

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

+ **Crl.M.C.No.4996/2015**

Judgment reserved on : 14th November, 2017

Date of decision : 23rd December, 2017

DALJEET YADAV
S/O SH. SHIV LAL YADAV
R/O 83, KHANPUR VILLAGE,
NEW DELHI – 100 062.

..... Petitioner

Through: Mr. Vineet Mehta, Advocate.

versus

1. THE STATE
THROUGH (GOVT. OF N.C.T. OF DELHI)

2. BSES RAJDHANI POWER LIMITED,
HAVING ITS REGISTERED OFFICE AT:
BSES BHAWAN, NEHRU PLACE,
NEW DELHI – 110019
THROUGH ITS CHAIRMAN

..... Respondent

Through: Mr. Izhar Ahmad, APP for State with SI
Shri Bhagwan, PS Neb Sarai.
Mr. Sunil Fernandes, Standing Counsel
for R-2.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide the present petition, the petitioner seeks the setting aside of the order dated 17.8.2015 of the learned ASJ, Spl.Court (Elect.) South, Saket

Courts in relation to FIR No.247/12, Police Station Neb Sarai under Section 135 of the Electricity Act 2003, whereby the petitioner was summoned as an accused in the said case. Notice of the petition was issued to the State and the BSES Rajdhani Power Limited arrayed as respondent No.1 and 2 respectively.

AVERMENTS IN THE FIR

2. The FIR in question lodged on the complaint of Sh. Rupendra Singh Negi, Assistant Manager Enforcement (Energy Protection Group) of the BSES Rajdhani Power Limited, i.e., the respondent No.2 alleged that the complainant, an authorized officer of the electric company which is engaged in the business of distribution of electricity in the area where the accused J.P.Sharma (user), Prahlad Khanna (user) and Daljeet Yadav (user), i.e., the present petitioners, all residents of C-120, Basement R/P Raju Bagh, Devli, Khan Pur, New Delhi, on an inspection/raid conducted on 5.6.2012 at 3 p.m. at the said premises were found indulging in the direct theft of electricity for a non-domestic purpose (NX) whereafter on the directions of the DGM (Enforcement), a mass raid was conducted by the Joint Team with the assistance of the Delhi Police officers in which report made by the joint inspection team, it was *inter alia* stated:

“At the time of inspection no meter was found installed against said address. The accused persons/consumer were found indulged in direct theft of electricity by directly tapping from distribution box of pole no. KRPE 237 to running non Domestic load i.e. Garments Manufacturing Work. b. During inspection Mr. Prahlad (Khana Master) the user present at the site. c. Connected Load has been assessed team member as per load report prepared. The Material evidence seized at site as mentioned in seizure memo. e. Necessary Videography was done by Pawan Videographer from M/s Arora Studio at the time of inspection at the site. Sketch depicting the mode of theft was also prepared and the same is shown in the Inspection Report. F. Inspection report including meter detail report, Load report, seizure memo were prepared at site and the same were offered to the

Accused, who refused to accept the same. The details of inspection carried out at the site are as follows: Case ID RJ050612SA085 COUNTER AFFIDAVIT. No. :400249034 (Now) Electronic Meter No.: N.A. – R/C: N.A. Users : J.P. Sharma Prahlad Khanna Dlajeet Singh Yadav Address : House No. C-120, Basement, R/P, Raju Park, Khanpur, New Delhi-110062. Sanction Load : 0.00 KW Connection Load : 13.820 KW/NX Category : NX.”

3. The FIR also stated to the effect that material evidence in the form of:

“One Piece Two core Black Colour Aluminum Cable of Size 10 mm Sq and having length 3 meters. (approx.) (ii) One piece Two Core Black Colour Aluminum cable of Size 10 mm Sq and having length 10 meters. (approx.)”

was also seized and it was alleged through the FIR that the said material evidence brought forth the irregularities and illegal user of the electricity supplied by the complainant by the accused persons and that a videography showing the irregularities had been prepared.

AVERMENTS IN CHARGE-SHEET

4. As per the charge-sheet submitted before the Special Judge (Electricity), Saket Courts, New Delhi dated 30.09.2012, it was observed to the effect that at the time of the raid conducted on 05.06.2012 under the supervision of the complainant Sh. Rupendra Singh Negi, Assistant Manager Enforcement (Energy Protection Group) of the BSES Rajdhani Power Limited at House No. C-120, Basement, R/P, Raju Park, Devli Road, Khanpur, New Delhi – 110062, one Prahlad Khanna was present in whose presence the raiding party had found the direct electricity theft being indulged into and a directly connected cable had thus been seized. A CD of the same had been prepared, which had been handed over to the Investigating Officer along with the other case property.

5. The charge-sheet, however, indicates that during the course of the investigation Mr.J.P. Sharma against whom there was material found for his

arrest, was arrested, and subsequently released on bail and that as regards the accused Prahlad Khanna and Daljeet Singh Yadav (i.e. the present petitioner), the investigation did not reveal any sufficient grounds for his arrest and thus, Prahlad Khanna was arrayed in column no. 12 of the charge-sheet and the charge-sheet was thus filed only against J.P Sharma s/o Kishan Lal.

OBSERVATIONS IN THE IMPUGNED ORDER

6. Vide the impugned order dated 17.08.2015 of the Ld. ASJ / Special Court (Electricity), South Saket Courts, New Delhi, on an application under Section 319 of the Criminal Procedure Code, 1973 filed by the State and moved on behalf of the complainant seeking the summoning of Prahlad Khanna, arrayed in column no. 12 of the charge-sheet, and Daljeet Singh Yadav (i.e. the present petitioner) as the accused in the instant case, the said Prahlad Khanna and Daljeet Singh Yadav (i.e. the present petitioner) were directed to be summoned as the accused in the instant case observing to the effect that the Investigating Agency had adopted a policy of **“pick and choose”** and had filed the charge-sheet as per their whims and fancies without assigning any reason or concrete material as to why the said two persons were left out of the case. Vide the impugned order, it was observed to the effect that as per the deposition of PW-2, the member of the raiding party had deposed in his examination-in-chief that one Prahlad Khanna was found present at the site at the time of inspection, who was the employee of the existing accused J.P. Sharma and in his cross-examination also, the said witness had answered that the said Prahlad Khanna was captured in the videography and that the owner of the house where the inspection was carried out was one Daljeet Singh Yadav (i.e. the present petitioner).

7. During the proceedings before the Special Electricity Court, the accused J.P. Sharma, who appeared as DW1, produced a copy of the rent agreement Ex.D-1 wherein also the owner of the premises was shown to be Daljeet Singh

Yadav (i.e. the present petitioner) and it was further observed vide the impugned order to the effect that the Investigating Officer and the SHO had not explained as to what investigation they had conducted qua the said Prahlad Khanna and Daljeet Singh Yadav (i.e. the present petitioner), nor was there any explanation to bring forth how the Investigating Officer had come to the conclusion that no evidence could be found against them and that there was no justification in the charge-sheet as to why Daljeet Singh Yadav (i.e. the present petitioner) was not kept in the column No. 12 or as to why Prahlad Khanna had been kept in column no. 12 of the charge-sheet. Along with the impugned order, thus, it was observed to the effect that the evidence which had come on record against the two accused Prahlad Khanna and Daljeet Singh Yadav (i.e. the present petitioner) in the form of oral and documentary evidence, was sufficient to proceed against them as the accused persons in the case in relation to the FIR No. 247/2012, registered at PS Neb Sarai, New Delhi, under Section 135 of the Electricity Act, 2003.

CONTENTIONS OF THE PETITIONER

8. The petitioner has thus assailed this impugned order dated 17.08.2015 of the Ld. ASJ/ Special Court (Electricity), South Saket Courts, New Delhi submitting to the effect that the impugned order was erroneous, in as much as PW-2 Mr. Rupender Singh Negi and DW-1 J.P. Sharma (the tenant in the premises where the raid was conducted) had not deposed anything relating to the commission of the offence or any conspiracy or common intention of the petitioner with that of J.P. Sharma for the commission of the offence under Section 135 of the Electricity Act, 2003. It was also submitted on behalf of the petitioner that the only reason why the petitioner had been summoned vide the impugned order was because he was the owner of the premises and that there were nineteen electricity connections, installed in the premises for the last 25 years which catered to the electricity registration of different tenants occupying

the premises and that for each electricity meter connection, the charges for the electricity consumption were being paid directly by the tenants to the electricity department and even in the instant case, the accused J.P. Sharma, a tenant under Daljeet Singh Yadav (i.e. the present petitioner) was paying the rent charged for the electricity consumed by him directly to the electricity department through his cheques. It was also submitted on behalf of the petitioner that there was no evidence led by the prosecution to show that the accused had been paying the electricity charges along with the monthly rent for the consumption of electricity to the petitioner and not to the electricity department, which could have shown involvement of the petitioner in the commission of electricity theft for his financial gains and that the Trial Court had ignored the evidence to the effect that at the time of inspection of the premises, the petitioner was not present in the premises, which indicates that the petitioner had no role to play in the alleged electricity theft and that J.P. Sharma was in occupation of the premises as a tenant and was admittedly running a garment manufacturing work and using the electricity for the said commercial work. It is also submitted on behalf of the petitioner that the Ld. ASJ / Special Court (Electricity), South Saket Courts, New Delhi had overlooked the deposition of PW-5 SI Surinder Singh, who had clearly deposed that he could not find any evidence against the petitioner for the commission of the offence punishable under Section 135 of the Electricity Act, 2003 and that he had thus not charge-sheeted the petitioner.

9. On behalf of the petitioner, it was further urged that under Section 319 of the Criminal Procedure Code, 1973, the Court has to look into the evidence brought on record by the prosecution during the trial and not the contents of the charge-sheet before exercising its extra ordinary discretion to summon any person as an accused to face the trial and that there was no evidence on record

brought by the prosecution disclosing incriminating evidence for commission of the theft of electricity.

10. It was further submitted on behalf of the petitioner that the categorical admission of the accused, J.P. Sharma coupled with the evidence led by the prosecution corroborating the facts brought forth that there was no room left for any doubt in relation to the aspect of J.P. Sharma, being the user of the electricity on the date of the alleged inspection by the electricity department.

REPLY OF ACCUSED J.P. SHARMA TO STATEMENT U/S 251 Cr.P.C.

11. Placed on record along with the petition is the reply of the accused J.P. Sharma to the notice framed by the ASJ / Special Court (Electricity), South Saket Courts, New Delhi on 26.11.2012 qua the substance of accusation to which the accused J.P. Sharma pleaded not guilty and claimed that he had not committed any theft of electricity and stated that there was a meter connection bearing CRN No. 2510004155 in the name of M/s. Deepak Flour Mill and he further stated that his son Ajay Sharma is a tenant in the said premises under the landlord, namely Daljeet Singh Yadav (i.e. the present petitioner) and his son Ajay Sharma deposits the monthly electricity bills regularly without any default and that there was a dispute between his son and the officials of the BRPL on account of some illegal demand at the ends of BSES officials and that thus, a false and fabricated case has been made out against him by the complainant company.

ANALYSIS

12. Copies of the statements of PW-1 HC Anupam Gautam, PW-2 Rupinder Singh Negi, Assistant Manager, BSES Rajdhani Power Ltd., PW-3 Pawan, videographer from M/s. Arora Photoa Studio, PW-4 Amit Kumar, Senior Manager BSES Rajdhani Power Ltd. and SI Surendra Singh, Investigating Officer of the case were annexed to the petition by the petitioner. The statement of the accused Jai Prakash Sharma s/o Late Sh. Kishan Lal under Section 313 of

the Criminal Procedure Code, 1973 was also submitted by the petitioner. *Inter alia* in the statement u/s 313 of Cr.P.C. of the accused Sh. J.P. Sharma, it was stated as under : -

“Q no. 6. Have you anything else to say?”

Ans. I am innocent person. I made agree ment with the owner of the premises in question vide rent agreement dated 09.03.2012 and the original of the same is already on record and the same is now Exhibit D-1. The premises in question have 3 phase meter vide CRN No. 251004155 in the name of M/s. Deepak Flour Mills and the copies of the electricity bills which are 13 in number are marked as Mark-X-1 to Mark X-12. I have been paying the rent in cash to the said landlord and consumption charges of electricity were being paid to the complainant company through cheques. I was not committing any direct theft of electricity at the premises in question on the date of inspection. Hence I’m not liable to pay any amount as allegedly claimed by the complainant against me.”

The statement of the DW1 J.P. Sharma, the accused recorded with permission under Section 315 of the Criminal Procedure Code, 1973 are placed on record.

13. The said statement of the accused J.P. Sharma under Section 315 of the Criminal Procedure Code, 1973 indicates that he is a tenant of Daljeet Singh Yadav (i.e. the present petitioner) w.e.f. 2-3 months prior for the date when the rent agreement dated 09.03.2012 was executed and he further stated that he was regularly paying the electricity bill of consumption of his premises through cheques and the rent agreement entered into between him and Daljeet Singh Yadav (i.e. the present petitioner) is Ex.D1.

14. PW-2 Rupinder Singh Negi – Assistant Manager, BSES Rajdhani Power Ltd., Andrews Ganj, New Delhi in his cross-examination stated that the accused J.P. Sharma was not present at the spot at the time of the inspection and that the

owner of the house where the alleged inspection was carried out is Daljeet Singh Yadav (i.e. the present petitioner) as stated by the persons at the site.

15. The respondent no. 2 through its reply submitted that the learned Trial Court had rightly summoned Daljeet Singh Yadav (i.e. the present petitioner) in the instant case as the Investigating Officer had not investigated the factum of ownership of the inspected premises, which admittedly belongs to the petitioner in which theft of electricity was being done and that furthermore the electricity connection was installed in the premises in the name of the son of the petitioner named Deepak and thus as the petitioner was the owner of the inspected premises where electricity was received illegally, the petitioner had rightly been summoned in view of depositions made before the said Court during the course of the evidence and the impugned order under Section 319 of the Criminal Procedure Code, 1973 did not suffer from any infirmity whatsoever, in as much as the petitioner was also one of the users of the electricity supply at the premises and had thus even been indulging in theft of electricity for non domestic purposes.

16. During the course of the arguments addressed on behalf of either side, it was submitted on behalf of the BSES Rajdhani Power Limited i.e. the respondent no. 2 herein, that the verdict of this Court in ***Hindustan Petroleum Corporation Ltd. Vs. BSES Rajdhani Power Ltd. & Anr. 138 (2007) DLT 679*** makes it clear that merely because the premises where the theft of electricity was indulged into was let out to Ajay Sharma, who was the son of the accused J.P. Sharma, would not suffice to dislodge the claim of the BSES Rajdhani Power Limited i.e. the respondent no. 2 herein, that it was the duty of the petitioner herein to ensure that others did not indulge in the commission of alleged theft of electricity.

17. The observations in ***Hindustan Petroleum Corporation Ltd. (Supra)*** in para 7 are to the effect : -

“7. It is submitted by Counsel for respondent no. 1 that the electricity connection was obtained by the petitioner for its own consumption, on the petrol pump. Once the petitioner had obtained connection in its own name, it was the responsibility of the petitioner to see that the electricity connection is used legally and lawfully. The respondent no. 2 is merely a licensee of the petitioner to sell petrol as a dealer of the petitioner. The petitioner is the principal agent, who was selling petrol on the petrol pump and the petrol pump belongs to the petitioner. If adulterated petrol is sold or less petrol is sold to customers by tampering with pump meter or electricity is stolen, it is the responsibility of the petitioner and has a duty to do regular inspection and keep a check on the petrol pump. The petitioner cannot wash off its hands saying that it has nothing to do with the petrol pump once it gave licence. The petitioner in its own petition has not stated if it had taken any action against the respondent no. 2 when it discovered theft of electricity to the extent that meter was found slow by more than 80%. That shows that the electricity was being stolen either with connivance of the petitioner or with consent of the petitioner.”

18. The verdict of this Court in *Narender Kumar Widhani & Anr. Vs. B.S.E.S Rajdani Power Ltd. in Crl. M.C. 165/2007* decided on 10.05.2012 is on facts *pari materia* to the facts of the instant case in as much as the summoning order was challenged by the petitioners therein submitting to the effect that as per Clause-8 of the rent agreement/ lease entered into between the petitioners therein and the tenant, it was the duty of the tenant to pay the electricity bill directly to the authority concerned and that the petitioners, who were old aged persons, had not indulged in any electricity theft and that the theft could not have in any manner been committed by any of the tenants and thus the petitioners could not have been made as an accused. Clause 8 of the lease agreement in that case was to the effect : -

“8. It shall be the responsibility of the lessee to pay directly all charges for consumption of water and electricity to the authorities concerned. The payment for consumption of water and electricity shall be on actual basis from commencement till expiry or earlier determination of this or extended lease,”

was also referred to as per which all charges of water and electricity were to be paid to the authorities concerned directly by the lessee as in the instant case in the present petition.

19. Vide para 15, it was further observed in this judgment to the effect:-

“15. The petitioners are seeking quashing of the complaint and the summoning order. It is settled that in a proceeding initiated on a complaint, exercise of inherent power to quash the complaint/summoning order is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If on reading the complaint as a whole, it appeared that on consideration of the accusations, the ingredients of the offence are disclosed, there would be no justification for interference by this Court in exercise of inherent power. At this stage, it is not for this Court to embark upon the sifting of entire evidence and form an opinion whether the accused is guilty or not, only consideration at this stage before this Court is to see whether there is prima facie indication of involvement of the accused or not.

16. On perusal of the complaint and the summoning order, it can be gathered that the learned Addl. Sessions Judge, Special Court (Electricity) has applied his mind to the facts and the material placed on record which prima facie was sufficient to indicate involvement of the petitioners in the offence alleged against them. Quashing of complaint and summoning order at preliminary stage will not only be detrimental to the case of complainant but will also have the effect of denying the complainant its right to prove its case which will be against the spirit of law. Whatever pleas

are available to the petitioners under law, they will have ample opportunity to prove the same during trial.

17. The proceedings before Trial Court were stayed on 12.02.2009. In the case Santosh De and Anr. vs. Archana Guha and Ors. (1994) 2 SCC 420, in para 5, it was observed as under:-

“15. The facts of this case impel us to say how easy to has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 Cr.P.C. Any and every irregularity or infraction of a procedural provisions cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Such frequent interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system.’

18. The Supreme Court in State of Madhya Pradesh vs. Awadh Kishore Gupta & Ors. 2004 (1) SCC 691 while exercising jurisdiction under Section 482 CrPC, held that it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed, at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the

materials produced are sufficient or not, for convicting the accused.”

20. The observations in para 3 of the verdict of this Court in ***Udai Veer Singh Vs. BSES Rajdhani Power Ltd. & Ors. in Crl. A. 871/2012*** decided on 10.02.2016, the facts of which were also similar to the instant case where the petitioner was the registered consumer of the electricity consumption but the premises had been let out to a tenant i.e. Apollo Foods to the effect : -

“3. After recording pre-summoning evidence, the accused persons were summoned to face the trial. Accused No.2 – Udai Veer Singh entered appearance and submitted that the accused number 1 was a tenant and had vacated the premises. The accused number 1 was dropped due to non-availability of complete details about its identity. The notice of accusation of offence punishable under Section 135 of the Act was served upon the accused number 2 who pleaded not guilty and claimed trial. It was alleged that the meter was in his name which was disconnected by the complainant on 20.10.2004 and he was not using the electricity in any manner and as such was not liable to pay any amount to the complainant.”

have essentially to be ordered to.

21. Vide para 15 of the said verdict, which reads to the effect reference has been made to the third proviso to Section 135 of the Electricity Act, 2003 : -

“15. Section 135 of the Act provides for theft of electricity. The third proviso to Section 135 of the Act is relevant for adjudication of present controversy. It reads as under:

“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.”

It was thus observed to the effect vide para 16 of the said verdict that a bare reading of proviso 3 to Section 125 of the Electricity Act, 2003 brought forth that once it was proved that there exists abstraction / theft of electricity, it is presumed that the consumer had indulged in theft of electricity and the presumption, however, is rebuttable but this onus is upon the appellant, who was the registered consumer of the electricity connection to prove that there was no theft of electricity in the premises and that the appellant has pleaded that the premises were rented out to Apollo Foods, however, such a plea was neither taken in the reply to the notice under Section 251 Cr.P.C served upon him.

22. Vide para 18 of the said verdict, it was observed to the effect that once it was found that the appellant was the owner of the premises and the registered consumer of the electricity connection and it was found that there was theft of electricity being indulged, the onus to rebut this presumption that he had not committed theft of electricity was on the appellant which he had failed to discharge and the appeal was thus dismissed.

It was thus submitted on behalf of the BSES whilst placing reliance further on the verdict of this Court in *Ashwani Kumar Chopra Vs. BSES Rajdhani Power Limited* in **Crl. MC. 1077/2016** decided on 17.08.2017 to the effect that where the petitioner contended that he was merely the owner of the premises in question and not a registered consumer of the electricity connection and that it could not be presumed merely because he was the owner of the premises where another person was found illegally committing theft of electricity by putting the same on service cable of BSES and where the contention of the BSES was that the theft could not have been committed by the accused without the connivance of the petitioner/owner, it was held that the averments made in the complaint had to be accepted as true at that stage i.e. where the trial was at its initial stage and the charge had not even been framed

and the veracity of the statements made in the complaint could not be gone into in the petition under Section 482 of the Criminal Procedure Code, 1973 as all the disputed questions of facts are matter of trial and that there was no reason thus to stay the proceedings based on the inspection conducted by the joint team of the respondent therein i.e. ***BSES Rajdhani Power Limited***.

23. It was further submitted on behalf of the petitioner that in the facts and circumstances of the instant case in as much as the petitioner herein who was the owner of the tenanted premises had let out the premises to J.P. Sharma, he could not have been aware of the factum of theft of electricity which was being indulged exclusively by J.P. Sharma and that he was thus not liable for the commission of the said theft qua which it has been submitted on behalf of the respondent that in any event it was for him to rebut the prosecution that such theft of electricity was being done without his active connivance.

24. On behalf of the petitioner reliance was placed on the verdict of this Court in ***Meena Choudhary @ Meena P.N. Singh Vs. BSES Rajdhani Power Limited & Ors. in Crl. M.C. 1002/2011 decided on 12.05.2015*** in which the person arrayed as the accused was a paying guest and there were observations in para 17 of the said verdict to the effect that even though the registered consumer was another person, the petitioner therein was enjoying the facility and was liable to pay the electricity charges. It was thus submitted on behalf of the petitioner that this itself brought forth that the petitioner herein who was the owner of the tenanted premises where the alleged theft of electricity was being indulged into could not be summoned for the commission of any offence in terms of clause 319 of the Criminal Procedure Code, 1973.

CONCLUSION

25. On a consideration of the rival submissions made on behalf of either side and the entire available record and the verdicts relied upon, it is apparent that the registered owner and registered consumer of electricity in a premises has to

be presumed to have knowledge of user of the said electricity at his premises by illegal means and merely because the premises had been let out to a tenant who at the time of physical inspection conducted was found indulging in the commission of theft of electricity, the same does not suffice to dislodge the presumption of commission of theft of electricity against the petitioner and the onus to discharge the presumption lies on the registered owner which can be done only at trial of disputed fact.

26. In the facts and circumstances of the instant case, thus it is rightly contended on behalf of the State and the respondent no. 2 that there was no infirmity in the impugned order dated 17.08.2015 of the learned ASJ, Spl. Court (Elect.) South, Saket Courts in relation to FIR No.247/12, under Section 135 of the E.A, 2003 Police Station Neb Sarai, in as much as it is for the petitioner to dislodge the presumption raised against him of having indulged in the commission of theft of electricity, being the owner of the premises and registered consumer of the electricity connection in question.

27. As regards the contention raised on behalf of the appellant that the provisions of Section 319 of the Criminal Procedure Code, 1973 had not been correctly invoked contending to the effect that Section 319 of the Criminal Procedure Code, 1973 can be invoked only when it appears from the evidence recorded that any person not being an accused had committed any offence for which such person can be tried together with the accused in relation to whom an enquiry or trial of an offence was being conducted and that in the instant case, the testimonies of the PW1, PW2, PW3, PW4 & PW5 recorded during trial had not brought forth any incriminating evidence at all against the petitioner especially as the Investigating Officer of the case PW5 SI Surendra Singh in his testimony dated 01.11.2014 had stated

“There were two other accused named in the complaint. Who were also examined but I could not find any evidence against them and as such, they were not

arrested. Thereafter, I prepared the charge-sheet and placed the same before the SHO concerned for forwarding the same for trial.....

XXXXXXXXXXXXXXXXXXXX

“It is incorrect to suggest that I have not conducted free and fair investigation or that I have adopted pick and choose policy in order to falsely implicate the accused J.P. Sharma in the present case or that I have deliberately left out the owner and the other real accused in this case,”

as regards this submission, it is essential to observe that the summoned accused J.P. Sharma in his response to the notice dated 26.11.2012 under Section 251 of the Criminal Procedure Code, 1973 had stated : -

“I plead not guilty. I was not committing any theft of electricity. There is a metered connection bearing CRN No. 2510004155 in the name of M/s. Deepak Floor Mill and he further stated that his son Ajay Sharma is a tenant in the said premises under the landlord, namely Daljeet Singh Yadav (*i.e. the present petitioner*) and his son Ajay Sharma deposits the monthly electricity bills regularly without any default”.

28. Further the witness PW-2 Mr. Rupinder Singh Negi Assistant Manager BSES Rajdhani Power Ltd., Andrews Ganj, New Delhi stated

“On 05.06.2012 at around 3.00 p.m., I along with Haider-GET, Virender-lineman, Pawan-Videographer along with Delhi Police visited and inspected the premises bearing no. C-120, Raju Park, Basement, Right portion, Khanpur, New Delhi. On reaching the premises in question we found that there was no meter installed at site and the use of the premises in question found indulged in direct theft of electricity by directly tapping from distribution box. We assessed the total connected load of the premises in question around 13 KWs used for non domestic purpose i.e. running a garment manufacturing work.”

29. Further, PW-5 SI Surendra Singh PS Kotla Mubarakpur, New Delhi stated

“I did not make any enquiry as to whether the accused i.e. J.P. Sharma was present at the spot at the time of raid conducted by the complainant company.”

30. The accused (i.e. J.P. Sharma) in his statement u/s 313 of the Criminal Procedure Code, 1973 in reply to question no. 6 stated to the effect : -

“Q no. 6. Have you anything else to say?

Ans. I am innocent person. I made agreement with the owner of the premises in question vide rent agreement dated 09.03.2012 and the original of the same is already on record and the same is now Exhibit D-1. The premises in question have 4 phase meter vide CRN No. 251004155 in the name of M/s. Deepak Flour Mills and the copies of the electricity bills which are 13 in number are marked as Mark-X-1 to Mark X-12. I have been paying the rent in cash to the aid landlord and consumption charges of electricity were being paid to the complainant company through cheques. I was not committing any direct theft of electricity at the premises in question on the date of inspection. Hence I'm not liable to pay any amount as allegedly claimed by the complainant against me.”

(emphasis supplied)

31. In his evidence in defence DW1 J.P. Sharma the accused after his deposition in examination in chief on oath under Section 315 of the Criminal Procedure Code, 1973 on being cross examined under Section 315 of the Criminal Procedure Code, 1973 stated that

“I am a tenant of Daljeet Singh Yadav w.e.f. 2-3 months earlier from the date when the rent agreement dated 09.03.2012 was executed between us. The rent of the house occupied by me was fixed at Rs.8,000/- per month excluding the electricity charges. There was one hall occupied by me in the premises in question. The width and length of the said house is 20 feet and 35 feet respectively. There were 20 sewing machines installed

in the said hall. There was a garment fabrication factory running in the said hall by son through workers. There was a meter installed in the first floor of the premises through which the electricity supply of the said hall was going on. Again said the meter was installed at the ground floor of the premises. The said meter was installed in the name of Sh. Deepak s/o Sh. Daljeet Singh. On 05.05.2012 when BSES officials inspected the premises, I was present at my office in Gurgaon. There were 17-18 tubelights, 6 ceiling fans and one exhaust fan and one iron press installed in the said hall apart from the 20 sewing machines. I pay the rent to my landlord in cash and there is no receipt of the said payment of the rent is available.

32. Prima facie, it thus appears that the petitioner, the owner of the premises C-120, Basement R/P Raju Bagh, Devli, Khan Pur, New Delhi has to be presumed to have knowledge that there was no meter installed at the site and despite the same the premises had been let out for commercial work to the accused J.P. Sharma for non domestic purposes, which electricity was being consumed after direct tapping from the distribution box pole no. KPRE237 for running non domestic load i.e. Garment Manufacturing work and that the petitioner, the owner of the premises where such alleged theft of electricity was being made (as claimed by him) was not aware of the same despite the factum that there was no meter installed for user of electricity and that electricity was being consumed by direct tapping from the distribution box for commercial work, is a factum which would have to be explained by the petitioner himself.

33. In the circumstances of the case, it cannot be contended by the petitioner that the provision of Section 319 of the Criminal Procedure Code, 1973 has been erroneously invoked by the learned ASJ, Spl.Court (Elect.) South, Saket Courts in relation to FIR No.247/12, Police Station Neb Sarai, under Section 135 of the Electricity Act, 2003 and it is thus held that there is no infirmity in the said impugned order dated 17.8.2015 of the learned ASJ, Spl. Court (Elect.)

South, Saket Courts in relation to FIR No.247/12, Police Station Neb Sarai under Section 135 of the Electricity Act, 2003 and thus the interim stay against the said order granted vide order dated 09.12.2015 and continued thereafter, is vacated.

34. The petition is thus dismissed.

ANU MALHOTRA, J

DECEMBER 23rd, 2017
SV / MK

