

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

% Decided on: 7th August, 2018

+ **CRL.L.P. 514/2018**

BSES RAJSHANI POWER LIMITED

..... Petitioner

Represented by: Mr. Rishab Raj Jain, Advocate
alongwith Ms. Jaya Verma
(Office of BSES Rajdhani
Power Limited)

versus

USHA SHOKEN & ANR.

..... Respondents

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No.29447-448/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.L.P. 514/2018

1. Aggrieved by the judgment dated 9th May, 2018 whereby the learned Additional Sessions Judge, acquitted the respondent No.1 for the offence punishable under Section 135/138 read with Section 150 Electricity Act, 2003, and respondent No.2 for the offence punishable under Section 135/138 Electricity Act, 2003, the petitioner/complainant has preferred the present leave petition.

2. The facts leading to the present case are that on 22nd January 2009 at 2:10 P.M., an inspection was carried out by the inspection team of the complainant company which consisted of Surender Chauhan, Manager, Dhiraj Kumar, GET and Raju Pandey, DET for meter bearing No. 27110110 installed at House No. 7, Office at No. B-22., KH No. 8/2, Tek Chand

Colony, Near BSES Pole No. NGLG262, Nilothi Ext., Nangloi, New Delhi. The inspection report noted that wrong date and time was found in the meter display. It showed date as 3rd January 1988 and time as 5:45 P.M. while actual date and time was 22nd January 2009, 2:10 P.M. The joint team downloaded the CMRI data analysis for further detailed analysis and also checked accuracy of meter with standard accuracy check instrument and found that the meter ran within limit. The inspection team found all seals of the meter box intact and opened the meter box. Joint team called division staff for maintaining user supply through new meter and old meter was seized by them. The respondents were found to be using connected load of 110.776 KW/IX/DAE. The meter was duly sealed and sent for testing/analysis to meter testing lab. Upon investigation of the removed meter, abnormal power down count was found to be 102256 and abnormal power down duration was found to be 908 days 20 hours and 37 minutes. NVM found failed and in currency history KVah was less than KWh. The testing lab declared that the meter was tampered. A show cause notice dated 2nd April 2009 was issued to the respondents requesting them to file reply by 9th April 2009. They attended personal hearing on 15th April 2009 in the office of the petitioner. On 15th April 2009, personal hearing was attended by respondent No.2 and Deepak Kumar who stated that the factory was being run for the last one year and he had applied for enhancement of load from 12 KW to 35 KW and paid the demand note on 12th June 2008 and was not aware of the meter tampering. The Assessing Officer of the petitioner passed a speaking order consequent to which an amount of ₹53,33,989/- was to be paid by the respondent No. 2 for wrongful abstraction, consumption or use of electricity. Hence, the complaint.

3. Notice under Section 251 Cr.P.C. was served upon the respondents on 29th April, 2013 to which they pleaded not guilty and claimed trial.
4. Surender Chauhan (PW-1), Manager of the petitioner in his testimony proved the inspection report (Ex.CW-2/1), meter report, load report (Ex.CW-2/2), seizure memo (Ex.CW-2/6). He stated that he offered copies of the said reports to respondent No.2 and also requested him to sign on the said reports but respondent No. 2 neither signed on the said reports nor accepted them.
5. Saurabh Vashist, Training Engineer was examined as PW-2, Ritu Raj Sinha, Assessing Officer as PW-3, Jai Prakash, videographer as PW-4 and Pankaj Bhatta, Authorized Representative as PW-5.
6. Respondent No. 1 in her statement recorded under Section 313 Cr.P.C. stated that she did not know whether any inspection had been carried out on 22nd January 2009 as she was not present at the premises on the said date. Respondent No. 2 was the tenant and user of the premises. She stated that neither was the meter tested in her presence nor has she received a copy of the speaking order. No videography was carried out in her presence.
7. Respondent No. 2 in his statement recorded under Section 313 Cr.P.C. stated that inspection team inspected the premises, however, he reached at the site after about 20 minutes of the starting of the inspection. No reports were prepared nor was any videography conducted in his presence. He was told by his laborers that videography was conducted at the site by the inspection team. He stated that neither was the meter tested in his presence nor has he received a copy of the speaking order.
8. Learned Additional Sessions Judge acquitted the respondent on the

basis that inspection report (Ex.CW-2/1), has not been proved on record and there was no evidence to show that the same was served on the respondents through registered post.

9. He further relied on the testimony of Jai Prakash (PW-4), Videographer who stated that the alleged CD containing the videography was prepared by one Vicky Arora who has not been examined by the petitioner company. The petitioner company has also not filed the requisite certificate under Section 65B of the Indian Evidence Act, so as to prove the alleged videography. Furthermore, Ritu Raj Sinha (PW-3), Assessing Officer, BRPL, during his cross-examination stated that he did not issue Ex.CW-2/3 to the respondents which makes it quite clear that the respondents were not aware of the alleged testing of the alleged meter on 11th February 2009. Saurabh Vashist (PW-2) in his testimony stated that there was no document on record which authorized him to do the testing of meter and there was also no such document on record which showed that the petitioner had authorized to get the meter tested and testing was supervised by Rajiv Ranjan, Assistant Manager. In the absence of any alleged ESD/HF or any other material, it cannot be said that the respondent had intentionally shut down the meter abnormally for the purpose of manipulating the consumption. The petitioner company had failed to show any tangible evidence of dishonest abstraction of energy against the respondents. There was nothing in the inspection report (Ex.CW-2/1) to show that any efforts were made by the team to join the public persons in the inspection in spite of there being evidence on record to suggest that 4-5 public persons had assembled at the time of inspection. Testimony of Surender Chauhan (PW-1) shows that there were three members of the inspection team but the

petitioner company has only examined one member of the inspecting team.

10. In view of the officer not being duly authorized to test the meter, the videography having not been proved by examining the person who did the videography, absence of certificate under Section 65B of the Indian Evidence Act, this Court concurs with the view expressed by the learned Additional Sessions Judge that the petitioner has not been able to prove dishonest abstraction of electricity by the respondents beyond reasonable doubt. Hence, the impugned judgment acquitting the respondents cannot be said to be perverse warranting interference of this Court.

11. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 07, 2018

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