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

\+ CRL.M.C. 2039/2017 & Crl.M.A. No. 8376-77/2017

PARVEEN KUMAR JAIN & ANR .....Petitioners

Through: Mr. Fanish K. Jain, Advocate.

Versus

TATA POWER DELHI DISTRIBUTION LTD ....Respondent

Through: Mr. Abhay Kumar, Mr. Saurabh Mishra and Mr. Himanshu, Advocates.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

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

% **05.07.2017**

<u>CRL.M.A. 8377/2017</u> ***(exemption)***

Allowed, subject to all just exceptions.

Application stands disposed of.

<u>CRL.M.C. 2039/2017</u>

1. Notice. Mr. Abhay Kumar accepts notice for the Respondent.

2. The present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside of order dated 22.03.2017 passed by Sh. Sanjay Kumar Aggarwal, ASJ (Electricity) North West District, Rohini, Delhi.

3. The factual matrix of the present petition is that three inspections were carried on 19.06.2010, 23.06.2010 and 02.07.2010 at G-118, Sector-2, DSIDC Bawana, Delhi with respect to electricity connection. On the basis of the inspections the respondent passed an assessment order dated 14.12.2011 stating that the case falls in the category of theft of electricity.

The respondent filed a complaint against the petitioners alleging dishonest abstraction of energy by tampering the meter.

4. Learned ASJ vide order dated 22.03.2017 accepted the contention of the respondent and framed the charges against the petitioners U/s 135 of the Indian Electricity Act, 2003 r/w 34 of the Indian Penal Code. The relevant portion of the order dated 22.03.2017 under challenge is reproduced as under:

> *"... The record makes it clear that there is prima facie evidence that accused no. 2 & 3 were the users of the electricity at the given site and there is also prima facie evidence that the meter was tampered with for illegal abstraction of energy. More so, it is settled law that at the time of framing charge grave suspicion is enough for making a prima facie case.*
> *xxxxx*
> *Accordingly, prima facie case u/s 135 of the Indian Electricity Act, 2003 read with Section 34 of the Indian Penal Code is made out against accused Praveen Kumar Jain and Jaideep Jain.*
> *Bail bonds of accused Dheeraj Gupta stands cancelled. Surety discharged."*

5. Adversely affected by aforesaid order, the petitioner filed the present petition for quashing of order dated 22.03.2017.

6. Mr. Fanish K. Jain, counsel for the petitioner submitted that the learned ASJ failed to consider the inspection report, testimony of the witness in pre-summoning evidence and the entire material on record in the right perspective. He further submitted that inspections dated 19.06.2010 and 23.06.2010 clearly depict that there was no physical tampering of any kind in the meter rather the same was found to be intact.

7. It was further urged that from the three consecutive inspection it is clear that the consumer cannot be made responsible for the alleged

discrepancy if any found in the CT wires or CT/PT terminal block pins and it is not possible for the consumer to have access to the said CT wires to cut and rejoin them and to replace CT/PT pins in the terminal block and thus no case of theft of electricity is made out.

8. Counsel for the petitioner further submitted that the inspection report dated 02.07.2010 cannot be admissible and in terms of Regulation 52(viii) of Delhi Electricity Supply Code and Performance Standard Regulation, 2007, the respondent was under an obligation to get the meter tested in DERC notified NABL accredited laboratory.

9. Contrarily, Mr. Abhay Kumar counsel for the respondent contended that at this stage of framing of charge there is prima facie evidence to show that the meter was tampered with by the petitioners. He further submitted that the complex meters contain high technology and tampering has been done in such a manner that even the specialist had difficulty in detecting the tampering.

10. I have heard both the counsel for the parties and have also perused the material available on record.

11. As the counsel for the petitioner contended that as per the inspection reports dated 19.06.2010 and 23.06.2010, all the seals of the meter, meter box and meter terminals were found intact and the respondent in order to make a false case of theft of electricity conducted a third inspection dated 02.07.2010 making allegations contrary to their earlier inspection reports, the inspection report on 02.07.2010 is reiterated below:

> *"Resin cast found damaged, repaired with M.Seal and re-painted. C. T. wires of all phases found in cut and*

re- joined position. In terminal block, the CT/PT pins found replaced and refixed.

Paper seal vide no. 125490 &125491 dated 02.07.2010 duly signed by joint team pasted on meter box.

Necessary photographs are taken by Mr. Rakesh of M/s Prakash Studio.

Establishment type- Industrial.

Total connected load- 122.126 KW (As per previous report)."

12. Since the petitioner has approached this court against the order of charge, at this stage, I deem it appropriate to mention the law pertaining to framing of charges. In ***State of M.P. v. Mohanlal Soni***: ***2000 Cri.LJ 3504*** the Apex Court held:

> *"8. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."*

13. Coming to the facts of this case, looking into the material and documents that were made available at the stage of framing charge on their face value and bearing in mind the settled position of law, there are no valid grounds to interfere with the order of charge.

14. Consequently, the petition stands dismissed.

CRL.M.A. 8376/2017

In view of the above order, this application is rendered infructuous.

SANGITA DHINGRA SEHGAL, J.

JULY 05, 2017gr//