

\$~30

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

+ CRL.M.C. 4139/2017

SHRI SATISH KOCHHAR Petitioner

Through: Mr. Fanish K Jain, Adv.

versus

BSES YAMUNA POWER LIMITED Respondent

Through: Mr. Sunil Fernandes, Mr. Arnav
Vidyarthi, Ms. Anju Thomas and Ms.
Nupur Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **13.11.2017**

Learned counsel for the petitioner has vehemently contended that meter was defective and was not tampered with by the petitioner since, as per the inspection report, except one seal of CT box, no other seal was found tampered with. It is submitted that with passage of time, wire might have loosened, inasmuch as, by tampering one bottom seal CT box could not have been opened. There was no variation in the pattern of average consumption. The meter was even sent to the lab but seal of CT box was not checked and there is no explanation for the same. As per the lab report, all the seals were found intact, therefore, petitioner could not have loosened the connection in the CT box. As per the meter data, only one phase was found disturbed from 12th October, 2012 till 27th January, 2013, that too for intermittent

periods. Even during this period, most of the time all phases recorded energy which shows that the alleged wire was not within the petitioner's accessibility since it was being connected and reconnected automatically. This shows that wire might have loosened up with the passage of time. It is submitted that no, prima facie, case was made out for framing of the notice against the petitioner under Sections 135 and 138 of the Indian Electricity Act, 2003("Act", for short). The trial court has erred in framing the notice under the aforesaid provisions.

I have heard learned counsels and perused the material placed on record. Trial Court has noted that as per the inspection report, lab report Ex. CW2/14, speaking order CW2/11 and revised speaking order Ex. CW2/12, it was clear that there is variation in the consumption pattern of average consumption which, prima facie, shows that there is sufficient material on record to frame the notice under the aforesaid sections.

I do not find any material illegality or irregularity in the impugned order. It is trite law that at the time of framing of charge material placed on record by the prosecution has to be considered to form a prima facie view. I find that in the inspection report it has been categorically mentioned that bottom meter box seal was found tampered with. As per the lab report,

meter accuracy of CT Box was found 31.6 percent slow. It is noted that connected load of 96.529 KW was found as against the sanctioned load of 36 KW, meaning thereby, consumption pattern also does not co-relate the connected load. This gives rise to a grave suspicion against the petitioner for having committed offence of Dishonest Abstraction Of Energy (DAE). Tampering of bottom CT Box seal itself, prima facie, shows that meter was tampered and obviously beneficiary of this act would be the petitioner and nobody else. Whether the wires got loosened up with the passage of time or if it was as a result of tampering is subject matter of trial.

For the foregoing reasons, I do not find any illegality or irregularity in the impugned order.

As regards prayer of the petitioner for quashing of the criminal complaint, filed by the respondent before the trial court for prosecution of petitioner under Sections 135/138 of the Act, has also been rejected for the reasons detailed above. It is trite law that the power of quashing a criminal proceeding has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The extraordinary or

inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims or caprice.

Petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

NOVEMBER 13, 2017
ga