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

+ **CRL.A.No.816/2010 & Crl.M.A.No.11469/2011**

% *Judgment delivered on: 22nd March, 2012*

BSES RAJDHANI POWER LTD. Appellant
Through : Ms.Anjali Sharma, Adv.

versus

RUGGAN Respondent
Through : Mr.Tarun Rana & Mr.Ali Z.
Ahmed, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide instant petition, the appellant has assailed the judgment/ order dated 03.12.2008 whereby respondent/accused has been acquitted from all the charges against him.
2. The facts of the case in brief are that on 28.03.2005, for detecting of theft electricity energy being committed at premises Farm House No.3, Village Ghitorni, adjacent to village Sazol, New Delhi, the authorised inspector and other team members including PW3 & 6 reached at the premises. They found, therein factory being run of waste plastic was being recycled into solid plastic with the help of the machines run by electric energy. No meter was found at the site, on search of source of electric current. They found that the user of the

premises had hooked four wires from the pole which was supplying the electric energy to the machines and as such there was direct theft of energy. The load report Ex.PW1/A was prepared after calculation of the load, inspection report Ex.PW1/B was also prepared alongwith meter report Ex.PW1/C. On inquiry being made, about owner/user of the said factory, from the labourers who were working there, some of them disclosed the name as Raghu whereas some of them disclosed the same as Ruggan; hence, both the names were mentioned as user of the premises in question.

3. PW3 & PW6 corroborated the testimony of PW1 in total. The testimony of these two witnesses who are material witnesses neither linked the respondent/accused with the commission of the offence nor any of them identified him either as Ruggan or Raghu. The identity of the respondent is sought to be established by the prosecution on the basis of the statement of the investigating officer, who was examined as PW4, who deposed that on 12.09.2008, respondent/ accused was arrested by him and has also identified him in the Court vide memo Ex.PW4/C whose personal search memo was also proved Ex.PW4/D.

4. Learned Trial Judge recorded in the impugned order that the IO of the case was also not been able to establish that the respondent, whose name was Raghu Nath has only come into picture after his arrest, is the same Raghu Nath, as was told to be Raghu and Ruggan by workers of the factory. To prove that it was Raghu Nath, who was also known as Raghu and Ruggan, three witnesses i.e. PW7, 8 & 9 were examined, but all these witnesses were declared hostile – who even

denied that their statement was recorded by the police; however, the same were confronted. These three witnesses could have only proved that the respondent Raghu Nath was arrested under Section 41 (1) Cr. P.C. and produced before the Court after filing supplementary challan is Raghu @ Raghunath, but the prosecution even failed to prove the same.

5. Respondent/accused was identified by these witnesses only as Raghu Nath and was denied to be Ruggan or Raghu.

6. Learned Trial Judge has also observed that as per the evidence on record, no link has established between respondent and evidence of theft which was in fact committed by owners/user who was made accused on hear say evidence of PW1. The workers found in the factory, who told the name of Ruggan and Raghu to complainant (PW1), are neither examined nor their names or details were mentioned in the complaint Ex.PW1/E.

7. It is further recorded that the investigating officer also failed to examine said workers/labourers during investigation, so as to prove that it was Ruggan @ Raghu who was the user of the premises, wherein a factory was running which was being run by the energy directly tapped from the pole main electric line of the complainant.

8. PW7, father of the respondent / accused also examined and in his cross-examination, he deposed that Ruggan @ Raghu @ Raghu Nath cannot be read in isolation as his son and denied to have made any statement to this effect – which was confronted as Ex.PW7/A1.

9. Thus, the prosecution miserably failed to prove that it was the respondent who comes within the ambit of '**whoever**' as enumerated under Section 135 of the Electricity Act, 2003 or was found dishonestly tapping the service facilities of the complainant/ licensee so as to abstract or consume or use electricity in the said premises, which was raided. There is no evidence on record to say that respondent Raghu Nath was the owner of the premises or user of electricity or was running machines therein, with the use of tapped of illegal wires. None of the witnesses either identified the respondent as to link him with the commission of the offence or named him as accused of commission of the offence.

10. Even testimony of PW1, 3 & 6 who are claimed to be material witnesses, are based on hear-say. The primary evidence available with the prosecution in the form of workers has not been produced as to give support to the hearsay evidence of these three witnesses.

11. I note, DW3 Smt.Bela Johar was examined by respondent who testified that the said premises in question i.e. Farm House No.3, Ghitroni Village, New Delhi was sold by her on 23.03.2004 to M/s.Diplomatic Enclave Associates by registered sale deed.

12. In answer to the Court Question, this witness deposed that accused Ruggan @ Raghu has got no concern with M/s.Diplomatic Enclave Associates and also she did not know any person in the name of Raghu @ Ruggan.

13. Testimony of DW3 has been supported by testimony of DW2,

who placed on record the copy of *Khatoni* dated 29.07.2008 as Ex.DW2/B which is deposed to be in relation to the premises in question i.e. Farm House No.3, as it does not in any way name the respondent/accused as either owner or user of the property in question. Similar deposition of DW1, also proved the copy of the *khatoni* dated 30.01.2006.

14. I find no discrepancy , irregularity or perversity in the impugned judgment/ order passed by learned Trial Court, therefore, I concur with the same.

15. Accordingly, instant Criminal Appeal No.816/2010 is dismissed.

16. In view of above, Criminal M.A.No.11469/2011 does not require further adjudication and accordingly stands disposed of.

17. Before parting with instant matter, it is observed that initially respondent No.1 deposited the amount of Rs.35.00 Lacs in three instalments (Rs.15.00 Lacs on 26.02.2007; Rs.10.00 Lacs on 26.03.2007; and Rs.10.00Lacs on 23.04.2007) with the petitioner i.e. BESES Rajdhani Power Limited and thereafter by the direction of this Court dated 28.04.2010, same amount was deposited by the petitioner on 22.05.2010 with Registrar General of this Court; which was kept in the form of FDR.

18. Since the instant appeal filed by the petitioner company, has been dismissed, therefore, I direct the Registrar General of this Court to release the said amount in favour of respondent within four weeks

with interest accrued thereon. However, I further direct that since the respondent has deposited the said amount in the year 2007 and same was with petitioner till same was deposited in the Court; therefore, the interest for the period from the date of deposit the year 2007 (as mentioned above in three instalments) till it was deposited with Registrar General of this Court, shall be paid to respondent as provided under Section 154(6) of the Electricity Act, 2003 by the petitioner within four weeks. Any delay on the part of petitioner in payment of interest, shall bear over and above interest at the rate of 8% till its payment.

19. *Dasti* copy of order be provided to petitioner for disbursement of interest to respondent within the stipulated period.

20. No order as to costs.

SURESH KAIT, J

MARCH 22, 2012

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