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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.A. 1072/2017 Crl.M.(Bail) 2078/2017 & Crl. M. A No.19274/17

BADU ASH Appellant
Through: Mr.Bijay Kumar, Advocate

versus

BSES RAJDHANI POWER LTD & ANR Respondents
Through: Mr.Arnab Vidyarthi, Adv for R-1.
Mr.Ashish Dutta, APP for State.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **23.11.2017**

Vide the present appeal, the appellant assails the impugned judgment dated 11.8.2017 in complaint case No.634/13 of the Court of the learned Additional Sessions Judge, Special Court under the Electricity Act, 2003, Saket Courts, New Delhi under Section 135 of the Electricity Act, 2003 whereby the appellant was convicted for the offence punishable under Section 135 of the Electricity Act, 2003 and was directed to pay a fine of Rs.90384/- and in default of the payment of the said fine, he was directed to undergo simple imprisonment for a period of three months.

During the course of arguments that have been addressed yesterday, it was sought to be urged on behalf of the appellant whilst placing reliance on the order dated 24.11.2015 of the Consumer Disputes Redressal Forum-X, Government of NCT of Delhi, that there had been an unauthorized removal of the electricity meter of the

appellant who had got a 'Kunda' connection and that the removal of the electricity meter had taken place between 21.2.2009 to 8.7.2009 though the specific date of removal was not specified.

The appellant, while placing reliance on the said order of the Consumer Redressal Forum-X to the effect that the BSES Rajdhani Power Limited, arrayed on record as respondent No.1, was directed to install an electricity meter and to restore the electricity connection at the premises of the complainant with a further direction to pay Rs.3000/- for compensation as well as Rs.3,000/- for litigation expenses to the complainant.

On behalf of the respondent No.1 a submission made by the learned standing counsel at Bar to the effect that the said amount of Rs.3000/- towards compensation and Rs.3000/- towards litigation charges has already been paid to the complainant. However, it was urged on behalf of the respondent No.1 that the order of the Consumer Disputes Redressal Forum-X can in no manner obviate the responsibility imposed on the appellant inasmuch as the commission of the offence of theft of electricity had been established conclusively and was rather, in fact, admitted by the deposition of the accused himself as reproduced in the impugned judgment vide paragraph 20 thereof which reads to the effect:

“It is correct that I am the owner of H. No. 24, Balmiki Mohalla, Tugalkabad village, New Delhi-110019 since 1997. The electricity meter was installed at my premises in the year 2009. I am not aware as to why, electricity meter was removed within one and a half month from my premises from its installation. I have the

documents pertaining to apply of Kunda connection. The document is now exhibited as Ex.DW1/D1 (colly- 1 to 3 pages) (OSR). I with the permission and under intimation to the Consumer Forum, used the electricity from the wire which was in my house after removing the electricity meter. These were verbal instructions and nothing in writing was given to me. It is correct that on 12.02.2013, my premises was inspected by BSES. It is correct that at the time of inspection, the meter was already removed by the BSES before the inspection and I was using the electricity through direct wire. It is correct that the load was taken by the Team and the same is correct. It is correct that I was present at the time of inspection. It is correct that I was using the electricity directly without installation of the meter.”

The statement that was made by the accused in the proceedings before the learned Special Court, is categorical that “*it is correct that I was using the electricity directly without installation of the meter*”. The same is apparently an admission of commission of the theft of electricity by the appellant and it was thus fairly conceded by the learned counsel for the appellant during the course of submissions made yesterday that the appellant had committed a mistake.

In view thereof, it is apparent that there is no infirmity whatsoever in the impugned judgment dated 11.8.2017 of the learned Additional Sessions Judge, Special Court under Electricity Act, 2003, Saket Courts, New Delhi qua the Complaint Case No.634/13.

The appellant has been in custody since 10.11.2017. It has been submitted on behalf of the appellant that the liability imposed on

the appellant may be confined to the order on the civil liability of Rs.60256/- with the penal amount of Rs.30,128/- being half of the theft bill may not be sought to be imposed on the appellant.

Learned counsel for the respondent No.1 during the course of submissions made, does not insist for the deposit of the financial loss to the company of Rs.30,128/-. To similar effect is the submission made on behalf of the State while placing reliance on the verdict of this Court in ***Shamshuddin Vs.BSEX(sic) Rajdahni Power Ltd.*** 2015 VI AD (DELHI) 750 and the verdict of this Court in ***Raju v. BSES Rajdhani Power Ltd. & Anr.***; 231 (2016) DLT 152 *inter alia* to contend that in the case of ***Shamshuddin*** (Supra) there was a reference to mediation and in the other case ***Raju*** (Supra) also the Court had exercised its discretion in reduction and waiver of the interest amount.

It has been submitted on behalf of the appellant that there are no previous antecedents against the appellant.

Taking also into account the factum that the appellant is in custody since 10.11.2017, presently, the impugned order on sentence dated 11.8.2017 in CC No. 634/13 is modified to the effect that the appellant is directed to deposit the amount of Rs.60,256/- as the civil liability as directed by the learned Additional Sessions Judge, Special Court, Saket Courts, New Delhi, under the Electricity Act, 2003, within a period of seven days w.e.f. today which on deposit is allowed to be released to the respondent No.1 the BSES Rajdhani Power Limited. The deposit of the amount of Rs.30128/- imposed towards the financial loss qua the penalty as in the circumstances of the case is

waived. On the deposit of the amount of Rs.60,256/- as directed hereinabove, the appellant is allowed to be released.

The appeal is disposed of accordingly.

Copy of this order be sent to the Superintendent Jail, Delhi.

ANU MALHOTRA, J

NOVEMBER 23, 2017/sv