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

% Judgment delivered on: 20.12.2023

+ **CRL.REV.P. 830/2023**

BSES RAJDHANI POWER LTD Petitioner

Through: Mr. Narender Hooda, Sr. Adv. with
Mr. Rishab Raj Jain, SC, and Mr.
Harshal Arora, Mr. Shaurya Lamba
and Ms. Rashi Choudhary, Advs.

versus

STATE GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Raj Kumar, APP for State.

+ **CRL.REV.P. 833/2023**

BSES RAJDHANI POWER LTD Petitioner

Through: Mr. Narender Hooda, Sr. Adv. with
Mr. Rishab Raj Jain, SC and Mr.
Harshal Arora, Mr. Shaurya Lamba
and Ms. Rashi Choudhary, Advs.

versus

STATE GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Raj Kumar, APP for State.

+ **CRL.REV.P. 886/2023**

BSES RAJDHANI POWER LTD Petitioner

Through: Mr. Narender Hooda, Sr. Adv. with
Mr. Rishab Raj Jain, SC and Mr.
Harshal Arora, Mr. Shaurya Lamba,
and Ms. Rashi Choudhary, Advs.

versus

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STATE NCT OF DELHI & ANR. Respondents
Through: Ms. Richa Dhawan, APP for State.

+ **CRL.REV.P. 890/2023**

BSSES RAJDHANI POWER LTD Petitioner
Through: Mr. Narender Hooda, Sr. Adv. with
Mr. Rishab Raj Jain, SC, and Mr.
Harshal Arora, Mr. Shaurya Lamba
and Ms. Rashi Choudhary, Advs.

versus

STATE NCT OF DELHI & ANR. Respondents
Through: Ms. Richa Dhawan, APP for State.

+ **CRL.REV.P. 891/2023**

BSSES RAJDHANI POWER LTD Petitioner
Through: Mr. Narender Hooda, Sr. Adv. with
Mr. Rishab Raj Jain, SC, and Mr.
Harshal Arora, Mr. Shaurya Lamba
and Ms. Rashi Choudhary, Advs.

versus

STATE NCT OF DELHI & ANR. Respondents
Through: Ms. Richa Dhawan, APP for State.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present criminal revision petitions have been filed by the petitioner assailing the following impugned orders whereby the amendment applications seeking to furnish better particulars, as well as, the complaint cases filed by the petitioner company against various accused persons, were dismissed at the pre-summoning stage by the learned Additional Sessions Judge (Electricity)-01, Central District, Tis Hazari, District Courts, Delhi

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(hereinafter referred to as “the Special Court”):

- (i) Order dated 12.07.2023 in CC No. 894/2022 (giving rise to CRL. REV. P. 830/2023);
- (ii) Order dated 12.07.2023 in CC No. 1085/2022 (giving rise to CRL. REV. P. 833/2023);
- (iii) Order dated 20.07.2023 in CC No. 1411/2022 (giving rise to CRL. REV. P. 886/2023);
- (iv) Order dated 13.07.2023 in CC No. 1487/2022 (giving rise to CRL. REV. P. 890/2023);
- (v) Order dated 20.07.2023 in CC No. 1045/2022 (giving rise to CRL. REV. P. 891/2023).

2. In the above-mentioned complaint cases, amendment application(s) for furnishing better particulars / identification of the premises of the accused persons (collectively referred to as ‘applications’) were filed by the petitioner before the issuance of summons i.e., at the stage of pre-summoning evidence.

3. It is the case of the petitioner that in the said applications the officials of the petitioner/complainant, who had inspected the premises earlier, revisited the said premises again and found the exact number of the premises. Essentially, the applications were meant to just particularize the premises on which the inspections were carried out.

4. As the facts of all the five cases being dealt with in the present judgment are similar except for the details / number of the premises and further since the issue involved is also common, therefore, for the sake of brevity, the facts of CRL. REV. P. 830/2023 are being referred to.

5. The petitioner is a company engaged in the distribution of electricity in the areas of South and West Delhi, including the area and premises of the

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respondent, having its registered office at BSES Bhawan, Nehru Place, New Delhi-110019.

6. The premises of the respondent no.2, i.e., House near T-Huts 37, Opposite Flat No.37, D/5, Vishal Enclave, New Delhi- 110027, where the alleged offence has been committed, falls within the distribution area of the petitioner. A raid was conducted on 05.01.2022 at about 7:30 AM by the authorized officers of the petitioner company at the said premises of respondent no.2.

7. During inspection, it was found by the officials of the petitioner that respondent no.2 was the user of the said premises and there was no electricity meter installed for the supply of electricity to the said premises. Further, it was revealed that the respondent no.2 was illegally using the electricity by directly tapping from the supply of network of the petitioner from Pole No. TGN-H-006, with the help of two core black cables entering the premises from its back side and further connected to the load of the premises. The same was recorded in the inspection report dated 05.01.2022 which was prepared at the site during inspection.

8. It was further found that there was a total connected load of 5.301KW/DX/DT, i.e., electricity being used for domestic purposes which was recorded in the Load Report dated 05.01.2022 prepared at the site. The team could, however, not seize any of the illegal cables or any material due to resistance by the consumer at the spot and the same was mentioned in the seizure memo prepared at the spot. The team also comprised of a photographer and a CD of the raid was also prepared. The documents prepared at the spot including the inspection report, load report, and seizure memo were handed over to respondent no.2 at the spot but respondent no.2 refused to receive/sign them.

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9. A theft bill dated 07.01.2022 was raised by the petitioner against respondent no.2 for Rs. 1,05,805/- (Rupees One Lakh Five Thousand Eight Hundred and Five only).

10. Thereafter, the petitioner filed the criminal complaint on 27.5.2022 against respondent no.2 alleging direct theft of electricity by the respondent no.2 at her premises. The matter was first taken up on 6.6.2022 and the petitioner company was called upon by the court to lead pre-summoning evidence.

11. The officials of the petitioner/complainant, who had inspected the premises earlier, re-visited the said premises on 10.07.2023 and found the premises number where theft was detected was B-37, which is situated near T-Huts 37, Opposite Flat No.37, D/5, Vishal Enclave, New Delhi-110027.

12. Likewise, with respect to other criminal complaints, the premises of the respective accused persons were re-visited by the officials of the petitioner/ complainant and the exact address was verified. The address in the complaint, as well as, the verified address of the premises where the electricity theft was found to be committed are as under:

CRL. REV. PET. 830/2023 [arising out of CC No. 894/2022]

Address in Complaint	Verified Address in Application
House near T-Huts-37, Opposite Flat No.: 37, D-5, Vishal Enclave, New Delhi -110027	House No.: B-37 near T-Huts-37, Opposite Flat No.: 37, D-5, Vishal Enclave, New Delhi-110027.

CRL. REV. PET. 833/2023 [arising out of CC No. 1085/2022]

Address in Complaint	Verified Address in Application
Premises Opposite to RZ-C-112-B, Ground to Second Floor, Gali No.: 09, Vishnu Garden, New Delhi-110018.	Premises No.: RZ-C-123, Opposite to RZ-C-112-B, Ground to Second Floor, Gali No.: 09, Vishnu Garden, New Delhi - 110018.

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CRL. REV. PET. 886/2023 [arising out of CC No. 1411/2022]

Address in Complaint	Verified Address in Application
House opposite to L-2/23 Ground Floor & First Floor, New Mahabir Nagar, New Delhi-110018.	House No.: L-2/32, Ground Floor and First Floor, New Mahabir Nagar, New Delhi-110018.

CRL. REV. PET. 890/2023 [arising out of CC No. 1487/2022]

Address in Complaint	Verified Address in Application
Premises Right Hand Side to House No.: 12, Ground Floor to Top Floor, Khasra No.: 38/6/15, Rajindra Park, Nangloi, New Delhi-110041	House No.:12, Ground Floor to Top Floor, Khasra No.: 39/6/1, Rajindra Park Extension, Nangloi, New Delhi-110041

CRL. REV. PET. 891/2023 [arising out of CC No. 1045/2022]

Address in Complaint	Verified Address in Application
Jhuggi Right hand side of Jhuggi No.: W-02/R-18, Ground Floor and First Floor, B-1 Block, Raghubir Nagar, New Delhi-110027.	House No.: B-1/144, B1 Block, Ground Floor and First Floor, JJ Colony, Raghubir Nagar, New Delhi-110027

13. After verification of the address, applications were filed by the petitioner/complainant in all the complaints seeking to furnish better particulars/identification of the premises of the accused persons.

14. In the complaint case i.e. CC No. 894/2022 giving rise to the CRL. REV. P. 830/2023, the amendment application was filed on 12.07.2023. The application was taken up for hearing by the Special Court on the same day itself and was dismissed on the ground that the address upon which the raid was conducted, intimation with respect to the raid was posted and the so-called theft bill was posted/served upon the accused is entirely different from the address which is sought to be incorporated by virtue of amendment



application and the same entirely negates the case of the complainant with respect to the alleged theft, as well as, goes to the root of the present complaint.

15. Simultaneously, the complaint filed by the petitioner/complainant was also dismissed on the following premise:

“1. The offence of theft / abstraction of electricity, as already discussed earlier, will prima facie establish only w.r.t a particular place and the identity of that place itself is in doubt not by the court but by the complainant itself as the raid was conducted at a particular address and documents were also prepared and sent in this respect at a particular address but now by virtue of the amendment application the identity of the said address stand changed.

2. The load sheet showing different appliances allegedly being used by the accused do not tally with the videography contained in the CD tendered during the course of pre-summoning evidence.

3. There is no explanation w.r.t. non seizure of the illegal wires by cutting the same from the BSES pole to at least outside the house of the accused.”

16. The learned senior counsel appearing on behalf of the petitioner submits that the premises are situated in an unauthorized colony where the houses do not have municipal house numbers and it is very difficult to ascertain the house numbers, therefore, the SOP that is followed by the petitioner is to identify the number of premises with reference to validly installed meters in nearby or adjacent premises.

17. He submits that videography and photography was done by the inspection team at the time of conducting the raid, however, at the stage of pre-summoning evidence the officials of the petitioner re-visited the premises to find out the exact address of the premises and to particularize



the location. Accordingly, applications were filed seeking amendment along with the re-verification report.

18. He submits that the complaints were at the pre-summoning stage and the Special Court ought to have allowed the amendment as no prejudice was being caused to the other side by such amendment.

19. He submits that evidence in the form of statements of CW1 and CW2 was available on record which *prima facie* proves that the accused persons had indulged in offence of direct theft of electricity in terms of Section 135 of the Electricity Act, 2003.

20. He submits that insofar as the observation of the Special Court that the inspection team could have seized the illegal wires from outside the inspected premises but the same was not done, is contrary to the law laid down by this Court in ***Mukesh Rastogi Vs. North Delhi Power Limited, 2007 (99) DRJ 108***, wherein it was held that non-seizure of materials is not a fatal defect in a prosecution under Section 135 of the Electricity Act, 2003.

21. As far as the finding of the Special Court to the effect that the load sheet showing different appliances allegedly being used by the accused does not tally with the videography contained in the CD, the learned senior counsel submits that it is a matter of trial and at the pre-summoning stage such a detailed appreciation of evidence is not contemplated under Section 200 CrPC.

22. *Per contra*, learned APP has supported the findings recorded in the impugned orders. He submits that the amendment sought by the petitioner before the Special Court is not formal in nature. He further submits that the address upon which the raid was conducted and the address which is sought to be incorporated by way of amendment, are entirely different.

23. I have heard the learned counsel for the petitioner, as well as, the



learned APP for the State, and have perused the record.

24. It is not in dispute that the complaint was at the pre-summoning stage and cognizance had not been taken by the Special Court. Further, it is beyond doubt that there is no provision in the Code of Criminal Procedure providing for amendment of the complaint. Against this backdrop, the question that has to be considered is whether any amendment in the complaint is permissible under law.

25. This question need not detain this Court any longer, in as much as, the Hon'ble Supreme Court in ***S.R. Sukumar Vs. S. Sunaad Raghuram***, AIR 2015 SC 2757 relying upon the decision in ***UP Pollution Control Board Vs. Modi Distillery and Ors.***, AIR 1988 SC 1128, re-stated the legal position in this regard, in the following terms:

“18. What is discernible from the U.P. Pollution Control Board’s case is that easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is a likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.

19. In the instant case, the amendment application was filed on 24.05.2007 to carry out the amendment by adding paras 11(a) and 11 (b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. Firstly, Magistrate was yet to apply the



judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem ‘Khalnayakaru’ being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India.”

(emphasis supplied)

26. Clearly, an amendment of a complaint is permissible when – (i) cognizance has not been taken, (ii) the amendment does not change the original nature of the complaint, (iii) where an amendment sought relates to an infirmity which is curable by means of formal amendment, and (iv) where such amendment does not cause prejudice to the accused / the other side.

27. Tested on the touchstone of aforesaid principles, it appears that the application of the petitioner did not seek to change the address of the inspected premises but only sought to provide better particulars of the inspected premises for its exact identification, which is a curable infirmity.

28. Even otherwise, the amendment does not go to the root of the matter as it is only formal in nature and does not change the original nature of the complaint which is a complaint under Section 135 of the Electricity Act, 2003. Further, the Code of Criminal Procedure like all procedural laws, is



designed to further the ends of justice and not to frustrate them by introduction of endless technicalities.¹ Therefore, absence of specific provision in Code of Criminal Procedure, 1973 cannot be an impediment for allowing an amendment of the complaint at the pre-summoning stage to cure a formal defect in the complaint.

29. That apart, cognizance had not been taken and no prejudice was likely to be caused to the accused in case the amendment was allowed. This being the position, the Special Court erred in law while dismissing the application of the petitioner seeking formal amendment.

30. Insofar as the dismissal of the complaint is concerned, it appears that the Special Court has embarked upon detailed appreciation of evidence which is not contemplated at the stage of summoning. The Special Court was only expected to examine the pre-summoning evidence which was available in the form of the statement of CW1, CW2 and other exhibits to find out whether based on *prima facie* impression of the said material, an element of criminality is there for issuance of process, subject to determination at the stage of trial.

31. The Special Court ought not to have delved deep into the comparative examination of load sheet and the videography available on the record in the form of CD. The detailed conciliation of appliances in the load sheet and the videography is essentially a matter of trial and consideration of factual controversy in that regard at the stage of summoning will not be a judicious approach. The Special Court is not required to evaluate the merits of the material or evidence in support of the complaint, because the Special Court must not undertake an exercise to find out whether the material would lead to conviction or not.

¹ AIR 1956 SC 116



32. The question as to whether non-seizure of illegal wires etc., is a fatal defect in a prosecution under Section 135 of the Electricity Act, 2003 is also no more *res integra*. This Court in **Mukesh Rastogi (supra)** dealing with a similar question has observed that the Court has only to see whether theft has been proved by cogent evidence or not and mere non-production of the wires cannot fail the prosecution's case, if the theft of electricity is otherwise proved. The relevant paragraph of the afore-noted judgment read as under:-

"5. From the evidence it is apparent that the wires, cut out and the entire material being used for stealing electricity was collected from the spot. However, it is true that the wires used by the appellant for connecting LT Main directly upto the cut out were not produced in the Court. The counsel for the appellant argued that this non-production of the case material is serious lacuna on the part of the complainant and the appeal should be allowed. I consider that this argument must fail. The case against the appellant is of theft of electricity and the Court has to see whether this theft has been proved by cogent evidence or not. Mere non-production of the wires cannot fail the prosecution, if the theft of electricity is proved by cogent evidence otherwise. It must be kept in mind that complaint is filed by NDPL which is basically a distribution company. The officials working in enforcement department are not trained in investigation and since this is new job for them, it may take some time for them to learn the technicalities of investigation. Merely because there is a lapse on the part of the complainant company not to retain or not to produce the wires in the Court through which the electricity was being stolen, cannot fail the case if it is sufficiently proved by other evidences that electricity was being stolen by hooking wires directly to LT Main. In the present case; the evidence of CW2 and CW3 in respect of theft of electricity has gone unchallenged. CW 2 & CW 3 both were the members of enforcement team that had visited the spot. CW 2 & CW 3 had categorically stated that accused was taking supply of the electricity directly from NDPL LT Main through one number single phase two core wire and the electricity was being used for domestic as well commercial purposes

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8. It has to be kept in mind that the conclusion of theft by the Trial Court cannot be made merely on the basis of an inspection report. If the law had been that the inspection report in itself was conclusive evidence of the theft of electricity and no further evidence was required, it would have been possible for the counsel for the appellant to argue that since the inspection report was the conclusive evidence of theft, the inspection report must strictly comply with the rules. Inspection of the premises is merely a mean to detect the theft of electricity and to find the means by which the electricity was being stolen. Inspection Report is merely a piece of evidence and inspection report is not considered as a conclusive proof of the theft of electricity. The theft of electricity has to be proved by the complainant in the Court by cogent evidence therefore, the validity of the inspection report cannot be attached too much of importance. Similarly, non-production of the single core PVC wires through which electricity was being stolen is not a serious infirmity in this case since there is sufficient oral testimony supported by photographs showing the theft of electricity. The appellant has stated that the name of 'the photographer and copies of photographs were not supplied to him before hand. It is submitted by the counsel for the complainant that the photographs were of the premises of the appellant and there was apprehension to the life of the photographer, therefore his name was not disclosed. There is force in the submission. There was a likelihood of the photographer being put to a danger of life. Photographer was not an employee of the complainant company and it was an obligation of NDPL to keep the safety of photographer in mind "

33. The non-production of the wires etc. would warrant dismissal of the complaint only when the complainant fails to prove its case with other cogent evidence. To be noted, that material in the form of the statements of CW1, CW2, the videography, the inspection report and other material is available on record which ought to have been examined by the Special Court independently to arrive at a conclusion whether the material *prima facie* discloses the offence alleged against the accused warranting issuance of process. However, the manner in which the Special Court has non-suited the



complainant without considering the complaint and the evidence in support thereof, is not justified.

34. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.²

35. In view of the aforesaid discussion, the present petitions are allowed and the impugned orders are quashed and set aside. Accordingly, the applications seeking to furnish better particulars / identification of the premises of the accused persons are allowed. Let amended complaints, as well as, amended memo of parties be filed.

36. Consequently, the matters are remanded back to the Special Court and the Special Court is directed to proceed with the amended complaints in accordance with law.

37. The petitions stand disposed of.

38. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

DECEMBER 25, 2023

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² Sonu Gupta v. Deepak Gupta and Ors. 2015 (3) SCC 424