

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

% Judgment reserved on: 04th April, 2018
Judgment pronounced on: 02nd July, 2018

+ CRL.M.C.2817/2014 & Crl.M.A.9669/2014 (stay)

ADIT ENGINEERING PVT. LTD. & ANR. Petitioners

versus

STATE & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Ankur Goel and Mr Bhriгу Dhami, Advocates.
For the Respondents : Mr Mukesh Kumar, Addl. PP for the State.
Mr Abhay Kumar and Mr Saurabh Mishra,
Advocates for R-2

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. The petitioners impugn order dated 24.04.2014, whereby, the Trial Court has held that, *prima facie*, a case under Sections 135, 138 read with Section 150 of the Electricity Act, 2003 (hereinafter referred to as the Act) of abetting the theft of electricity is made out against the petitioners.

2. Petitioner No.1 is an owner of the first floor of G-118, Sector 2, DSIDC, Bawana, Delhi. Petitioner No. 2 is the director of Petitioner

No. 1. Electricity connection has been obtained by the petitioners from respondent No.2.

3. It is alleged that the subject premises was rented out to one Praveen Kumar Jain and Jaideep Jain on 05.06.2008 and is alleged to be in possession of the said tenants since then.

4. Inspection was carried out of the premises on 23.06.2010 by the officials of the respondent No.2. Direct theft of electricity, *inter alia*, by tampering of meter was found. A show cause notice was issued to the occupants of the premises. In response to the show cause notice, a representation was given by the petitioners on 10.08.2010 contending that the premises had been rented out to Praveen Kumar Jain and Jaideep Jain since 05.06.2008 and was in their possession at the time of the alleged inspection.

5. Complaint was filed by the respondent No.2 under Sections 135, 138, 149, 150 read with Section 151 of the Electricity Act, 2003 against the petitioners as well as Praveen Kumar Jain and Jaideep Jain.

6. By the impugned order, the Trial Court has held that a *prima facie* case under Sections 135, 138 read with Section 150 of the Act is made out against all the accused persons and the case has been fixed for framing of notice under Section 251 Criminal Procedure Code.

7. Aggrieved by the said order, the petitioners have filed the subject petition.

8. The contention of the petitioners is that the petitioners had rented out the said premises to Praveen Kumar Jain and Jaideep Jain and, as such, have no control over the said electricity connection. As per the rent agreement, the tenants were liable to pay electricity charges and are liable and responsible for the purposes of any misuse of electricity.

9. It is contended that the petitioners have no knowledge of any theft of electricity and liability, if any, both civil and criminal, is of the tenants. It is further contended that the criminal liability being strict liability could only be fastened on the petitioners in case they had any knowledge or had connived with the tenants in the theft of electricity. *Mens rea* is absent and nothing has come on record to show that the petitioners had any knowledge of or connived in the theft of electricity. It is contended that the subject complaint is an abuse of process of law and is liable to be quashed qua the petitioners.

10. Reliance is placed on the decision of this of Court in *Vikas Pahwa vs. State*: 63 (1996) DLT 2 and the decision of the Gujarat High Court in *Barot Vitthalbhai Damodardas vs. Natwarbhai Umeshbhai Patel & Anr.*: (2009) 3 GLR 1974.

11. Per contra, learned counsel for the respondent No.2 has contended that since the petitioner was the registered consumer, it was his responsibility to keep the meter safely and under safe custody. The inspection having found tampering of meter and direct theft of electricity, the petitioner, being the registered consumer, is liable for the same and has in connivance and in collusion committed theft of electricity and has thus been rightly arrayed as an accused in the subject complaint.

12. Learned counsel for the respondents has relied on the decision of a coordinate Bench of this Court in *Rameshwar @ Kanwar Singh vs. BSES Rajdhani Power Ltd.*, (2017) 240 DLT 717.

13. Section 135 of the Act reads as under:

“135. Theft of electricity.—(1) Whoever, dishonestly,—

(a) taps, makes or causes to be made any connection with overhead, underground or underwater 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 *****

Provided further that *****

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.

(1-A) *****

*****”

14. Section 138 of the Act reads as under:

“138. Interference with metres or works of licensee.— (1)
Whoever—

(a) *unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or*

(b) *unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or*

(c) *lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or*

(d) *maliciously injures any meter, indicator, or apparatus belonging to a licensee or wilfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering;*

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such reconnection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.”

15. Section 150 of the Act reads as under:

“150. Abetment.— (1) *Whoever abets an offence punishable under this Act, shall, notwithstanding anything contained in the Indian Penal Code, be punished with the punishment provided for the offence.*

(2) *****

(3) *****

”

16. Sections 135 and 138 of the Act make the action punishable, if any person does any of the acts mentioned therein; *inter alia*; theft

of electricity or interference of meter. The third proviso to section 135 of the Act stipulates 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 abstraction, consumption or use of electricity has been dishonestly caused by such consumer. Consumer has been defined by section 2(15) of the Act 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 this 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. The petitioners are admittedly consumers. In terms of the third proviso to section 135, there is a presumption, until the contrary is proved, that such abstraction, consumption or use of electricity has been dishonestly caused by the consumer.

17. In the complaint filed by the respondents, the allegations about the role of the petitioners have been described in paragraphs 12 and 21, which read as under:-

“12. That the accused no. 1 M/s Adit Engineering Pvt. Ltd. is the registered consumer of the electricity connection bearing no. 41404069135 having entered into a contract with the North Delhi Power Ltd. for supply of

electricity & accused no. 2 Dheeraj Gupta is the Director of the accused no.1 Company and as such an agent of the company who permitted accused no.. 3 and 4 to use the electricity connection which was sanctioned to the accused no.1. The theft found being committed at site was within the knowledge of accused no. 1 & 2. Therefore, Accused no. 1 has committed offence under section 149 along with section 135, 138 & 150 of The Electricity Act 2003.

21. That the above said offence has been committed by the accused persons in collusion & connivance with each other and further, the accused no. 1 being the registered consumer and accused no. 2 being the Director of accused no. 1 as well as owner / landlord of the Inspected premises have been active abettors within the meaning of Section 150 of The Indian Electricity Act, 2003 with the accused no.3 & 4 in having committed the offence.”

18. A coordinate bench of this court in *Rameshwar @ Kanwar Singh vs. BSES Rajdhani Power Ltd.*, (2017) 240 DLT 717, has held as under:

“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 v. State (NCT, Delhi) (1999) 51 DRJ 31 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 v. State NCT of Delhi* 2012 Crl.LJ 1418 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 v. BSES Rajdhani Ltd.* 138 (2007) DLT 679 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.”

19. The ratio of *Rameshwar @ Kanwar Singh (supra)* squarely applies to the present case.

20. I am, however, in respectful disagreement with the view taken by single judge of the Gujarat High Court in *Barot Vitthalbhai Damodardas vs. Natwarbhai Umeshbhai Patel & Anr.*: (2009) 3 GLR 1974, firstly as the said judgment is distinguishable on facts, secondly, the third proviso to section 135 and the definition of consumer in section 2(15) has not been brought to the notice of the court and

thirdly the provisions of section 150 of abetment, were not sought to be invoked against the owner, unlike as in the present case.

21. In view of the above, I find no infirmity in the impugned order dated 24.04.2015 whereby, the Trial Court has held that, *prima facie*, a case under Sections 135, 138 read with Section 150 of the Act of abetting the theft of electricity is made out against the petitioners. Further, whether the petitioner had the requisite *mens rea* of dishonest abstraction by illegal means or not can be examined only after witnesses are examined. Since the third proviso to Section 135 (1) of the Act raises rebuttable presumption, it will be for the petitioners to discharge the burden during the course of trial.

22. I find no merit in the petition. The same is accordingly dismissed, with no orders as to costs.

SANJEEV SACHDEVA, J

JULY 02, 2018
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