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

+ CRL.L.P. 207/2016

BSES YAMUNA POWER LTD. Petitioner

Through: Ms. Shruti Bhasin, Adv.

versus

SUNIL KUMAR

.... Respondent

Through: Mr. Deepak Vashisht and Mr. Mahesh
Saroj, Advs.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **21.02.2017**

Heard.

Petitioner has prayed for the grant of leave to appeal against the judgment dated 21st December, 2015 of the trial court whereby respondent has been acquitted of the offence punishable under Sections 135/151 of the Electricity Act, 2003.

As per the prosecution, a raid was conducted on 17th December, 2007 at the premises of respondent bearing no. 2284/H, Bagichi Raghunath, Sadar Bazar, Pahar Ganj, Delhi by a team comprising of Sh. J.B. Singh (AM Enf.), Sh. R.P. Sharma MO (Enf.), Sh. Raj Karan (LM) and Sh. Dinesh Singh (Elect.) when it was noticed that respondent was indulging in direct theft of electricity by illegally tapping the BSES Service line through 2 nos. single

core 1x10 mm² black colour aluminium wire of approx. 3 metres in length. Total connected load was found to be 4.420KW/DT/IX which was being used for industrial purposes. Proceedings conducted by the inspection team were video graphed. Wires used for tapping were seized.

Sh. J.B. Singh (AM Enf.) was examined as PW2, Sh. R.P. Sharma MO (Enf.) was examined as PW3 and Sh. Raj Karan (LM) was examined as PW4. Authorised Representative of petitioner Sh. Rajeev Ranjan was examined as PW1. No other witness was examined by the prosecution. Trial court has noted that Sh. Dinesh Singh, one of the members of the raiding team, was not examined. Trial court has also noted that there were material discrepancies in the statements of the witnesses, inasmuch as, Regulation 52 (ix) of Delhi Electricity Supply Code and Performance Standards Regulation, 2007, was not complied with. Respondent has been given benefit of doubt. PW4 Sh. Raj Karan, though claimed to be present at the time of inspection and participated in the proceedings, however, in his cross-examination, he has deposed that he was standing outside the premises and did not enter in the inspected premises. He also showed his ignorance about the presence of respondent at site at the time of inspection. As per the prosecution, respondent had created obstructions. He had resisted the

inspection. However, his absence in the CD created a doubt that he was present at the spot, inasmuch as, PW4 had shown his ignorance about the presence of the respondent at site during the inspection. Regulation 52 (ix) of Delhi Electricity Supply Codes and Performance Standards Regulation, 2007 envisages that the report shall be signed by the Authorized officer and each member of the inspection team and the same must be handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of inspection report must be pasted at a conspicuous place in/outside the premises and photographed. Trial court has noted that report was not signed by PW Raj Karan and Sh. Dinesh Singh, who were the members of the raiding team. It has been further noted that no evidence was led to show that the report was pasted at a conspicuous place in/outside the premises and photographed. No such photograph was placed on record. Certain other discrepancies have also been noted in the statements of the witnesses for concluding that petitioner had failed to prove the offence against the respondent beyond the shadow of reasonable doubt.

Learned counsel for the petitioner has contended that respondent had stepped in the witness box as DW1 and has admitted that the meter was

removed, 18-20 days prior to the inspection, i.e., 17th December, 2007. This clearly shows that the theft of electricity was done by tapping wires from the BSES main lines.

It is noted that DW1, in his cross-examination, has stated that on 17th December, 2007 the officials, who had removed the meter, had connected the electricity directly from BSES lines. He has not admitted that he had been extracting electricity directly from the BSES lines rather he has denied the suggestion that he was committing direct theft of electricity.

It is trite to say that prosecution has to prove the case set up by it by leading cogent evidence and has not to depend on the sketchy and defence of the accused. In this case petitioner has failed to prove that respondent had been extracting electricity by directly tapping the BSES mains, on the sketchy evidence led by it.

For the foregoing reasons, I am of the opinion that the view taken by the trial court is a possible view on meticulous scrutiny of evidence adduced by the parties and does not suffer from any perversity. I do not find it to be a fit case to grant leave to appeal to petitioner.

Petition is dismissed.

A.K. PATHAK, J.

FEBRUARY 21, 2017

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