines a "consumer" as under:

"Section 2 - Definitions

(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;"

7. Thus the "consumer" also includes a person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee. In the present case as per the allegations as set out, the premises was found connected with the wires of the Respondent wherefrom direct illegal abstraction of energy was taking place, and thus to say that the

3

presumption as sought to be raised by the complainant is not made out would be incorrect.

8. The main thrust of the argument of the Petitioner is that he was not present at the time of inspection, he had sold the property to one Pawan Verma and the premises in question was owned by his sister-in-law and her husband Naresh Gupta. This is a finding of fact to be arrived at after recording of evidence and on appreciation thereof. The Petitioner has himself taken contrary stands, i.e. on the one hand that the premises was owned by Naresh Gupta and on the other hand that part of it was owned by one Pawan Verma to whom the Petitioner had sold. These may be the defence of the Petitioner which will be looked into at the stage of trial by putting the same to the witnesses in cross-examination and by leading defence evidence if so advised. This Court merely on the basis of averments cannot conclude that the Petitioner was not occupying and using the premises. It will be for the Respondent/ complainant to prove the same during trial.

9. In *Pepsi Foods Ltd.* (supra) the Hon'ble Supreme Court held:

22. It is settled that High Court can exercise its power of judicial review in criminal matters. In *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it

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said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Article 226 and 227 may be referred to.

10. Much reliance has been placed by the learned counsel on the finding of fact by the Hon'ble Supreme Court in *Pepsi Foods* (supra) that the complaint does not show what was the role assigned to the Appellant in the manufacture of beverage which was said to be adulterated and the only allegation was that the Appellant therein are the manufacturer of bottles. A

7

perusal of the present complaint shows that it has been specifically stated that on inspection the Petitioner and co-accused were found dishonestly indulging in direct theft of electricity by tapping the BSES L.V Mains. It would be for the Respondents to prove before the Learned Trial Court. This Court on the basis of averments of both the sides cannot adjudicate and appreciate the evidence as to who is stating the truth and whose version is false. This is an exercise which has to be performed by the Learned Trial Court after the parties lead the evidence. I do not find any merit in the contention of the learned counsel for the Petitioner that this Court should enter into the analysis, see the inconsistencies in the complainant's case and the Petitioner should not be made to undergo the entire trial.

11. Petition is dismissed.


MUKTA GUPTA, J

OCTOBER 31, 2011
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