



2024:DHC:10109



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:24.12.2024

+ **CRL.REV.P. 945/2023**

BSES RAJDHANI POWER LTDPetitioner

versus

STATE GOVT OF NCT OF DELHI & ANR.Respondents

+ **CRL.REV.P. 947/2023**

BSES RAJDHANI POWER LTDPetitioner

versus

STATE GOVT OF NCT OF DELHI & ORS.Respondents

+ **CRL.REV.P. 948/2023**

BSES RAJDHANI POWER LTDPetitioner

versus

STATE GOVT. OF NCT OF DELHI & ANR.Respondents

+ **CRL.REV.P. 949/2023**

BSES RAJDHANI POWER LTDPetitioner

versus

STATE GOVT OF NCT OF DELHI & ANR.Respondents



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+ **CRL.REV.P. 950/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE GOVT OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 951/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE GOVT OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1000/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1001/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1006/2023**

BSES RAJDHANI POWER LTD

.....Petitioner



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versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 999/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1072/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1073/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1074/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents



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+ **CRL.REV.P. 1075/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1077/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1078/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

+ **CRL.REV.P. 1080/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1082/2023**

BSES RAJDHANI POWER LTD

.....Petitioner



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versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1093/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1094/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1109/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1147/2023 & CRL.M.A. 29368/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE NCT OF DELHI & ANR.

.....Respondents



2024:DHC:10109



+ **CRL.REV.P. 1148/2023 & CRL.M.A. 29370/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1149/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE NCT OF DELHI & ANR.

.....Respondents

+ **CRL.REV.P. 1269/2023**

BSES RAJDHANI POWER LTD

.....Petitioner

versus

STATE NCT OF DELHI & ORS.

.....Respondents

Present: Mr. Harshal Arora, Adv. for BSES Rajdhani Power Limited
in all the matters.

Mr. Sunil Kumar Gautam, APP for the State in all the matters.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN



JUDGMENT

1. The present petitions have been filed challenging various orders passed by the learned Additional Sessions Judge -01 ('ASJ') (Special Electricity Court), Central District, Tis Hazari District Courts, New Delhi, whereby the complaints filed by the petitioner department against the accused persons for offences under the Electricity Act, 2003 were dismissed at the pre-summoning stage. The applications filed by the petitioner department furnishing better particulars/identification of the premises of the accused persons were also dismissed by the learned Special Court along with the complaints.
2. The brief facts of the present cases are that the complaints were essentially filed for the offence under Section 135 of the Electricity Act, 2003 alleging theft of electricity. Thereafter, respective applications were filed seeking to furnish better particulars and to amend the number and identification of the premises. By the separate impugned orders, the learned Special Judge had dismissed the applications holding that the complainant by way of an amendment cannot be allowed to improve its case. It was observed that the identity of the place itself is under doubt in the cases. The learned Special Judge had also taken into account the discrepancy in the load sheet and videography as well as non-seizure of the illegal wires. Consequently, the complaints were also dismissed for want of proper evidence with regard to the commission of alleged offences.
3. The particulars of the separate cases are as under:



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CRL. REV PET. 945/2023 [arising out of CC No. 266-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
House near F-341, JJ Colony, Raghubir Nagar, New Delhi-110027	F-349, Old F Block, JJ Colony, Raghubir Nagar, New Delhi-110027	Dismissed vide impugned order dated 21.07.2023

CRL. REV PET. 947/2023 [arising out of CC No. 1414-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
Premises opposite to L-138, Ground Floor, J.J. Colony, Raghubir Nagar, New Delhi-110027	Jhuggi No.9, L Block, J.J. Colony, Raghubir Nagar, New Delhi-110027	Dismissed vide impugned order dated 12.07.2023

CRL. REV PET. 948/2023 [arising out of CC No. 1455-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
GF & FF opposite to H.No. F-319, J.J. Colony, Raghubir Nagar, New Delhi-110027	F-311, J.J. Colony, Raghubir Nagar, New Delhi-110027	Dismissed vide impugned order dated 21.07.2023



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CRL. REV PET. 949/2023 [arising out of CC No. 1429-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
Premises to opposite to R-470, J.J. Colony, Raghubir Nagar, New Delhi-110027	H. No. R-459, Block R, 25 sq. yds., J.J. Colony, Raghubir Nagar, New Delhi-110027	Dismissed vide impugned order dated 21.07.2023

CRL. REV PET. 950/2023 [arising out of CC No. 1374-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
Premises opposite to T-Huts-9, J.J. Colony, Raghubir Nagar, F Block, New Delhi-110027	G-733, F Block, J.J. Colony, Raghubir Nagar, New Delhi-110027	Dismissed vide impugned order dated 20.07.2023

CRL. REV PET. 951/2023 [arising out of CC No. 1410-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
premises opposite H. No. 261, Ground Floor, Khasra No. 24/6, PP Colony, Village Baprola, New Delhi-110041	premises opposite H. No. 261, Ground Floor, Khasra No. 26/6, PP Colony, Village Baprola, New Delhi-110041	Dismissed vide impugned order dated 20.07.2023



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CRL. REV PET. 1000/2023 [arising out of CC No. 923-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
House G/F and F/F near WZ-115, 80 sq. yds., Harijan Colony, Tilak Nagar, New Delhi-110018	House No. WZ-114, G/F, F/F, 80 sq. yds., Harijan Colony, Tilak Nagar, New Delhi-110018	Dismissed vide impugned order dated 20.07.2023

CRL. REV PET. 1001/2023 [arising out of CC No. 251-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
House near M-152, JJ Colony, 25 Sq Yds, Raghubir Nagar, New Delhi-110027	House No. M-164, FF, JJ Colony, 25 Sq Yds, Raghubir Nagar, New Delhi-110027	Dismissed vide impugned order dated 20.07.2023

CRL. REV PET. 1006/2023 [arising out of CC No. 1428-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
House Opposite To House No. WZ-159, Ravi Nagar, New Delhi-110018	WZ-192-193 (GF) Plot No. 7 & 8, Ravi Nagar, New Delhi-110018	Dismissed vide impugned order dated 21.07.2023



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CRL. REV PET. 999/2023 [arising out of CC No. 802-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
GF, FF, SF near B-306, J.J. Colony, Chaukhandi, New Delhi-110018	B-307, GF, FF, SF, J.J. Colony, Chaukhandi, New Delhi-110018	Dismissed vide impugned order dated 21.07.2023

CRL. REV PET. 1072/2023 [arising out of CC No. 1256-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
S-221/2 Gali No. 67, Vishnu Garden, near J Block, New Delhi-110018	H.No. S-221/1, Block J, Gali No.6, Vishnu Garden, New Delhi-110018	Dismissed vide impugned order dated 20.07.2023

CRL. REV PET. 1073/2023 [arising out of CC No. 1268-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
premises RHS of T.C.-84, GF+FF, J.J. Colony, Raghubir Nagar, New Delhi-110027	T.C.-85, J.J. Colony, Raghubir Nagar, New Delhi-110027	Dismissed vide impugned order dated 12.07.2023



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CRL. REV PET. 1074/2023 [arising out of CC No. 280-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
Plot RHS of Plot No. 158, Khasra No. 116, Village Neelwal, New Delhi-110041	H.No. 61, Khasra No. 116, Near Hanuman Mandir, Village Neelwal, Post Office Tikri Kalan, New Delhi-110041	Dismissed vide impugned order dated 20.07.2023

CRL. REV PET. 1075/2023 [arising out of CC No. 1327-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
Ground, First, Second and Third floor of premises Right Hand Side to B-198, 12.5 sq. yards, New TC Camp, Raghubir Nagar, New Delhi-110027	C-86, Ground, First, Second and Third floor, New TC Camp, 12.5 sq. yards, Raghubir Nagar, New Delhi-110027	Dismissed vide impugned order dated 12.07.2023

CRL. REV PET. 1077/2023 [arising out of CC No. 1451-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
premises adjacent to H.No. Ware House 109/10 & 109/20, Phirni Road, Mundka Village, New Delhi-110041	H.No. 854/3, G/F, Village Phirni Road, Mundka, near Vipin Dharam Kata, New Delhi-110041	Dismissed vide impugned order dated 07.08.2023



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CRL. REV PET. 1078/2023 [arising out of CC No. 1515-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
Premises opposite to H.No. 260, G/F, Jai Vihar, G-2 Block, Gali No.3, Baprola, New Delhi-110043	Shiv Building Material Shop at Khasra No. 46/20/1, Jai Vihar, G-2 Block, Baprola, New Delhi-110043	Dismissed vide impugned order dated 20.07.2023

CRL. REV PET. 1080/2023 [arising out of CC No. 422-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
premises Opposite to J-220/18, Vishnu Garden, New Delhi-110018	J-221/64, J BLK, Vishnu Garden, New Delhi-110018	Dismissed vide impugned order dated 07.08.2023

CRL. REV PET. 1082/2023 [arising out of CC No. 378-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
House near Stall No.100, Guru Nanak Market, Khyala, New Delhi-110018	Shop No. 122, GF, FF, SF, TF, Guru Nanak Market, Khyala, New Delhi-110018	Dismissed vide impugned order dated 20.07.2023



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CRL. REV PET. 1093/2023 [arising out of CC No. 1227-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
premises opposite to Stall No. 107, (GF/FF/SF) DDA Colony, Khayala, New Delhi-110018	Stall No. 112, (GF/FF/SF) DDA Colony, Khayala, New Delhi-110018	Dismissed vide impugned order dated 13.07.2023

CRL. REV PET. 1094/2023 [arising out of CC No. 1231-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
premises F/F, opposite WZ-154, 80 yards, Harijan Colony, Tilak Nagar, New Delhi-110018	WZ-101, F/F, 80 yards, Harijan Colony, Tilak Nagar, New Delhi-110018	Dismissed vide impugned order dated 12.07.2023

CRL. REV PET. 1109/2023 [arising out of CC No. 897-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
near Flat No. A-41-D, Fourth & Fifth Floor, Slum Flat, Raghubir Nagar, New Delhi-110027	A-44D, near Flat No. A-41-D, Fourth & Fifth Floor, Slum Flat, Raghubir Nagar, New Delhi-110027	Dismissed vide impugned order dated 20.07.2023



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CRL. REV PET. 1147/2023 [arising out of CC No. 866-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
premises opposite to Plot No. 479, Harijan Basti, New Rana Public School, Mundka, New Delhi-110041	Plot at Khasra No. 490, Ground Floor, Village Mundka Extn., Opposite New Rana Public School, New Delhi-110041	Dismissed vide impugned order dated 13.07.2023

CRL. REV PET. 1148/2023 [arising out of CC No. 1275-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
premises GF nearby H.No. 37 B, Khasra No. 73/12, Tikri Kalan Extn., New Delhi-110041	Plot No.4, G/F, Gall No.1, Block E, Khasra No. 73/24, Tikri Kalan Extn., New Delhi-110041	Dismissed vide impugned order dated 13.07.2023

CRL. REV PET. 1149/2023 [arising out of CC No. 1416-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
premises G/F & F/F opposite to L-2/23, New Mahabir Nagar, New Delhi-110018	H.No. L-2/32, G/F, F/F, New Mahabir Nagar, New Delhi-110018	Dismissed vide impugned order dated 07.08.2023



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CRL. REV PET. 1269/2023 [arising out of CC No. 1400-22]		
Address as per the Complaint	Verified Address in the Application	Status of Application and Complaint
premises opposite to Jhuggi No. 12, C Block, Raghubir Nagar, New Delhi-110027	Jhuggi No. 14, Ground and First Floor, C Block, PIG Shed, Raghubir Nagar, New Delhi-110027	Dismissed vide impugned order dated 12.07.2023

4. It is the case of the petitioner department that the amendment was only formal in nature and the complaints could not have been dismissed in the aforesaid manner.

5. It is pointed out that similar complaints filed by the petitioner/department against numerous accused persons for the offence under the Electricity Act, 2003 have been dismissed by the learned Special Courts holding that the amendment of the complaint is not permissible. The challenge to the said orders was considered by a Coordinate Bench of this Court in batch of petitions by common judgment dated 20.12.2023, passed in **Bses Rajdhani Power Ltd. v. State (NCT of Delhi) : 2023 SCC OnLine Del 8408**.

6. Undisputedly, the facts in the batch considered by the Coordinate Bench are similar to the facts of the present batch of matters. In the said judgment, the Coordinate Bench of this Court had also considered the effect of non-seizure of illegal wires and discrepancy in load sheet and videography at the stage of summoning.



The judgement passed by the Coordinate Bench of this Court is therefore applicable to the facts in the present case as well. The Coordinate Bench of this Court has held under:

“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.

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...

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.

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.”

(emphasis supplied)

7. In regard to the amendment in the complaints and providing better particulars of the concerned premises, it was held as under:

“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 v. S. Sunaad Raghuram**, (2015) 9 SCC 609 : AIR 2015 SC 2757 relying upon the decision in **UP Pollution Control Board v. Modi Distillery**, (1987) 3 SCC 684 : 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 [AIR 1956 SC 116]. Therefore, absence of specific provision in Criminal Procedure Code, 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.”

(emphasis supplied)

8. Considering that the learned Special Judge in all the said cases was heavily weighed by the discrepancy in the address details of the concerned property, the non-seizure of illegal wires and the load sheet not tallying with the videography, in the opinion of this Court, in view of the judgment in **Bses Rajdhani Power Ltd. v. State (NCT of Delhi)** (*supra*), the impugned orders are unsustainable. Moreover, as noted by the Coordinate Bench of this Court, the amendment applications ought to also have been allowed as they only sought to furnish better particulars without changing the original nature of the complaint and no prejudice was likely to be caused to the respective accused if the said applications were allowed.

9. In view of the above, the present petitions are allowed.

10. Consequently, the complaints are restored to their original



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numbers and the learned Special Court is directed to proceed with the amended complaints in accordance with law and the observations made by this Court in judgement dated 20.12.2023.

11. Pending applications also stand disposed of.

12. A copy of this order be placed in all the matters.

Copy of this order be sent to the Principal District & Sessions Judge, Tis Hazari Courts for necessary compliance and fixing a date before the concerned Special Court.

AMIT MAHAJAN, J

DECEMBER 24, 2024