

07.08.2023

Present : Sh. Saurabh – Legal Retainer of the complainant company with Ld. Counsel.
Accused is yet to be summoned in the present case.

The matter is fixed today for the purpose of arguments on the point of summoning as pre-summoning evidence has already been led.

An application for taking on record better particulars of the accused along with amended memo of parties and verification report already stand filed by the Ld. Counsel for the complainant.

By virtue of the said application, the complainant is seeking to amend the number and identification of the premises at which raid was conducted.

The Ld. Counsel for the complainant has also relied upon a judgment titled as ***S.R. Sukumar Vs. Sunaad Raghuram in Crl. Appeal No. 844/2015*** of the Hon'ble Supreme Court of India in order to argue that the amendment being sought is of formal nature by virtue of which the address at which the accused resides and the raid was conducted is sought to be specified and as the accused is yet to be summoned, the said amendment, if allowed being of formal nature, will not affect or prejudice the accused, as cognizance is yet to be taken. The complainant has also relied upon two more judgments cited as ***Sushil Kumar Vs. BSES Rajdhani Power Ltd. and anr. in Crl. Appeal No. 1060/2010 & Crl. M.(B) No. 1253/2010 decided on 22.12.2020 by the Hon'ble High Court of Delhi and U.P. Pollution Control Board Vs. Modi Distillery and ors. decided on 06.08.1987 by the Hon'ble Supreme Court of India.***

Heard. Considered.

Before deciding the application in the light of the submissions and the judgment relied upon by the Ld. Counsel for the complainant as well as for the purpose of issuance of summons to the accused, the court deems it fit to discuss the relevant facts of the case and the amendment sought, as under :-

1. The present case is a complaint case filed u/s 135/138 of the Electricity Act. In the absence of anything being specified in the Electricity Act 2003 w.r.t the procedure to be followed for the purpose of trial of such complaint cases, the provisions of Section 200 of the Cr.P.C. takes precedence w.r.t the trial of the present complaint case filed u/s 135 of the Electricity Act.
2. At this juncture, it would be appropriate to reproduce the provision contained in Section 135 (1) of the Act, which reads as under :-

135. Theft of electricity. - (1) Whoever, dishonestly, -

(a) taps, makes or causes to be made any connection with overhead, underground or under water 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 in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use--

(i) does not exceed 10 kilowatt, the fine imposed on first

conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorized 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.

3. It is crystal clear from the perusal of the aforesaid provision that in order to take cognizance of the offence u/s 135/138 of Electricity Act on a complaint like in the present case, the complainant has to satisfy the court that there are sufficient grounds to proceed to issue process against the accused and for this purpose the complainant is required to prove prima facie the following ingredients :

- (i) that there was theft or abstraction of electricity illegally by tapping from the source validly authorised to the accused;***
- (ii) that the said illegal act was being done by accused in the inspected / subject premises.***

4. Now in this background, coming to the facts of the present case, the allegations against the accused are to the effect that :-

(a) a raid was conducted on premises i.e. premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018;

(b) allegedly the accused was found indulged in commission of theft of electricity at the address i.e. premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018;

(c) the raiding party prepared an inspection report bearing the address as “premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018”;

(d) an assessment of connected load at the address i.e. premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018, was also prepared;

(e) a seizure memo was also prepared stating that “no material was seized through which the alleged theft was taking place due to consumer resistance” and the said seizure memo bears the address as of premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018;

(f) an intimation u/s 135(1A) of the Electricity Act was served upon the concerned PS stating therein that an alleged theft of electricity was going on at the premises i.e. premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018;

(g) a copy of the said intimation along with the copy of the CD containing the videography of the raid was also served by way of registered post upon the accused at the address as of premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018;

(h) a certificate u/s 65B(4)(C) of the Indian Evidence Act w.r.t the authenticity of the CD containing the

videography of the raid w.r.t the address i.e. premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018 also stand filed;

(i) an electricity bill w.r.t assessment of direct theft of electricity was also served upon the accused at the address i.e. premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018.

Meaning thereby that the entire complaint case of the complainant rests upon the footing that a raid was conducted at premises i.e. **premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018** and all the documents w.r.t the said raid were served upon the police officials and the notice and the bill w.r.t the alleged theft was posted to the accused at such address i.e. premises Opp. to J-220/18, Vishnu Garden, New Delhi-110018.

Now, by virtue of the present amendment application along with alleged site verification report, the complainant is seeking to incorporate an entirely different address i.e. **J-221/64, J BLK, Vishnu Garden, New Delhi-110018**, which nowhere matches with the address upon which the raid was conducted, upon which the notice was served purportedly posted upon the accused, upon which the electricity bill was purportedly posted upon the accused.

In this background, the question arises, can the complainant take the plea that the amendment being sought by it is only of a formal nature and as such, will not cause any prejudice to the accused as the cognizance of the complaint is yet to be taken and the accused is yet to be summoned after taking cognizance.

In the opinion of this court, the answer to this question is “No”.

As already observed earlier, the address upon which the raid was conducted, the address upon which the police complaint was registered, the address upon which the intimation w.r.t the raid was posted upon the accused and the address upon which the so called theft bill was posted upon the accused, goes to the root of the present complaint.

The said address is entirely different from the address which is sought to be incorporated by virtue of the present amendment application / amended memo of parties as the same entirely belies the case of the complainant w.r.t the alleged theft.

If such amendment is to be allowed, that would imply that the address, mentioned in the raid documents as well as in the subsequent intimation served upon the police authorities and the accused, never existed and if such address never existed, the incorporation of new address will certainly cause prejudice to the accused and also fails to inspire confidence in the mind of the court that indeed the offence complained of at the address, did ever take place because the address itself stand modified which is a crucial factor as far as the present complaint u/s 135 of Electricity Act is concerned as unlike other criminal cases, w.r.t a criminal complaint under the provisions of Electricity Act not only the person who has committed the offence is material but also the place where the alleged offence i.e. the theft of electricity was taking place, is of utmost importance.

In the specific context of the offences u/s 135/138 of the Electricity Act, the alleged accused cannot commit the offence of theft of electricity unless and until the said theft of electricity is taking place at a particular place and if the identity

of that particular place is itself doubted and that too by the complainant who is making allegations of commission of offence, it cannot call upon the court to take cognizance of the offence regarding which it has failed to prove any concrete evidence by virtue of pre-summoning evidence.

It is also well settled that u/s 135/138 of the Electricity Act, for the purpose of taking cognizance the onus on the complainant is to prima facie prove abstraction of electricity by artificial means or means not authorized by it and for that purpose, during the course of pre-summoning evidence, the complainant has to at least prima facie discharge the said onus of proving abstraction of electricity by not only examining the members of the inspection team but also producing the device through which the electricity was being abstracted and to also prove the mode of abstraction.

In these circumstances, the judgment of Hon'ble Supreme Court of India relied upon by the Ld. Counsel for the complainant, in the opinion of this court, instead of favouring the complainant, goes against it as the amendment sought is not formal in nature but goes to the root of the alleged offence and will certainly cause prejudice to the accused.

Accordingly, the court, for the purpose of taking cognizance, has also gone through the pre-summoning evidence led by the complainant and a perusal of the CD containing purported videography of the raid, tendered during the course of evidence, makes it very much clear that the allegations levelled by the complainant w.r.t the document titled as "assessment of connected load" depicting various electrical appliances being used by the accused, nowhere tallies with the videography so

recorded and the complainant has failed to explain to the court as to how the said appliances found mention in the connected load sheet tendered during the course of pre-summoning evidence and when the said connected load sheet stand not proved, the subsequent document i.e. alleged theft bill so prepared on the basis of the said connected load sheet also become unreliable.

Furthermore, during the course of pre-summoning evidence it has also come on record on the basis of documents tendered in evidence that the material through which the electricity was allegedly being abstracted, has been stated by the complainant to have not been seized on account of resistance shown by the accused. However, at the same time, during the course of pre-summoning evidence it is also deposed by virtue of documents relied upon that the electricity was being abstracted by connecting illegal wires from the BSES pole.

There is no explanation on the court record as to when the illegal wires were connected to the BSES pole which belongs to the BSES itself and as per the common knowledge stands/erected on a public road, what prevented the BSES inspecting team to cut the said alleged illegal wires from the pole itself at one end and also cut the said illegal wires from outside the house of the accused at another end, if, as per the complainant, the accused had put resistance inside his house. The said wires, if were to be cut from the BSES pole to the house of the accused, would very well prove and strengthen the case of the complainant that indeed any such illegal abstraction of energy was being done by the accused.

The court is seized of around 200 matters pertaining to the complainant in which the very same wording “no material

could be seized due to user's resistance” has been used very conveniently by the complainant in order to overcome their own negligence in collecting / seizing the material through which they are alleging that the accused was abstracting electricity.

Accordingly, in view of the above findings / observations of this court, it is very much clear that in terms of the provisions of Section 200 of the Cr.P.C. taking into consideration the pre-summoning evidence and the arguments led by the Ld. Counsel for the complainant, the court has come to the conclusion that the complainant has failed to prove prima facie that there was theft or abstraction of electricity illegally by tapping from the source validly authorized to the accused on the following counts :

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.

Hence, in the light of the above findings of this court, it is very much clear that the complainant has failed to prove that the alleged offence ever took place.

In these circumstances, in terms of the provisions of Section 203 Cr.P.C., the court has come to the conclusion that there is no sufficient ground for proceeding against the accused and as such, the amendment application stands dismissed and the complaint also stands dismissed for want of proper evidence on the part of the complainant as it has failed to satisfy the court w.r.t the commission of alleged offence as the court do not find commission of offence at the particular place being taking place, in view of the failure on the part of the complainant to identify the place where theft was taking place and also in view of the observation of the court w.r.t the failure on the part of the complainant to prove the load sheet and the consequential theft bill prepared in pursuance of the said load sheet.

File be consigned to record room after due compliance.

(Vinay Singhal)
ASJ (Electricity) - 01,
Central/Tis Hazari Courts/Delhi
07.08.2023