

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. M. C. No. 2918/07 & Crl M. A. No. 10390/07**

Date of decision : 30.04.2008

RAJBIR SINGH Petitioner
! Through : Mr. Mukul Dhawan, Adv.

Versus

\$ STATE OF DELHI & ANOTHER Respondents
^ Through : Mr. Rahul Dhawan, Adv. for R-2.
Mr. M.P.Singh, APP for the
State.
Inspector Ramesh Chandra, SIT,
Crime Branch.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. The petitioner Rajbir Singh has filed the present petition for quashing FIR No. 583/2006 which was registered against the petitioner in police station

Najafgarh under Section 135 of the Electricity Act for having committed direct theft of the electricity.

2. The petitioner alleges that since he has compounded the offence in Criminal Complaint No. 140/2006 filed by the respondent and has paid the compounding fee of Rs. 20,14,100/- against receipt No. 10933100738, no useful purpose would be served in keeping the proceedings in the FIR pending the offence being compoundable. Respondent BSES RPL also filed a criminal complaint No. 140/2006 against the present petitioner for the similar offence of theft of electricity as reported in the inspection report dated 19.6.2006. Subsequently, an FIR was also registered being FIR No. 583/2006 against the petitioner and other persons at police station Najafgarh under Section 135 of the Electricity Act read with Section 379 of the Indian Penal Code on 19.6.2006.

3. Consequent to the said theft, a bill for Rs. 1,31,96,129/- was raised by the respondent. The petitioner filed a petition before the Authorized Officer cum Deputy Commissioner. His appeal was

accepted and petitioner was directed to deposit the compounding fee in the Government Treasury calculated on the basis of Section 152 of the Electricity Act. This order was complied with and petitioner deposited Rs. 20,14,100/- in the Government Treasury towards compounding fee for the offence of theft of electricity. In view of the compounding of the offence, the learned ASJ, Special Electricity Court vide his order dated 26.11.2007 was pleased to dispose of the criminal prosecution in terms of the compounding of the offence. After the closing of the criminal prosecution the impugned FIR containing the allegations of theft of electricity as against the petitioner cannot be allowed to proceed further. A person cannot be convicted or sentenced twice for the same offence. The offence of theft of electricity having been compounded the FIR No. 583/2006 so far as it relates to theft of electricity by the petitioner has to be quashed so as to avoid unnecessary harassment to the petitioner which is likely to be caused to him in the investigation of the FIR.

4. Learned counsel for the respondents has submitted that in view of the orders of this Court in Writ Petition (C) No. 9616/2006, Gram Sudhar Samittee, Village Dindarpur v. BSES Rajdhani Power Ltd. & Ors. vide its order dated 2.2.2007 directed the investigation of FIR No. 583/2006 dated 19.6.2006 along with other FIRs of different dates to be conducted by Crime Branch of Delhi Police with the direction that Head of the Crime Branch would ensure that the cases are assigned to a senior officer for investigations and proper challans are filed, if so warranted, before the competent court expeditiously.

5. A raid was conducted on 19.6.2006 on four factories including M/s New Shokeen Ice Factory owned by the petitioner before this Court. Other three factories are M/s Rajender Ice Factory, M/s Amar Ice Factory and M/s Vikas Ice Factory. These factories were sealed and there was disconnection of water and electricity supply to the factories which were so raided but the petitioner in the said writ petition had urged that despite the disconnection of water and electricity supply, four out of six factories continued to function

unauthorisedly as was pointed out by the Commissioner of Industry in his letter dated 12.5.2006 and therefore, the raid was conducted. During the raid, these factories were found operating and functional. Hence, they were resealed during the raid. FIR No. 583/2006 dated 19.6.2006 i.e. the impugned FIR is registered on two separate issues. Firstly, whether the seals put up by the authorities had been tampered with and the factories were functional and secondly whether there was electricity theft for running the factories by their respective owners. While disposing of the petition, following directions were issued by the Division Bench of this Court:

“4. In the circumstances, therefore, we direct as under:

- 1) The factories in question shall continue to remain sealed till such time a competent court directs desealing of the same. The owners of the factories shall forebear from restarting the manufacturing process in the said factories without proper verification from the authorities competent to do so. The jurisdiction police shall ensure that these directions are complied with scrupulously and in the event of default by the concerned take

proper action against the offenders in accordance with law.

2) Investigation of FIRs No. 583/2006 dated 19.06.2006, 287/2004 dated 20.05.2005, 522/2005 dated 20.08.2005, 77/2007 dated 31.01.2007 and 924/2006 shall stand transferred to the Crime Branch of Delhi Police. The Head of the Crime Branch shall ensure that the cases are assigned to a senior officer for investigations and proper challans are filed, if so warranted, before the competent court expeditiously but not later than 6 months from the date the investigating agency takes over the investigation.”

6. Therefore, keeping in view these directions and also the fact that quashing of the FIR has been sought as prayed by the petitioner only in respect of the electricity theft, FIR No. 583/2006 qua the petitioner only as regards the theft of electricity punishable under Section 135 of the Electricity Act is hereby quashed having offence being compounded. However, this FIR as regards the investigation regarding the first direction as issued in the order dated 2.2.2007 and investigation as against the other co accused persons regarding electricity theft and allegations of breaking of seal etc. shall continue in

accordance with the said order. Petition is accordingly allowed. The investigation proceedings against the petitioner under Section 135 of Electricity Act read with Section 379 IPC are hereby quashed only qua the present petitioner. Petition stands disposed of accordingly. Attested copy of the order be sent to the trial court as well as to the State.

**ARUNA SURESH
(JUDGE)**

**April 30, 2008
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