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

\+ **CRL.M.C.2631/2012**

VIJAY BALI .....Petitioner

Through: In person

versus

STATE & ORS. ....Respondents

Through: Ms. Nishi Jain, Additional Public Prosecutor for Respondent-State
Mr.Sudhir Nandrajog, Senior Advocate, with Mr. Rahul Malhotra, Advocate for respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **O R D E R**
09.03.2015

1. In this petition, quashing of CC No.1008/2008 titled *B.S.E.S. Yamuna Power Ltd. v. Shri Vijay Bali*, FIR No.444/2008 and FIR No.140/2009 is sought by petitioner alleging that false criminal prosecution has been launched by respondent No.2-BSES YPL and police personnel.

2. Petitioner was a registered consumer in respect of K.No. 121113250285 installed in petitioner's premises and on the request of petitioner, old mechanical electric meter was replaced by new electronic meter by respondent No.2 on 30th March, 2004. In January, 2006, it was found that aforesaid meter was found stopped at reading of 2069 but the electric connection to petitioner's premises was alive. According to

respondent No.2, due to inadvertence, status of petitioner's electric meter was uploaded on the data of the computer system as disconnected. Upon verification of meter reading on 2nd May, 2008, as per site inspection report, the electric meter at petitioner's premises showed reading of 2069 but the electric supply was found to be connected.

3. On 5th May, 2008, officials of respondent No.2 visited petitioner's premises for replacement of meter, but petitioner resisted and a Notice under Section 163 of *Electricity Act, 2003* was sent by post to petitioner because he had neither received it nor had allowed it to be pasted at the premises. Again on 13th May, 2008, officials of respondent No.2 alongwith local police went to petitioner's premises for installing new electric meter but entry inside petitioner's premises was denied by petitioner. However, with the help of local police, the faulty meter was removed from petitioner's premises on 15th May, 2008 and in this regard, site inspection report and MMG Report was prepared regarding petitioner-consumer resisting installation of new meter. Copy of Meter Return Report and PD cases and site inspection report have been placed on record by respondent No.2.

4. On 1st July, 2008, a complaint was lodged by respondent No.2 with Delhi Police regarding petitioner not allowing respondent No.2 to change the meter and copy of said complaint is also annexed with reply of respondent No.2 to this petition. Again on 2nd July, 2008, petitioner's premises was inspected by officials of respondent No.2 with the assistance of local police and it was found that electric supply was being directed taken from LT Box of respondent No.2 and on the basis of Inspection Report of 2nd July, 2008, a theft bill of ₹1,86,497/- was raised

and a complaint under Section 135 of *Electricity Act, 2003* was filed in the concerned court.

5. On 15th December, 2008, petitioner was again found indulging in direct theft of electricity and theft bill was raised upon him regarding which FIR is already pending in the concerned court. As per respondent No.2, on the directions of the concerned court, petitioner's premises was again inspected with the aid of local police on 21st April, 2009 and it was found that petitioner was indulging in direct theft of electricity through illegal wires, which were directly connected to the bar. A fresh theft bill of ₹95,566/- was raised and FIR No.140/2009 was registered.

6. It is the case of respondent No.2 that to avoid payment of legitimate dues and installation of new electronic meter, petitioner had instituted several cases against respondent No.2 which are pending at various stages. The details of the said cases find mention in paragraph No.15 of the reply filed by respondent No.2 to this petition.

7. Afore-noted stand taken by respondent No.2 is strongly contested by petitioner, who has chosen to himself argue this petition. The averments made in this petition were not concise and the case of petitioner was not concisely put as this petition appears to have been drafted by petitioner himself. At the hearing, petitioner had sought to explain this case as stated in this petition and had taken pleas which were not tangible and so, petitioner was called upon to precisely state his case by way of short synopsis and even the synopsis is no better. However, to decide this petition on merits, an earnest endeavour was made by this Court to go through this petition, the response filed thereto and the synopsis filed.

8. At the hearing, petitioner had sought to delve deep into the facts of this case, but precise stand of learned senior counsel for respondent No.2 was that the disputed question of facts are sought to be raised by petitioner which cannot be gone into in the exercise of jurisdiction under Section 482 of Cr.P.C. as the stand taken by petitioner needs to be put to respondent No.2 at trial. It was pointed out that the investigation in the FIR cases in question is complete and the complaint case also needs to be tried and so, the stand taken by petitioner deserves to be tested at trial.

9. The material on record as well as status report, and the Single Bench decision in W. P. (C) No.8859/2009 titled *Sh. Vijay Bali v. BSES Yamuna Power Ltd. & Ors.* rendered on 4th October, 2010 and Division Bench decision in LPA No. 69/2011 titled *BSES Yamuna Power Ltd. V. Vijay Bali & Ors.* rendered on 25th March, 2014 have been carefully considered and thereupon this Court finds that although Single Bench of this Court in W. P. (C) No.8859/2009 *(Annexure P-46)*, has quashed the theft bills in question, but a Division Bench of this Court in Appeal had found that the said Appeal raised disputed questions of facts and it was left open to be independently gone into by the Special Court in complaint case, subject to the orders of this Court in the present proceedings.

10. No doubt, BSES's Regulation 40 (C) expressly provides that pending replacement of meter, a case of direct theft should not be booked. However, the benefit of the said Regulation cannot be extended to petitioner at this stage because the categoric stand of respondent No.2-BSES is that petitioner had resisted installation of new electronic meter, which is not categorically disputed by petitioner. This certainly raises a

disputed question of fact which cannot be gone into the exercise of inherent jurisdiction under Section 482 of Cr.P.C.

11. It needs no reiteration that the inherent powers under Section 482 of Cr.P.C. have to be sparingly exercised and with circumspection. This Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations and counter allegations levelled by the parties against each other. On this aspect, the pertinent observations of Apex Court in *State of Orissa v. Ujjal Kumar Burdhan* (2012) 4 SCC 547 are as under: -

> *"It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation."*

12. In the considered opinion of this Court, on the disputed question of facts raised in this petition, the proceedings arising out the complaint case and the FIRs in question cannot be prematurely quashed as upon

plain reading of the aforesaid complaint and FIR cases, it cannot outrightly be said that the ingredients of the offences alleged do not apparently exist. Nor it can be said that instant case is of gross abuse of process of the court. While refraining to go into the disputed of question of facts raised in this petition, it is disposed of while not commenting upon merits lest it may prejudice either side before the trial court. Since petitioner is claiming that he has been victimized by respondents, therefore, let the pending proceedings in these cases be expeditiously taken to its logical end.

13. This petition is accordingly disposed of.

(SUNIL GAUR)
JUDGE

MARCH 09, 2015
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