

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

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Reserved on: 31st January, 2017

Decided on: 20th March, 2017

+ **CRL.M.C. 1700/2016 & Crl.M.A. 7200/2016 (stay)**

RAMESHWAR @ KANWAR SINGH Petitioner

Represented by: Mr. Fanish K. Jain, Adv.

versus

BSES RAJDHANI POWER LIMITED Respondent

Represented by: Mr. Puneet K.G., Mr. Sunil
Fernandes, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. A complaint case was filed by the respondent under Section 151 read with Section 154 for offences punishable under Sections 135 read with Section 150 of the Electricity Act, 2003 (in short 'the Act') and for determination of civil liability under Section 154(5) of the Act. In the said complaint being CC No.148/2012 the petitioner was arrayed as respondent Nos. 2 and 3 with the name Kanwar Singh as owner and Rameshwar as registered consumer.

2. Learned counsel for the petitioner does not dispute that the petitioner Rameshwar @ Kanwar Singh is the owner and registered consumer of the premises in question. Vide the impugned order dated 5th December, 2015, notice was directed to be framed for the offences alleged against the petitioner. Hence the present petition.

3. Learned counsel for the petitioner contends that though the petitioner is owner and registered consumer of the premises however in view of the

fact that the petitioner was not the user at the relevant time when the inspection was carried out and the property in question was on rent with the tenant who was found to be user, the petitioner cannot be fastened with vicarious liability for the offences punishable under Sections 135 read with Section 150 of the Act.

4. Learned counsel for the petitioner relying upon the decision of this Court reported as (1999) 51 DRJ 31 D.D. Chadha Vs. State (NCT, Delhi) contends that Section 39 of the Indian Electricity Act which is para materia Section 135 of the Electricity Act, 2003 contends that mens rea is essential ingredient of the offence and the word “whoever” indicate that only a person who dishonestly abstracts or consumes or uses the electricity by unauthorized mean is liable to be punished for the offences. In the absence of proof of mens rea, merely because the petitioner is the registered consumer, he cannot be fastened with the liability. Distinguishing the decision of this Court reported as 138 (2007) DLT 679 Hindustan Petroleum Corporation Vs. BSES Rajdhani Ltd. & Anr. learned counsel for the petitioner contends that the same has no application to the facts of the present case.

5. Learned counsel for the respondent on the other hand referring to the third proviso to Section 135 (1) of the Act submits that in view of the presumption raised, it would be for the petitioner to rebut the same in the course of trial that as registered consumer he was not aware and had no control on the acts of the tenants and at this stage, there is no illegality in framing of notice against the petitioner. Reliance is placed on the decision in Hindustan Petroleum Corporation (supra) and the decision of this Court reported as 2012 CrLJ 1418 Lokesh Chandela Vs. State NCT of Delhi & Ors.

6. Before adverting to the legal issue it would be relevant to note accusation of the respondent in the complaint as under-

“7. That as per the direction of DGM Enf. the joint inspection team inspected the abovesaid premises and following observations were made.

- a) At the time of inspection one number three phase CT meter bearing no-29010066, C/R 154.6 Kwh, 212.2 Kvah was found installed at site, however there was no blinking on the meter. KIT KAT was found removed but supply was found running on load position.
- b) Joint team traced the service cable & the same was found at roof of the premises and three no's of illegal tapping were found in the service cable by means of three no's of illegal Teflon copper wire through which entire load was connected. Further recording of meter was done.
- c) The total connected load of the premises was assessed and the same was found to be 71.804 KW/DT/IX.
- d) Joint team seized One no. three phase Electronic CT meter bearing no.29010066 C/R 154.6 Kwh, 212.2 Kvah and three no. of illegal black colour copper Teflon of size 20 sq.mm and length 3 meter (approx) as material evidence from the site.
- e) Necessary Videography was conducted by Photographer Anand from M/s Arora Studio at site.
- f) The Joint team members prepared Load Report, Inspection Report & Seizure Memo at the site and the same were offered to the consumer/accused persons but consumer refused to receive and sign the said reports as evident from the documents/report. The member of the raiding team drew the sketch depicting the mode of theft, which is on the inspection report annexed herewith.

The details of inspection carried out at the site are as follows:

Case ID	:	RJ040212WA009
Electronic Meter No.	:	29010066
User	:	RAMESH (PANDIT)
Owner	:	KANWAR SINGH

R/C : RAMESHWAR
Address : KHASRA NO-05,
OPPOSITE SHIV RAM
DHARAM KANTA,
VILLAGE KAMARUDDIN
NAGAR, NEW DELHI-
110041
Sanction Load : 15.910 KW/IX
Connected Load : 71.804 KW/DT/IX
Category : IX

The joint inspection report (along with meter detail report) prepared at the time of inspection is annexed as ANNEXURE-B (Colly.).

8. *That the Accused persons were found indulged in the Direct Theft of the Electricity and illegally using the electricity for industrial purpose by directly tapping from the BSES service cable. In view of the submission made herein above and as per the documents attached herewith clearly show that the Accused persons have been indulging, inter-alia, in Direct Theft of Electricity and hence booked a case of Direct Theft against the Accused named herein above in terms of Section 135 of the Electricity Act, 2003."*

7. Section 135 of the Electricity Act, 2003 reads as under-

"135. Theft of electricity.- [(1) Whoever, dishonestly,-

- (a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or*
- (b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or*
- (c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be*

- so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or*
- (d) uses electricity through a tampered meter; or*
 - (e) uses electricity for the purpose other than for which the usage of electricity was authorised,*

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use –

- (i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;*
- (ii) exceeds 10 Kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:*

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary

is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnect: Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause., restore the supply line of electricity within fortyeight hours of such deposit or payment;]

(2) [Any officer of the licensee or supplier as the case may be, authorised] in this behalf by the State Government may –

- (a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity [has been or is being], used unauthorised;*
- (b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which 1[has been or is being], used for unauthorised use of electricity;*
- (c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under subsection (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.*

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.”

8. The third proviso to Section 135 (1) of the Electricity Act, 2003 provides that if it is proved that by any artificial mean or means not authorized by the Board or licensee or supplier exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer. Thus, the same being a rebuttable presumption is required to be discharged by the petitioner/accused during the course of trial.

9. In the present case, notice framed against the petitioner is not for offence punishable under Section 135 of the Electricity Act simplicitor but with the aid of Section 150 which defines abetment of offence punishable under Section 135 of the Electricity Act. Further Section 2(15) of the Act defines the word “consumer” to mean any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be. Thus, Section 2(15) read with Section 135 of the

Electricity Act, 2003 fasten the liability both on the user as well as registered consumer/owner of the premises in case illegal abstraction of energy is found at the premises.

10. Whether the petitioner had the mens rea of dishonest abstraction by illegal means or not cannot be ascertained in a petition under Section 482 Cr.P.C. and can be examined only after witnesses are examined. Since the third proviso to Section 135 (1) of the Act raises a presumption though rebuttable, it will be for the petitioner to discharge the burden during the course of trial.

11. In D.D.Chadha (supra) relied upon by learned counsel for the petitioner, the complaint itself noted that as per the inspection report M/s Ravi Sun printers were found dishonestly abstracting the electricity and the offending meters were in the custody and control of M/s Ravi Sun Printers yet M/s Ravi Sun Printers were not charge sheeted under Sections 39/44 of the Indian Electricity Act and it is on these facts this Court held that there was no material before the Courts below to come to the conclusion that the petitioner therein was committing theft of electricity. As noted above in the present case, petitioner has been charged for abetment of the offence punishable under Section 135 of the Electricity Act, 2003 and not for the substantive offence.

12. In Lokesh Chandela (Supra) this Court dealing with the similar situation held that the registered consumer was required to rebut the presumption and prove during the course of trial that the premises was in possession of a tenant and since the appellant therein failed to rebut the said presumption he was held guilty of the offence punishable under Section 135 read with 150 of the Electricity Act, 2003.

13. In Hindustan Petroleum Corporation Ltd. (Supra) relied upon by both the sides this Court noted that the electricity connection was in the name of Hindustan Petroleum Corporation Ltd. and the license was issued by the Company to its agent, in such a situation the responsibility of Hindustan Petroleum Corporation Ltd. and the duty to do regular inspection and keep a check at the petrol pump was not absolved. In view of the presumption, this Court declined to quash the complaint in exercise of its jurisdiction under Section 482 Cr.P.C.

14. In view of the discussion aforesaid this Court finds no merit in the present petition. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 20, 2017
‘v mittal’