IN THE COURT OF SH. VIDYA PRAKASH, SPECIAL JUDGE, ELECTRICITY COURT – 01, CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI.

Crl. Complaint No. 321931/16 (old CC No. 835/15)

In the matter of :

BSES RAJDHANI POWER Ltd.
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT HAVING ITS REGISTERED OFFICE AT: BSES BHAWAN,
NEHRU PLACE, NEW DELHI - 110019, AND
CORPORATE, LEGAL AND ENFORCEMENT CELL, NEAR ANDREWS GANJ MARKET, NEW DELHI - 110049.

THROUGH SHRI BINAY KUMAR, ITS AUTHORISED OFFICER.

......COMPLAINANT

VERSUS

PINKI (USER)
W/O VIJAY KUMAR
G-16-B, OPPOSITE G-52-A,
OM VIHAR, PHASE-V,
UTTAM NAGAR,
NEW DELHI – 110059.

........ACCUSED

PS: UTTAM NAGAR

DATE OF INSTITUTION : 07.04.2015
DATE OF ARGUMENTS : 06.02.2021
DATE OF JUDGEMENT : 11.02.2021

COMPLAINT UNDER SECTION 135 READ WITH SECTION 154 OF THE ELECTRICITY ACT, 2003

Brief facts :

1. The present complaint case has been filed under Section 135 r/w Section 154 of Electricity Act (hereinafter called as the Act) through Sh. Binay

Kumar, Authorised Representative of the complainant company, with prayer to summon, try and punish the accused for the commission of offence under Section 135 of the Act and to determine civil liability in terms of provision contained in Section 154 (5) of the Act and to award the recovered amount as compensation to the complainant company.

2. In brief, the case of the complainant company, as mentioned in the complaint case, is that on 10.02.2015, a joint inspection team comprising of Sh. Arafat Nabi – Asstt. Manager (PW 2); Sh. Lokesh - Engineer (PW 3) and Sh. Ravinder - Technician (PW 4) inspected the premises i.e. G-16-B, Opposite G-52-A, Om Vihar, Phase V, Uttam Nagar, New Delhi 59 (hereinafter called as the subject premises) falling within its distribution area. Accused herein was running a tea stall and accused was allegedly found indulged in direct theft of electricity by tapping from BSES service cable with the help of illegal wires. It is further alleged that no meter was found installed at the subject premises. It is claimed that inspection team prepared inspection report (Ex. CW 2/1) alongwith rough sketch/ diagram depicting the mode of theft, load report (Ex.CW 2/2) and Formal seizure memo (Ex. CW 2/3). However, illegal wire, which was being used for direct theft of electricity, could not be seized due to resistance of the consumer at the site. It is alleged that connected load of the premises was found as 5.624 KW for domestic purpose (DX). It is further the case of the complainant that photography/ videography was conducted by photographer namely Garav at site. The CD thereof is also placed on record in this regard. It is alleged that aforesaid illegal act of the accused resulted in causing wrongful loss to the complainant company and wrongful gain to herself and same amounts to direct theft of electricity within the meaning of Section 135 of Electricity Act. It is claimed that theft bill (Ex. CW 2/5) for a sum of Rs. 92,667/- was raised by the complainant company as per DERC Regulations and Tariff Order applicable for the relevant period but accused failed to make the payment of theft bill amount. Hence, the present complaint case has been filed.

Summoning of accused and framing of notice under Section 251 CrP.C.

3. After recording of pre-summoning evidence by the complainant company, summons of the present complaint case were directed to be issued to the accused vide order dt. 04.12.2015 passed by Ld. Predecessor of this Court. Accused was admitted to bail vide order dt. 28.07.2016. On joint request, parties were referred to Lok Adalat but matter could not be settled between them.

4. Notice of accusations in terms of provision under Section 251 CrP.C. was served upon the accused on 16.05.2019. Accused pleaded not guilty and claimed trial.

5. In order to establish the guilt of accused, the complainant company has examined five witnesses namely Sh. Rajesh Arora, Sh. Arafat Nabi, Sh. Lokesh Verma, Sh. Ravinder and Smt. Shobhna MG as PW 1 to PW 5 respectively during post summoning evidence. The testimonies, in detail, of all these five witnesses shall be discussed herein after in subsequent paras.

6. After closing of post summoning evidence on 04.01.2021, the statement of accused in terms of Section 313 CrPC was recorded on 02.02.2021 and the relevant incriminating evidence, which came on record, were put to her but she denied the same. She claimed in the said statement that she did not commit the alleged theft of electricity and she has been falsely implicated in this case. However, she preferred not to lead any evidence in her defence.

7. I have already heard Sh. Jasbir Singh, Advocate on behalf of complainant and Sh. Praveen Yadav, Advocate on behalf of accused. I have also gone through the material available on record and the authorities cited at the Bar.

8. Before dealing with the submissions made on behalf of both the sides, it would be necessary to discuss, in brief, the testimonies of the complainant's witnesses examined during trial. As already noted above, five witnesses in all were examined by complainant in support of their case during trial.

9. PW 1 Sh. Rajesh Arora is Authorized Representative of the complainant company, who deposed that GPA dt. 10.01.2018 was executed in his favour by CEO of the complainant company to represent and act on their behalf in the legal cases instituted by said company. He has proved self attested copy of said GPA as Ex. PW 1/1. He has also proved present complaint case as Ex. CW 1/1.

10. During his cross examination, he has admitted that he does not have personal knowledge of the facts of the present case. He also admitted that he was not member of the raiding party. However, he denied the suggestion that complaint case was not filed by Authorized person or that the documents filed alongwith complaint case, are false or baseless.

11. PW 2 Sh. Arafat Nabi, who was working as Asstt. Manager (Enforcement) with complainant company deposed that consequent upon the instructions of DGM, a raiding team consisting of himself, Lokesh-DET, Sh. Ravinder- Technician and Sh. Gaurav – Videographer, was constituted. He further deposed that they all reached at the aforesaid premises for carrying out inspection thereof. They met one Pinki, who was user of electricity and no meter was found at the site. On inspection, raiding team found that supply was running directly with the help of illegal wire through BSES Service cable. He further deposed that the assessed connected load was found as 5.64 KW/DX approx. Joint Inspection team prepared the Inspection report Ex. CW 2/1 (colly), bearing his signatures at point A on it. He further deposed that illegal material could not be seized due to resistance from the consumer. Further that, she also refused to accept the said report.

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12. In his cross examination, PW 2 admitted that there was no written instructions to conduct the inspection at the subject premises. He neither made any departure entry in the Office on the date of inspection nor he called the police for assistance at the time of resistance created by user. He stated that inspection report was prepared away from the subject premises but he could not disclose the exact distance. He admitted that he did not paste any inspection report on the wall of the subject premises. PW 2 also admitted that he did not verify whether the service cable of BRPL was connected to which electricity connection. He further admitted that he did not make verification with regard to the ownership/ occupier-ship / tenancy from the person at site. He denied the suggestions that neither any raid nor videography were conducted or any document was prepared at the site.

13. Being member of the Raiding Team, PW 3 Sh. Lokesh Verma deposed on the identical lines of PW 2. He deposed that Pinki (User), who met at the subject premises, did not allow them to enter into the subject premises. He further deposed that videography of the subject premises was started though the door was half opened and the connected load was assessed to the possible extent and Inspection Report was prepared inside the Van. He also deposed that Pinki refused to accept the report so prepared at the site.

14. During his cross examination, he admitted that he was not having knowledge whether Raiding Team acted upon oral or written complaint. He stated that no verification was made from neighbourhood regarding theft of electricity and regarding ownership/ user. He did not check property documents in respect of ownership of the subject premises and regarding identity of the accused at the time of inspection proceedings. He admitted that no public person was asked to join the investigation proceedings or to sign the said inspection report. He further admitted that he was not having knowledge whether accused Pinki was owner/ occupier or tenant at the subject premises.

15. PW 4 Sh. Ravinder, Technician deposed that no meter was found at the site and there was direct theft of electricity through service cable. He has also deposed on the identical lines of PW 2 and PW 3.

16. During his cross examination, he admitted that no call was made to the police during consumer's resistance. He admitted that they did not make any public witness with regard to the alleged inspection. He also admitted that he did not make any enquiry regarding ownership of the subject premises from neighbourers. PW 4 also admitted that he was not having knowledge as to whether Pinki was owner/ occupier or tenant of the subject premises. He denied the suggestions that no videography was conducted at the subject premises or that Pinki did not meet them at the site or that she was not having any concern with the subject premises or with the present case.

17. Ms. Shobhna, MG was called in the witness-box and she had been examined as PW 5. She identified signatures of Sh. A.S. Menon on Theft Assessment Bill Ex. PW 5/A (previously exhibited as Ex. CW 2/5 during pre-summoning evidence) as Sh. A.S.Menon had already retired from the services of the complainant company in February, 2018. She deposed that theft bill (Ex. PW 5/A) was issued on the basis of relevant documents including inspection report, etc as well as DERC regulations and guidelines.

18. In her cross examination, she denied the suggestions that she had never worked with Sh. A.S.Menon or that she could not identify the signatures of Sh A.S.Menon. However, she admitted that theft bill (Ex.PW 5/A) was neither prepared or issued by her nor it was issued in her presence. She denied the suggestion that said bill is false or incorrect.

ARGUMENTS ADVANCED & CASE LAW CITED

19. Arguments advanced by Ld. counsel for the complainant are that :-
(i) on 10.02.2015, on behalf of complainant, a Joint Inspection Team

(comprising of Sh. Arafat Nabi – Asstt. Manager; Sh. Lokesh - Engineer and Sh. Ravinder - Technician), who were duly authorised under Section 135 (2) of the Electricity Act, 2003 to enter, inspect, break open, search, seize and remove all such devices, instruments, wire, etc, had inspected the subject premises i.e. G-16-B, Opposite G-52-A, Om Vihar, Phase V, Uttam Nagar, New Delhi 59, where accused Pinki was found to be the USER of the electricity;

(ii) there was no meter equipment installed at the site and it was found that accused was indulging in direct theft of electricity by illegally and directly tapping from BSES Pole with the help of illegal wire;

(iii) the total connected load was found as 5.624 KW/DX/DT for domestic purpose; and

(iv) the accused failed to produce any electricity bill at the time of inspection.

20. Ld. counsel for the complainant company further argued that illegal wire which was being used by the accused for committing theft of electricity, could not be seized due to resistance of the accused and mob had gathered at the site. He further submitted that at the time of inspection, necessary photography/ Videography was also done by the Joint Inspection Team with the help of videographer namely Gaurav. Ld. counsel for the complainant strengthened his arguments by stating that inspection was carried out while following the whole procedure in accordance with the relevant provisions of Electricity Act and the Regulations framed thereunder. He also heavily relied upon Inspection Report (Ex.CW 2/1-colly), Load Report, CD in respect of inspection conducted at the subject premises and formal seizure memo statedly prepared by Joint Inspection team at the site.

21. Ld. counsel for complainant further contended that inspection in question was conducted by Authorized Officers of the complainant company.

Hence, there is no reason to disbelieve the inspection report. Inspection report in itself is a sufficient document to prove the illegal act done by the accused. In support of his said argument, he has relied upon judgment passed by Hon'ble Supreme Court in case titled as **“Punjab State Electricity Board & Ors. Vs. Ashwani Kumar”** reported at **2010 (7) SCC 569.**

22. Ld. counsel for the complainant further argued that non production of illegal wire does not show that accused was not indulging in theft of electricity when other seized material from the site, sufficiently prove that present case is of theft of electricity by directly tapping from BSES service cable with the help of illegal wires. For said purpose, he contended that PW 2 to PW 4, who were members of the Raiding Team, have proved the relevant document i.e. Inspection report as Ex. CW 2/1 (colly). In support of said submission, he alos placed reliance upon judgment passed by Hon'ble Delhi High Court in case tilted as **“Mukesh Rastogi Vs North Delhi Power Limited”** reported at **2007(99) DRJ108.**

23. On the basis of abovenoted submissions, counsel of complainant company urged that the complainant company has successfully proved its case against the accused beyond reasonable doubt. Hence, the accused is liable to be convicted in this case.

24. Per contra, counsel of accused vehmentally argued that the complainant company has miserably failed to establish the offence charged against accused beyond reasonable doubt. For the said purpose, he argued that no evidence is led by complainant company to prove that subject premises was belonging to the accused or that she was actually found indulging in direct theft of electricity at any point of time. For the said purpose, he also pointed out that none of the documents including Inspection Report, Load Report and Seizure Memo, bears the signature of accused and there is no evidence to establish her presence at the subject premises on the date when inspection was allegedly carried out by Joint Inspection Team of the

complainant company. He further argued that there is total non-compliance of Regulation No. 25 (III) and Regulation No.52 of DERC Regulations, 2007. In order to strengthen the said arguments, counsel of accused referred to various clauses of Regulation No.52 of DERC Regulations, whereby Joint Inspection Team is enjoined upon to comply with the relevant directions / procedure as provided therein. He, therefore, urged that accused is entitled to be acquitted in this case.

25. At this juncture, it would be useful to discuss the scheme of the Act. By virtue of Section 135 (2) of the Act, certain powers have been given to the Officers of specified category to be notified in the Official Gazette by the State Government, to carry out inspection of any place or premises and to search or seize / remove the devices / wires / instruments or examine or seize books of accounts / documents which are considered to be relevant for the purpose of investigation of offence under Section 135 (1) of the said Act. Not only this, Authorized Officer is also empowered by Section 135 (2) of the Act to disconnect the electricity supply in case of detection of dishonest use of electricity, with further provision for restoration of the electricity by following the procedure as provided therein. Third Proviso attached to Section 135 (1) of the Act contains a presumption in favour of licensee / supplier to the effect that whenever it is proved that any artificial means or means not authorized by licensee or supplier, exists for the abstraction, consumption or use of electricity by the consumer then, unless the contrary is proved, it shall be presumed that such abstraction, consumption or use of electricity has been dishonestly caused by such consumer. Thus, it is quite crystal clear that the said presumption is rebuttable in nature. Section 178 of the Act empowers Central Commission to make Regulations which are to be notified. In exercise of such powers, DERC Regulations, 2007 (as were applicable during the relevant period) were promulgated by Central Commission.

26. Now, coming back to the facts of present case. As already noted above,

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it is the case of the complainant company that an inspection was carried out on 10.02.2015 by Joint Inspection Team consisting of PW-2 to PW 4 and accused was allegedly found to be indulging in direct theft of electricity by directly tapping from BSES Service cable with the help of illegal wires.

27. The material witnesses examined during trial in order to establish the offence pressed against accused are PW-2 to PW-4. PW-1 is AR of complainant company who has admitted that he had no personal knowledge about the facts of the present case and he has merely proved the factum of institution of the present complaint case through him, being Competent and Authorized Officer of the complainant company. Likewise, PW 5 has simply identified the signatures of Sh. A.S.Menon, who had issued the theft bill in question and she herself admitted during her cross examination that she did not have any personal knowledge about the facts of the case and the theft bill in question was neither issued by her nor same was prepared by her.

28. The testimonies of PW-2 Arafat Nabi, PW 3 Lokesh Verma and of PW 4 Ravinder are most relevant for the purpose of deciding as to whether the complainant company has been able to prove its case against accused beyond reasonable doubt or not. No doubt, all the said three witnesses have deposed about the factum of inspection being carried out by Joint Inspection Team at the subject premises, as also about the factum of preparation of Inspection Report at the site and said Report being offered to the user. However, it is important to note that said witnesses nowhere stated in their respective testimonies that it was accused herein, who was found present at the subject premises at the time of said inspection. They did not identify accused during trial. In other words, there is no dock identification of accused from the side of said witnesses, who all are alleged eye witnesses being part of the Joint Inspection Team, examined on behalf of the complainant company during trial. There may be more than one person with the name of Pinki residing in the same locality. This fact assumes importance in the backdrop of the fact that none of the documents placed on record, bears the signatures of

accused herein. Thus, it could not be established beyond doubt that it was only and only accused, who was found present at the subject premises or that she was indulging in direct theft of electricity. There is no iota of evidence on record to show or establish that the accused herein has any concern with the inspected premises in any manner. Rather, PW 2 to PW 4 have admitted during their respective cross-examination that they did not attempt to make any enquiry from the neighbourhood about the ownership / occupiership/ tenancy of the user at the site.

29. Apart from above, it is also relevant to note that all the three witnesses i.e. PW-2 to PW 4, nowhere deposed as to who had prepared the documents at the site. They also nowhere stated as to who all had signed the said documents which were claimed to be prepared at the site. This is apart from the fact that except Inspection Report, other documents including Load Report and Formal Seizure Memo were not put to said three witnesses during post summoning evidence and said documents were not even exhibited, what to say of being proved as per law. That being the position, it could not be established that the said documents were actually prepared at the site. Since, the said documents have not been proved by the witnesses of complainant company during trial, same, even if available on record, cannot be looked into or considered by the Court, as per the well settled proposition of law.

30. There is another strange aspect involved in this case. A bare perusal of inspection report [Ex. CW 2/1(colly)] would show that it contains reference to one meter No. 24438989. However, it is not clear either from said document or from the entire case set up by the complainant company as to where the said meter was installed and the reason for mentioning the said meter number in the Inspection Report when it is the specific case of complainant company that accused was indulging in direct theft of electricity and there was no electricity meter found installed at the site. In this backdrop, the complainant company could have produced KYC file of aforesaid meter during trial in order to clarify the situation, but same has not been done in this case.

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31. It is also pertinent to note that the address of subject premises as mentioned in para 7 of the complaint case is **"G-16B, Opposite G-52A, Om Vihar, Phase V, Uttam Nagar, New Delhi-59",** as also in the theft bill (Ex. PW 5/A), which is in disparity with the address of subject premises i.e. **G-61B, Opposite G-52A, Om Vihar, Phase V, Uttam Nagar, New Delhi** as mentioned in the Inspection Report. Thus, there is an inherent discrepancy with regard to exact address of the premises where inspection was allegedly carried out by the Officers of the complainant company. Same also creates doubt in the case of complainant company, the benefit of which should be given to the accused.

32. It is quite evident from the above said discussion that load report has not been proved during trial and, that is why, for want of any reliable or cogent evidence showing that theft bill (Ex. PW 1/5) is based upon actual connected load found at the time of inspection at subject premises, it cannot be said that theft bill (Ex.PW 1/5) is valid or correct. This fact further resumes importance in the backdrop of relevant portion of cross examination dt.26.02.2020 of PW 2 that they had assessed the connected load of 5.64 KW/DX approximately from outside as they were not allowed to enter inside the subject premises.

33. There are other reasons which further persuade this Court to hold that the complainant company has not been able to prove the allegations levelled against the accused in this case. It may be noted that Regulation 52 (ix) of Delhi Electricity Supply Code and Performance Standards (DERC) Regulations, 2007 requires 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. In the present case, PW 2 who is Head of the Raiding Team, has admitted during his cross examination that copy of Inspection Report was not pasted on the wall of the subject premises, on being refused to be accepted by the user/ consumer. Not only this, it is being

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claimed by the aforesaid three witnesses of the complainant company that there was resistance created by user/ consumer at the site but at the same time, all three of them have admitted during their respective cross examination that no attempt was made to call the police at the site or for taking any police assistance on that day. Moreover, it is nowhere the case of the complainant company that any police complaint, as envisaged in IInd Proviso to Section 135 (1A) of the Electricity Act, was ever filed with the concerned Police Station either within 24 hours from the date of alleged inspection or at any point of time thereafter. No such police complaint is available on record.

34. In the case titled as **"BSES Yamuna Power Ltd. Vs. Sh. Shamim Ahmed", Crl. LP No. 723 of 2018**, decided on 1 November, 2018, Hon'ble Delhi High Court while discussing with the requirement of Regulation 52 (ix) of Delhi Electricity Supply Code and Performance Standards (DERC) Regulations, 2007 has held as under:-

> **"xxxx**
>
> **It is odd that if a raid was conducted, there is no record of the date and time as to when 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..." thus, the Court finds no reason to interfere with the impugned order. The petition is without merit and the same is accordingly dismissed.**
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> **xxxx"**

35. In the case titled as **"BSES Rajdhani Ltd. Vs. Usha Shokeen & Anr". Crl LP No.514/2018** decided on 07 August, 2018, Hon'ble Delhi High Court has observed as under:-

"xxxx

In a criminal trial, it is for the prosecution to prove its case beyond all reasonable doubt; it must stand on his legs. This Court is of the view that the appellant is right in his submissions that there is no document on record to show that the appellant was either the owner or the occupier or the user of the said premises and was using the electricity generated from the illegal meter installed at that premises. It is not the case of the prosecution that this illegal meter was found installed in the premises of the appellant. Prosecution having failed to prove this necessary ingredient, the case of the prosecution must fail. Section 135 of the Electricity Act positively pre-supposes a situation that a dishonest abstraction of electricity and its use must be established against the party before that party can be nailed.

Xxxx"

36. Apart from above, it is also relevant to note that the complainant company failed to produce its videographer namely Gaurav, who had allegedly accompanied Joint Inspection Team to the subject premises on 10.02.2015 and had allegedly conducted videography of the inspection carried out at the subject premises. No explanation whatsoever has been furnished on their behalf for non examination of said witness during trial. Moreover, CD containing videography of alleged inspection, is neither played during the testimonies of PW 2 to PW 4 nor same has been proved otherwise during post summoning evidence by the complainant company, for the reasons best known to them. Further, requisite certificate in terms of Section 65 B of Indian Evidence Act with regard to said CD, is not even filed on record by the complainant company. It is needless to mention that said CD was one of the material piece of evidence relied by complainant company and it would have proved the presence of accused at the subject premises at the time of inspection allegedly carried out on 10.02.2015 but no attempt has been made

by complainant company for producing the concerned videographer and to prove the said CD during trial.

37. In the light of aforesaid discussion, Court is of the considered opinion that the complainant company has failed to prove the offence charged against accused namely Pinki beyond reasonable doubt. Consequently, the accused stands acquitted of the charge levelled against her. The amount, if any, deposited by accused in terms of any interim order / direction passed by the Court in the present proceedings, shall be refunded by complainant company to her after expiry of the period of appeal, as per the rules. Accused, however, is, directed to furnish personal bond in the sum of Rs.20,000/- with one surety in the like amount in terms of Section 437A Cr.PC. She is directed to appear before Ld. Appellate Court in case any appeal is preferred by complainant company against the judgment passed by this Court.

38. File be consigned to Record Room after due compliance.

Announced in the Open Court,
On 11.02.2021

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(Vidya Prakash)
Special Judge, Electricity Court-01,
Central, Tis Hazari Court, Delhi