IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

Reserved on : 05.02.2009

Date of decision : 10.02.2009

Crl.M.C. 2296/2008

BSES RAJDHANI POWER LTD. and ORS. Petitioners
Through: Mr. Sunil Fernandes with Mr. Rajat Jariwal, advs.

Versus

ISHWAR CHAND and ANR. ..... .Respondents
Through: Mr. N.C. Verma, adv.

MOOL CHAND GARG, J.

1. This petition has been filed by the petitioner under Section 482 Code of Criminal Procedure, 1973 (Cr.P.C.) for quashing/setting aside of the show cause notice issued by the learned Presiding Officer, Special Electricity Courts, Malviya Nagar, New Delhi in Complaint Case No. 375/2007 on the ground that the show cause notice is without jurisdiction and contrary to the statutory provisions contained under Section 344 of the Cr.P.C. It has been submitted that a notice under Section 344 can only be issued by the learned Judge only when the judgment of final order has been passed in the proceedings subject matter of issuance of such notice. It is stated that in this case at the time when the aforesaid notice was issued no such judgment much less any final order has been passed and that the instant criminal case is still at the stage of summoning of the evidence and therefore, the show cause notice under Section 344 is bad in law and deserves to be quashed. It has been submitted that in the instant case, the statutory inspection team conducted a raid on the premises of the accused persons on 16.02.2005 and detected theft of electricity. Accordingly, a supplementary theft bill of Rs.1,80,485/- dated 22.02.2005 was raised and which was unpaid by the respondents and hence the petitioner company filed C.C. No.375/2007 in the Special Electricity Court at Malviya Nagar. In the said Criminal Complaint, Shri Ishwar Chand was arrayed as accused No.1 and accused No.2 Mangli Ram, who was the Registered Consumer of the Electricity Connection at the said premises was arrayed as accused No.2. The accused No.1, Sh. Ishwar Chand was sought to be tried for the offence of theft of electricity and the accused No.2 was sought to be

tried for offence u/s 150 of the Electricity Act, 2003, i.e., abetment in his capacity as the registered consumer.

2. It is also the case of the petitioners that the members of the statutory inspection team under a bona fide plea and on the basis of inquiry conducted at site believed that respondent No.2 was the registered consumer of the said premises where theft of electricity was being committed.

3. It is also submitted that summons were issued to the accused persons on the complaint filed by the petitioner No.1 and the case was fixed on 17.07.2008 for appearance of the accused, on which date respondent No.1 appeared in Court and informed that respondent No.2, his father had died long time ago. The petitioner company just like everybody else came to know for the first time that respondent No.2 has deceased and prayed for aborting the complaint qua the deceased. It is alleged that, in fact, it was statutory duty of the respondent No.1 in accordance with the Regulation 7 of DRC Regulations of 2002 to have informed the complainant about the death of the registered complainant and to have got the connection transferred in his name which was not done and for the aforesaid fault of respondent No.1 the petitioner could not have been punished.

4. However, the learned Presiding Officer rejected the above-said submissions of the Appellant Company and took a view that the petitioner company has committed perjury by filing false complaint and issued notice u/s 340 Cr.P.C. despite the fact that earlier similar show-cause notices were stayed by the Honble High Court. The order issuing show-cause was impugned in the instant petition and vide order dated 22.07.2008, notice was issued to the non- applicant, returnable on 27.08.2008. However, displaying unfortunate haste, the learned P.O. passed the final order u/S 340 on 26.08.2008, i.e., one day prior to the hearing of the instant petition before this Court. The said final order was impugned vide Crl.M.A.11229/2008 and vide order dated 24.09.2008, this Court was pleased to stay the final order dated 26.08.2008 of the Trial court.

5. It has been submitted that the aforesaid conduct of the learned Trial Court apparently shows mala fide on its part. The haste in which the trial Judge has issued the notice under Section 344 of the Cr.P.C. in the aforesaid matter even before deciding a complaint and thereafter having passed a final order just on the next date which has resulted in miscarriage of justice and tantamount to abusing the process of the Court for reasons which can only be explained by the learned Trial Judge.

6. It is also brought to the notice of this Court that the criminal appeals bearing No.500/2008, 501/2008, 512/2008 and 612/2008 were also filed in similar circumstances have been disposed of by Kailash Gambhir,J vide its order dated 20.10.2008 and some of the observations made in the aforesaid judgment which is squarely applicable to the facts in issue and clarifies the legal position in such like matters. Relevant paragraphs of the said judgment are extracted for ready reference: Nobody can be allowed to file a false affidavit as filing of false affidavit that too by the government or instrumentality of the State has to be viewed seriously and in the given facts of a case such falsehood can lead

to an act of perjury. However, the intendment behind filing such a false affidavit can also not be ignored or overlooked. If filing of such affidavit is due to some carelessness or an act of an error or bonafide mistake, then the same cannot be treated at the same footing to a case where a false affidavit is filed to mislead the Court or to take some undue or illegal advantage over the other party or has the propensity to cause serious interference in the administration of justice. A man cannot be convicted of perjury for having acted rashly or negligently or for having failed to make a reasonable inquiry with regard to the facts alleged by him to be true. It is necessary to prove that he made some statement which he knew to be false or which he did not believe to be true in order to bring home the offence of perjury. In the case at hand, the appellants had no intention to file false affidavits or to bring on record anything which was false. At the time of filing affidavits they did not have the knowledge of death of the registered consumer as it was on the basis of inspection that the entry was made in the record and affidavits were filed based on such record. Also, I do not see that any conceivable gain or advantage would be derived by the appellants by filing false affidavits against a dead man. In any case to prevent such malady to happen again, vide order dated 18/8/2008 this court directed the appellant to issue guidelines so that criminal prosecution against a dead man is not initiated. Pursuant to the said direction, the guidelines in this regard have been framed vide office order dated 30/08/2008 bearing ref. No. BSES/RPL/HOD/001 and is placed on record by the appellant. In the aforesaid guidelines the HOD (Enforcement) of the Corporate Legal and Enforcement Cell has given directions to the raiding team to take all possible steps expected of a prudent man to verify the identity of the accused persons while booking cases under S. 135 of the Electricity Act, 2003 and also to avoid instances where people with dishonest intention mislead the raiding party. It also directed raiding team to videograph the persons who disclose name of the accused in cases where there is no electricity meter at the site. Also, where the name of the accused is obtained from signboard of a house, shop etc. then the same should also be videographed. As regards videography the guidelines specifically mention that it should have accurate date, time and place settings. Further, as regards I.R., it should specifically state the details of place person from where information about accused is obtained in place of the name of the accused as stated. The said guidelines also mention that in case of sole proprietorship, partnership firms and companies endeavour should be made to find out the names of the sole proprietors, partners and directors, respectively. Furthermore, guidelines mention of taking police assistance whenever required by the raiding party in case any person threatens or prevents them from raiding. Also, guidelines direct raiding team to accurately note down the address and nearby landmarks for better identification of the address of the accused. It is no more res integra that there are two conditions on fulfillment of which a complaint under S.340 CrPC can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an enquiry against such a person in relation to the offence committed by him. It is a settled legal proposition that prosecution for false affidavit should be sanctioned by courts only in those cases where it appears to be deliberate and conscious and the conviction is reasonably probable or likely. Further, it is no doubt true that the sanctity of the affidavits has to be reserved and protected discouraging the filing of irresponsible statements,

without any regard to accuracy but it is equally well settled, as discussed above, that until and unless ingredients of Sections 191/192/193, IPC are satisfied no offence is committed and thus court cannot file a complaint invoking provision of S.340, IPC, meaning thereby that there must be a prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge to proceed under S. 340 CrPC. In this regard the Honble Apex Court in Shabir Hussain Bholu v. State of Maharashtra,1963 Supp (1) SCR 501, while discussing S. 476 of CrPC, 1898, which is S. 340 in CrPC, 1973, observed as under: Under Section 476 the action may proceed suo motu or on application while under Section 479-A no application seems to be contemplated. But there is nothing in this provision which makes a distinction between flagrant offences and offences which are not flagrant or between serious offences and offences which are not serious. For exercising the powers conferred by this section the court has in the first instance, to form an opinion that the person against whom complaint is to be lodged has committed one of the two categories of offences referred to therein. The second condition is that the court has come to the conclusion that for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice it is expedient that a witness should be prosecuted for an offence which appears to have been committed by him. Having laid down these conditions, Section 479-A prescribes the procedure to be followed by the court. If the court does not form an opinion that the witness has given intentionally false evidence or intentionally fabricated false evidence no question of making a complaint can properly arise. Similarly where the court has formed an opinion that though the witness has intentionally given false evidence or intentionally fabricated false evidence the nature of the perjury or fabrication committed by him is not such as to make it expedient in the interests of justice to make a complaint, it has a discretion not to make a complaint. On the basis of the foregoing discussion, it is manifest that intention is the essential ingredient in the constitution of the offences U/Ss. 191/192/193 and since no intention can be imputed upon the appellant as well as its officers, the appeals are allowed and the impugned order dated 28/5/2008 passed by the learned trial court in complaint case no. 159/2007 in Crl. A No. 500/2008; dated 28/5/2008 passed by the learned trial court in complaint case no. 867/2007 in Crl. A No. 501/2008; dated 31/5/2008 passed by the learned trial court in complaint case no. 601/2007 in Crl. A No. 512/2008 and dated 14/7/2008 passed by the learned trial court in complaint case no. 911/2007 in Crl. A No. 612/2008 are set aside. With the above directions, the appeals are allowed. It is made clear that the appellant shall scrupulously follow the above guidelines formulated by them pursuant to the directions of this court.

7. I have heard the submissions of both the parties. Learned counsel appearing for the respondents has not been able to justify the correctness of the order passed by the learned trial Judge in the aforesaid matter. The facts as revealed goes to show that the show cause notice under Section 344 Cr.P.C. has not been issued by the learned trial Judge in accordance with law inasmuch as at the stage when the aforesaid notice was issued the complaint filed by the petitioner company was at the stage of appearance of the parties and even the evidence of the petitioners had not even been recorded. Section 344 Cr.P.C. reads as under: 344. Summary procedure for trial for giving false evidence:-(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the

effect that any witness appearing in such proceeding had knowingly or willfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both. (2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials. (3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section. (4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

8. This Section has no application inasmuch as neither any evidence was led by the petitioner/complainant nor any false affidavit was filed nor any other act or omission was committed on the part of the petitioner knowingly.

9. The order dated 17.07.2008 which is sought to be quashed by the petitioners reads as under: The complainant seeks adjournment again for supply of documents. This is 3rd date for supply of document which is not justifiable in a summary trial proceeding, however, in the interest of justice, adjournment granted but on cost of Rs.500/- to be deposited by the complainant. In the given facts and considering that false case is made out apparently against accused Mangli Ram who was no more alive on the date of alleged inspection/raid of the premises on 16.02.2005 which was supported by filing patently false affidavit by Sh. Asit Tyagi, B.N. and the complainant during evidence who also made statement on oath which were false, show cause notice be issued against Asit Tyagi and complainant u/S 344 Cr.P.C. as to why action should not be taken for perjury as well as under Section 340 for filing false complaint. The complainant submits that they will be able to pay the cost on the adjourned date when the reply to the show cause notice would be submitted.

10. The opinion formed by the trial Judge that the petitioners filed a false case against accused Mangli Ram on the date of the alleged inspection not proved before the trial Judge and was based upon the only statement made by Respondent No.1 even if it was a correct fact the question of the knowledge of the petitioners about this fact had not been substantiated by any cogent evidence on behalf of respondent No.1. Thus, there was no occasion for issuing show cause notice under Section 344 Cr.P.C. at that stage.

11. It is a matter of record that the operation of the similar orders passed in other matters was stayed by this Court in various matters yet the trial Judge despite said orders passed in respect of similar orders by this Court in number of cases and in particular criminal appeals bearing No.500/2008, 501/2008, 512/2008 and 612/2008 issued the notice in question. It is well settled that this Court can invoke its inherent jurisdiction whenever the act complained tantamount to miscarriage of justice and whenever the process of Court is abused.

12. In view of the aforesaid and the ratio of the judgment delivered by Kailash Gambhir,J in criminal appeals bearing No.500/2008, 501/2008, 512/2008 and 612/2008. I set aside the show cause notice issued by the special judge dated 17.07.2008

13. The petition is accordingly allowed.

14. However, before parting with the case I may also observe that looking to the conduct and haste shown by the Trial Judge it is an appropriate case which should be brought to the notice of Honble the Chief Justice and the inspecting judges of the concerned Judge. Thus, a copy of this judgment be sent to the Registrar General for doing the needful.

Sd./-
MOOL CHAND GARG,J

FEBRUARY 10, 2009