

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

+ CRL.M.C. 3635/2009

ROHIT Petitioner
^ Through: Mr. Kunwar Udai Bhan Singh, Adv.
versus

\$ BSES RAJDHANI POWER LTD. Respondent
^ Through: Mr. Sunil Fernandes, BSES RPL

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? Yes

: V.K. JAIN, J. (ORAL)

1. This is a petition for quashing the criminal complaint filed by the respondent-BSES Rajdhani Power Limited against the petitioner under Section 135 of Electricity Act read with Sections 151 and 154 thereof. The case of the complainant, in nutshell, is that during inspection/raid, conducted by its officials on 26th February, 2007, at the back portion of factory of one Ballan Singh, in Khasra No.5, Village Kamruddin Nagar, Nangloi, it was found that the accused persons were indulging in direct theft of electricity by tapping BSES lines and connecting to a change over switch from where three phases

were distributed to plastic moulding and mixing machines. The entire load in the premises was found running direct from BSES RPL System. The officials of BSES had to enter the premises by jumping from the gate, which had been intentionally closed on seeing them and police officials and in order to avoid inspection.

2. The scope of exercise of power under Section 482 Cr. P.C. and the categories of cases where the High Court may exercise power under it, relating to cognizable offences, to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in **State of Haryana v. Bhajan Lal**; AIR 1992 SC 604. The illustrative categories indicated by the Hon'ble Supreme Court are as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section [156\(1\)](#) of the Code except under an order of Magistrate within the purview of Section [155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the

evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section [155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In **R. Kalyani v Janak C. Mehta & Others**; (2009) 1 Supreme Court Cases 516, the Hon'ble Supreme Court summarized the proposition of law on the subject as under:

“(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

3. It has been specifically alleged in the complaint that the petitioner was one of the persons who was using the electricity by committing theft from BSES lines. Whether the petitioner was actually one of the users or not is a matter which requires investigation during trial. Suffice it to say that the name of this petitioner, as one of the users, finds mention in the Inspection Report—(Meter Details) Annexure-6 to the petition against column “Remarks”. Three persons, namely, Raj Singh, Mahavir and Rohit, are shown as the users and the address shown is back side of K.No.2631J0510057, Khasra No.5, Village

Kamruddin Nagar, Nangloi. The observations made in the Inspection Report also show that it was a case of direct theft by tapping from BSES lines. Column 2.2 of the Inspection Report, placed on page 36 of the file, shows that three persons Raj Singh, Advocate, Rohit and Mahavit have been shown as user and the address shown is back side of K.No.2631J0510057, Khasra No.5, Village Kamruddin Nagar, Nangloi. Obviously, K. No. 2631J0510057 is the electric connection installed in the factory of Ballan Singh.

4. It has also come in the statement of CW-2 that the accused persons were present on the spot at the time of inspection. The petitioner is one of the accused in the complaint. Thus, according to CW-2, who was as member of the raiding party, he was present on the spot though all the accused refused to sign and receive the documents.

5. In my view, at this stage, it is not possible for this Court in the proceedings under Section 482 of Code of Criminal Procedure to decide whether the petitioner was actually one of the users of the electricity stolen from BSES lines or not. There is prima facie evidence available against him on record. The trial is yet to commence in the presence of accused persons. Since the matter requires investigation during trial, no ground is made out for quashing the complaint. The learned counsel

for the complainant states that the complaint has not been instituted by an authorized person, as the Letter of the Authority. Annexure-4 is in the name of one Mr. Binay Kumar, whereas the complaint was filed by Mr. Pankaj Tandon. In my view, since the matter is still pending before the Trial Court and the complainant is yet to lead evidence post appearance of accused persons, the complainant can still file documents and satisfy the Trial Court as regards the authority of the person, who has instituted the complaint. At the stage of trial and at this stage, without giving an opportunity to the complainant to produce the authority in favour of Shri Pankaj Tandon, it cannot be said that the complaint has not been instituted by an authorized person.

I find no merit in the petition and the same is hereby dismissed.

The observations made in this order shall now affect the decision of the Trial Court.

(V.K.JAIN)
JUDGE

JANUARY 21, 2010
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