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

\+ CRL.M.C. 982/2017

ASHUTOSH SHARMA & ORS. ..... Petitioners

Represented by: Mr. Karamveer Singh, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR. ..... Respondents

Represented by: Mr. Ashok K. Garg, APP for the State with SI Janak Singh, PS New Friends Colony.
Mr. Sunil Fernandes, Standing Counsel for BSES RPL and Mr. Puneeth KG, Advocate for respondent No. 2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>O R D E R</u>

% **21.03.2017**

1. A complaint was filed by the respondent No.2 being complaint case No.1371/2016 titled as 'BSES Rajdhani Power Ltd. vs. Sunil Saini & Ors.' under Section 151 read with Section 154 of the Electricity Act, 2003 for offences punishable under Sections 135, 138 and 150 of the Electricity Act, 2003 and for determination of the civil liability.

2. On hearing the learned counsel for the complainant on 30th September, 2016, learned Special Judge, Electricity Court, South, Saket Courts, New Delhi took cognizance of the offences punishable under Sections 135 and 138 read with Section 150 of the Electricity Act, 2003 and

listed the matter for pre-summoning evidence for 7th October, 2016 when no witness of the respondent No.2 was present.

3. Repeatedly, no witnesses of the respondent No.2 were present and on 3rd November, 2016 an application was filed on behalf of the complainant for substitution of the authorised representative. Mr. Binay Kumar, Authorised Representative/Manager (Legal) was examined as CW-1 and Shri Jai Gopal Gautam, Assistant Manager was examined as CW-2. After examination of the two witnesses of the respondent No.2 who exhibited the documents, summons were issued to the accused, that is, Sunil Saini, Pankaj, Ashutosh Sharma and Manju Sharma.

4. Since none of the accused were present on 23rd November, 2016, bailable warrants were issued returnable for 7th January, 2017. On 7th January, 2017, report was received that accused had shifted to some other place and thus the matter was listed for verification report to be filed by the respondent on 7th February, 2017. After the order was passed on 7th January, 2017, Ashutosh Sharma and Manju Sharma appeared with their counsel Mr. Naveen Kumar, Advocate before the learned special Judge and filed applications for bail. After hearing the parties on the applications, learned Trial Court noted that the accused in order to show their bona fide and good gesture and without prejudice to their rights, are ready and willing to deposit ₹1,50,000/- of the alleged theft bill amounting to ₹3,44,640/- with the complainant company and granted them interim bail.

5. Thus, without expressing any opinion on the merits of the case, both the accused Ashutosh Sharma and Manju Sharma were enlarged on interim bail subject to their furnishing personal bail and surety in sum of ₹20,000/-

each, which were accepted upto the adjourned date. No adverse orders were passed against other two accused Sunil Saini and Pankaj who were reported to be the tenants of the accused Ashutosh Sharma and had left the premises in question.

6. Aggrieved by the order dated 7th January, 2017 noting that the accused to show their bona fide and good gesture and without prejudice to their rights, were ready and willing to deposit ₹1,50,000/- with the respondent No.2/complainant company, the petitioners preferred an application for modification of the order dated 7th January, 2017, on 10th January, 2017.

7. In the application it was stated that the petitioners have already filed a civil suit against the complainant company against the speaking order dated 14th July, 2016 passed by the Assessing Officer and that the meter for which the complainant company alleged was replaced on 29th March, 2016, was actually installed on 17th February, 2016. The petitioners also placed on record the job slip dated 17th February, 2016. The petitioners stated that from the computer generated document it was clearly evident that the earlier meter No. 21808788 was removed on 26th January, 2016 and the new meter No.26292577 was installed on 17th February, 2016. It was also stated that injunction in favour of the petitioners had been granted restraining the respondent No.2 company from disconnecting electricity vide order dated 3rd November, 2016 without subject to any payment. The petitioners thus prayed that condition of deposit of ₹ 1,50,000/- be removed and they be enlarged on regular bail in the interest of justice.

8. A perusal of bail applications filed by the petitioners reveals that

initially they were filed under Section 438 Cr.P.C seeking anticipatory bail along with copy of the job slip dated 17th February, 2017 and the prayer also mentions anticipatory bail. However, the same were converted into bail applications under Section 439 Cr.P.C. instead of Section 438 Cr.P.C. This Court need not go into the aspect whether the petitioners did the same voluntarily or for the reason the petitioners were present in Court it was deemed that they had surrendered to the Court.

9. On the modification application dated 10th January, 2017, learned Trial Court passed the impugned order dated 7th February, 2017 as under:

> *It is submitted by the AR of the complainant company that in some cases, it happens that the punching date is different than the date of removal of the meter inadvertently.*
>
> *It is further submitted that Ex.CW2/1 also has a date of meter removal i.e. 29.03.2016 and he has sought the clarifications from the Assessing Officer who submitted that on the basis of punching date, this date is mentioned on the document.*
>
> *It is further submitted by the AR of the complainant company that this is a mere technical error and opportunities would be given to the accused during cross examination of the witnesses, otherwise, there is no fault in the theft bill.*
>
> *It is submitted by the counsel for the accused that at this stage, accused has not established the theft of electricity by the accused. I am not in agreement with the submission of counsel for the accused as the same is to be established by leading evidence by the complainant company.*
>
> *Prima facie perusal of the records appears that there is a theft of electricity in this case.*
>
> *It is reported that the accused has not complied the order dt. 07.01.2017 till date.*
>
> *One final opportunity is granted to the accused to deposit ₹1,50,000/- towards his willingness as per the order. Interim bail is extended till the adjourned date.*

Pervious sureties are present, whose bail bonds are extended till the adjourned date.

Now, to come up for further proceedings on 10.03.2017. Copy be given dasti to the accused for compliance.

10. A perusal of the impugned order dated 7th February, 2017 reveals that there is no consideration of the averments made in the application for modification and the case/defence of the petitioners has not even been looked into by the Trial Court while reiterating that one final opportunity was granted to the petitioners to deposit ₹1,50,000/- towards their willingness as per the order till the next date.

11. The order dated 7th February, 2017 granting one final opportunity to the accused to deposit ₹1,50,000/- is set aside. Learned Trial Court is directed to decide the application of the petitioners seeking modification of order dated 17th January, 2017 after dealing with the averments made in the application.

12. Petition and application disposed of.

13. Order dasti. Trial court record be sent back.

MUKTA GUPTA, J.

MARCH 21, 2017
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