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

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Judgement delivered on: 01.11.2018

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CRL.L.P. 723/2018

BSES YAMUNA POWER LTD.

..... Petitioner

Through: Mr. Anil Bhasin, Adv.

versus

SH. SHAMIM AHMED

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The petition seeks leave to appeal against order dated 27.07.2018 which dismissed the petitioner's complaint for prosecution of the respondent for theft of electricity under section 135 of the Electricity Act, 2003.

2. It is the petitioner's case that a raid was conducted at the premises of the respondent where he was running a Guest House and was stealing electricity from underground and overhead cables by tapping into them. The raid was conducted with the assistance of two policemen from the local police station i.e. Police Station Jama Masjid. The entire process of raid was videographed by M/s Arora Photographic Agency. A person called Jamil Ahmed (*sic*) who was representing the consumer Shamim Ahmed, the present respondent, was associated with the raiding team. According to the

petitioner, all rooms of the respondent could not be inspected because the same were occupied by guests. The respondent was not present at the spot. The Inspection Report was sought to be handed over to the Authorized Representative, but he refused to sign it. It is alleged that he also prevented the raiding team from pasting the Inspection Report on the said premises. The complaint was filed with the police three months later.

3. The impugned order dismissed the complaint on the ground that Regulation 52(ix) of Delhi Electricity Supply Code and Performance Standards (DERC) Regulations, 2007 required that in the event of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of the Inspection Report must be pasted at a conspicuous place in/outside the premises and photographed. Simultaneously, the Report shall be sent to the consumer through Registered Post. Neither of the said requirements was complied with. The learned Trial Court was of the view that if the petitioner had the assistance of the local police, then the inspecting team could not have been prevented from pasting the Inspection Report at a conspicuous place in/outside the premises of the consumer or at the place from where the electricity was being stolen. There is neither an explanation as to why the complaint was filed three months later nor is there any explanation as to why the said Report was not pasted in/ outside the premises on the same day. The complainant had not examined the Authorized Representative-Zamil Ahmed to prove the inspection. M/s. Arora Photographic Agency also did not bring into the witness box the videographer, namely Raju, to prove that the aforesaid raid was videographed. The impugned order rightly held that the complainant

company had also not relied upon the requisite certificate under section 65B of the Indian Evidence Act, 1872 to prove the videography. The two policemen who had accompanied the inspecting party had deposed that they did visit some premise but they did not remember the date and time when the raid was conducted. According to the testimony of PW-1, the complaint was made to the police but he did not remember the date of the complaint because many years had passed. The respondent had denied that he knew Zameel Ahmed and that he was his Authorized Representative. He also denied that any such inspection was done at his premises. Furthermore, there was no evidence to show that he was stealing electricity at the said premises. The learned Trial Court has reasoned as under:

It is relevant to pen down here that during cross examination, PW3 admitted that they had seized the case property which was mentioned in the seizure memo only and when a question was put up to the PW3 during cross examination that apart from the case property mentioned in the seizure memo, whether had they seized the wire which was coming from the electricity pole, he replied that "No, due to technical difficulties, the wire which was coming from electricity pole was not seized".

Here, view of the Court is that it is not clear that what prevented the inspection team from seizing the alleged wire allegedly coming from the electricity pole and what were the alleged technical difficulties which prevented them from seizing the alleged wire which was allegedly coming from alleged electricity pole. Mere say is not sufficient that due to technical difficulties, the alleged wire which was coming from electricity pole was not seized.

It is also to note here that as per the testimony of PW1 and PW3, videography has been carried out at site by Sh. Raju M/s Arora Photo Studio. It is to note here that no videographer namely Raju of M/s Arora Photo Studio has been examined by the complainant company in this case.

Furthermore, the complainant company has also not relied the requisite certificate U/s 65B of the Indian Evidence Act, so as to prove the videograph. Thus, the complainant company has failed to prove the videography in the present case in accordance with law. Therefore, the videography Ex. P-02 is of no help for the case of the complainant company.

As per the testimony of PW1 and PW3, there were five members of the alleged inspection team and Staff of Delhi Police. It is very relevant to pen down here that complainant company examined only two members out of alleged five members of the alleged inspecting team. Furthermore, no police official has been examined by the complainant company. Had the complainant company examined remaining other alleged members of the alleged inspection team as well as police official, the accused persons would definitely have not the opportunity to cross-examine them.

In view of above discussion, the complainant company has failed to prove the offence alleged against accused namely Shamim Ahmed beyond reasonable doubt in the present case. Thus, the accused namely Shamim Ahmed is entitled for acquittal. Accordingly, accused namely Shamim Ahmed is acquitted for the offence punishable Under Section 135 of the Electricity Act, 2003.”

4. It is odd that if a raid was conducted, there is no record of the date and time as to when it was so done; that the raiding team did not remember the date or the time or when the police assistance was requested and there is no explanation as to why the requirement of Regulation 52(ix) of the Delhi Electricity Supply Code and Performance Standards (DERC) Regulations, 2007, which is imperative, was not followed nor is there any explanation as to why the complaint was made three months later.

5. In view of the above, the Court finds no reason to interfere with the impugned order. The petition is without merit and the same is accordingly dismissed.

NAJMI WAZIRI, J

NOVEMBER 01, 2018/acm

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