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

+ **Date of Decision: 08.04.2015**

% **CRL.L.P. 168/2014**

BSES YAMUNA POWER LTD Petitioner
Through: Ms. Shruti Bhasin, Advocate.

versus

MOHAN LAL Respondent
Through: Mr. Jawahar Narang, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present leave petition has been preferred to seek leave to appeal under Section 378(4) of the Cr.P.C. against the judgment dated 02.09.2013 passed by Sh. Arun Kumar Arya, Additional Sessions Judge, Special Court (Electricity), Tis Hazari Court, Delhi in CC No.119/2007, whereby the respondent is acquitted of the offence under Section 135/ 151 of the Electricity Act, 2003.

2. The case of the petitioner complainant was that on 05.06.2006, at about 02:25 PM a team comprising of four officers/ employees of the petitioner – including PW-2 Sh. M. M. Sharma raided the premises bearing No. 46, Ground Floor, Parda Bagh, Darya Ganj, Delhi in the presence of representatives of accused/ respondent. The accused was found indulging

in direct theft of electricity from BYPL service cable. No meter was found installed at the premises. The accused was using the load of 2.205 KW / NX / DT. The Manager (Enf.) was telephonically called to the spot, who seized all the material evidence. The official of the petitioner clicked photographs at the site with the help of digital camera. The reports and documents were not signed by the representatives of the accused at the spot. The accused was booked for the offence of direct theft of electricity and assessment bill of Rs.1,02,738/- was raised against the accused. On his failure to pay the same, complaint in question was preferred against the accused.

3. The accused was summoned vide order dated 20.07.2007 of the Trial Court. Notice under Section 251 Cr.P.C. was framed for the offence punishable under Sections 135 and 151 of the Electricity Act, 2003 against the accused vide order dated 01.07.2008, to which the accused pleaded 'not guilty' and claimed trial.

4. The petitioner complainant examined two witnesses, namely PW 1 Sh. Rajeev Ranjan (Authorized representative) and PW 2 Sh. M. M. Sharma (DGM). On behalf of the accused, son of the accused Sh. Sunny Bajaj was examined as DW1. The star witness of the prosecution PW-2 and Sh. M.M. Sharma deposed that on 05.06.2006 at about 02:25 pm he along with Sh. Akhilesh Kumar (GET), Sh. K. U. Rehman (DET) and Sh. Javed Saleem (Lineman) had conducted a raid at the premises bearing no. 46, Ground Floor, Parda Bagh, Darya Ganj. At the time of inspection no electricity meter was installed at the site. However, the accused was illegally using the electricity from BSES line through illegal wire which were further connected with the connected load of the said premises. The total connected

load of 2.205 KW was being used by the accused for non – domestic purpose. The load report (Ex. CW2/3), the inspection report (Ex. CW2/3), meter reading report (Ex. CW 2 /2) bore his signatures at point A. They also took photographs (Ex. CW2/5 collectively) and their CD (Ex.CW2/7) was prepared. He deposed that during the inspection, the accused was present at the spot. Sh. Vikrant Seth (Business Manager) was called to the spot for seizing the case property. All the documents were prepared at the spot, and offered to the accused, but he refused to receive or sign the same and also did not allow to paste the same.

5. In his cross-examination PW-2 admitted that he had the written authority to conduct the raid from senior officers, but same was not filed on record. He did not procure the document pertaining to occupancy, or tenancy, or the ownership of the inspected premises. He could not tell the exact nature of activity carried out in the premises. He further admitted that the photographs, which were kept on record were not of the premises in question and the same were of the adjoining premises. The person present at site stated himself as Mohan Lal. PW-2 stated that theft was being committed by tapping through service line of other user.

6. In his statement under Section 313 Cr.PC, the accused denied the allegations against him. DW-1 deposed that neither the shop in question was in the name of accused Mohan Lal, nor any meter was installed in the said premises in the name of the accused. It was stated that Mohan Lal has no concern with the premises i.e. 46, Ground Floor, Parda Bagh, Darya Ganj, Delhi.

7. After hearing the parties and on the basis of the evidence brought on record, the learned ASJ acquitted the respondent accused.

8. Learned counsel for the petitioner submits that the impugned judgment is laconic. Merely because three out of four officers, who were part of the raiding party, had not been examined, the said omission was not fatal to the case of the prosecution, since PW-2 Sh.M.M. Sharma, who was one of the officers who conducted the raid, had deposed before the Trial Court and supported the case of the prosecution. Learned counsel submits that there is a high rate of attrition in the organization of the petitioner, and officers who formed part of the raiding party, may not be available when the matter went on trial.

9. I find no merit in this submission and, in my view, the Trial Court has correctly appreciated this aspect in the impugned judgment. No doubt, it was not necessary that all the members of the raiding party be examined by the prosecution before the Trial Court. However, if the deposition of the witness produced and relied upon by the prosecution suffers from material contradictions, and the prosecution had taken the risk of not examining the other witnesses, who formed part of the raiding party, then the prosecution would have to fail.

10. In the present case, PW-2 testified that the accused was present at the spot at the time of the raid. However, in the complaint, the petitioner had claimed that the representatives of the accused were present at the site. It was not claimed that the accused himself was personally present.

11. Secondly, in order to connect the accused with the offence, it was

essential for the petitioner company to show that the accused was connected with the premises in which the theft was allegedly being committed. However, the owner of the premises in question was not examined to establish the capacity in which the accused was allegedly in occupation of the premises.

12. While it was claimed in the complaint that theft was committed from BYPL line through illegal wire, in his cross-examination PW-2 stated that the theft was being committed by tapping through service line of some other user. However, the identity of the other user was not disclosed, and he was not cited as a witness. No independent person was joined at the time of seizure of the case property. The petitioner also did not lodge any FIR in this case to take Police help for verification of the occupant/ accused, or seizing the material. The photographer, who had taken the photographs at the spot, was not identified, or examined in Court. The Compact Disk containing the photographs taken from the digital camera (Exhibit CW-2/D-1) was not proved in accordance with Section 65B of the Evidence Act. Even though PW-2 admitted that the alleged illegal wire used for theft was around 15 metres but, surprisingly, only a piece of 0.75 meter was produced before the Court.

13. The report prepared at the site was required to be signed in terms of Regulation 25 (vii) Delhi Electricity Regulatory Commission (Performance Standards Metering and Billing) Regulation, 2002 [DERC Regulation, 2002] by each member of the raiding team. According to the petitioner, there were four officers in the raiding team, including one Sh. Jawed Salim. However, the said report was signed by three members and not by Sh. Jawed Salim. In

terms of Regulations 25 (i) of the DERC Regulation, 2002, it was essential that the raiding team carry a written authority of the designated officer of the licensee. However, no such authority was placed on record. Though it was claimed by the prosecution that the case property was seized at the instance of Vikram Seth, he was not examined as a prosecution witness before the court.

14. From the above discussion, it is evident that there were several, and not just one, lacunae in the case of the prosecution which leads to the inference that the prosecution had not established the commission of alleged offence by the accused beyond all reasonable doubt. The numerous lapses taken note of by the Trial Court raise doubts on the case of the prosecution with regard to the involvement of the respondent in the offence in question. On a perusal of the impugned judgment, it cannot be said that the same suffers from perversity, or that there is material lack of appreciation of evidence by the Trial Court. In these circumstances, there is no justification to grant leave to appeal in the present case.

15. The petition is, accordingly, dismissed.

VIPIN SANGHI, J

APRIL 08, 2015

B.S. Rohella