

---

**(2006) 09 P&H CK 0018**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. 740 of 2006**

B.B. Singhal

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

---

**Date of Decision :** 13-09-2006

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 5(1)(d), 5(2)

**Citation :** (2007) 1 RCR(Criminal) 93

**Hon'ble Judges :** Rajive Bhalla, J

**Bench :** Single Bench

**Advocate :** R.S. Cheema, with Mr. J.S. Mehndiratta, for the Appellant; Rajan Gupta, for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

Rajive Bhalla, J.—This order shall dispose of CrI. R. No. 740 of 2006, CrI. R. No. 757 of 2006, CrI. R. No. 798 of 2006, CrI. R. No. 847 of 2006 and CrI. R. No. 868 of 2006, as they arise from the same FIR and involve similar questions of law and facts.

2. Prayer in these revision petitions is for setting aside the order dated 6.2.2006, whereby the learned Special Judge, CBI, Chandigarh directed framing of charges, as also the order dated 22.2.2006, whereby the learned Special Judge proceeded to frame charges against the petitioners.

3. Vide order, dated 6.2.2006, the Special Judge, CBI Court, Chandigarh, after a detailed appraisal of the final report, ordered charges to be framed. Vide order dated 22.2.2006, charges were framed against the petitioners. However, vide order dated 24.2.2006, charges, framed against petitioner-B.B. Singhal were corrected and the charges u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act deleted.

4. A brief narrative of the facts necessary for adjudication of the present case, would be appropriate.

5. M/s. Bhushan Industrial Company (hereinafter to be referred as "BIC"), manufactures steels and consumes a large amount of electricity. The allegations are that the petitioners conspired to enable the BIC to dishonestly abstract, consume and use electric energy. The modus operandi adopted was that no electric meter was installed in the premises of the company. The electric meter was installed on the feeder at the 66 KV BBMB Sub-Station, Sector 28, Chandigarh. Though the meter was sealed, the input from the potential transformer wires or current transformer wires upto the meter were not sealed at all points. A single meter was being used to record the consumption. The log sheets and the meter readings indicated cuttings and alterations and the meter, when subjected to analysis, was found to be defective. During the period between April 1985 and July 1988, the company produced 45592.095 MT of steel ingots/billets. It was billed for 33163300 units of electricity. To produce 45592.095 MTs of steel, the BIC was required to consume 44908396 units of electricity, and, thus, it is sought to be inferred that the petitioners conspired to steal electricity. The petitioners, excluding B.B. Singhal, were responsible for supplying electricity to the company, recording of readings, preparing of bills etc. This matter came to the notice of the HSEB. An inquiry was conducted by one Sh. P.P. Gogia, who submitted a report. His report was scrutinized, examined and criticized by officers of the Board but eventually led to the registration of an FIR by the CBI. After investigation, the CBI filed its final report. The petitioners' pleas that no charges could be framed were rejected and thereafter charges framed. The impugned orders, passed by the Special Judge, CBI Court, Chandigarh, have been challenged on the following grounds :-

(a) The facts, narrated in the charge-sheet/final report, do not disclose any "theft of electricity".

(b) Prosecution, as per Section 50 of the Indian Electricity Act, 1910 (hereinafter referred to as "the Electricity Act"), has not been launched "at the instance of" the Government or a State Electricity Board, or an Electric Inspector, or of a person aggrieved by the same.

(c) That no sanction to prosecute has been obtained or granted u/s 56(2) of the Electricity Act or Section 197 of the Code of Criminal Procedure (hereinafter referred to as "the Code").

(d) That the sanction granted, even if presumed to have been granted under the Electricity Act, and the Code, is void, as under the aforementioned enactments, sanction is to be granted by the State, in this case the States of Punjab and Haryana. Sanction, however, has been granted by the respective Electricity Board.

(e) That the petitioner-H.S. Brar could not have been charged for an offence, u/s 39-A of the Electricity Act or u/s 116 of the Indian Penal Code (for short hereinafter referred to as "the Penal Code"), as Section 39-A of the Electricity Act was introduced in the Electricity Act after the commission of the offences alleged and offence u/s 116 of the Penal Code is not made out.

(f) That the cognizance of the offence was time barred, as regards B.B. Singhal.

6. Counsel for the petitioners contends that a perusal of the final report, submitted by the CBI, does not disclose the commission of any offence, much less offences, under the Electricity Act, the Penal Code or the Prevention of Corruption Act (for short hereinafter referred to as "the P.C. Act"). It is further contended that the basis of the allegations, are a report, submitted by P.P. Gogia and nothing more. Section 39 of the Electricity Act defines the term "Theft of energy" as a dishonest abstraction, consumption or use of any energy. Section 39 of the Electricity Act defines the term "Theft of energy" as a dishonest abstraction, consumption or use of any energy. Section 39-A of the Electricity Act prescribes punishment for abetment of such theft. Section 44 of the Electricity Act provides for penalty for interference with meters and for improper use of energy. It is contended that the final report/charge- sheet is devoid of any particulars with respect to dishonest abstraction, consumption or use of energy. The prosecution as well as P.P. Gogia have coined incomprehensible theory wherein theft of electricity is sought to be inferred from the amount of electricity likely to be consumed for the production of 1 MT of steel. On the basis of this formula, it is alleged that as the total electricity billed to BIC was far below the electricity that should have been consumed for the total production of steel, during the check period, the petitioners committed an offence of theft of electricity. This formula, being inferential in nature, and based upon assumptions and presumptions, is inherently flawed. Such inferences have no place in criminal jurisprudence and, therefore, cannot form the basis of an order framing charges against the petitioners. It is further argued that an appraisal of the allegations in the FIR, and the order framing charges, discloses allegations of wrong billing, which, at best, could be a dereliction of duty and not a criminal offence. It is further argued that as there was no excess energy available, with the electricity department, there was no question of any energy being available for theft. Hence, the theory, propounded by the prosecution, is based upon incorrect facts. It is also argued that as the Electricity Board never raised any demand upon BIC for excess consumption of electricity, the falsity of the allegations is apparent and sufficient to discard the laboured attempt by the prosecution to infer a case of theft. BIC was billed for electricity consumed, in accordance with the bills issued and, therefore, no case of theft was made out.

7. It is further contended that the learned trial Court erroneously held that there was sufficient evidence to charge the petitioners with the offence of theft of electricity. No evidence exists or has been placed on record to suggest, even a prima facie, dishonest abstraction of energy. No allegations have been levelled as to the existence of any artificial or unauthorised means of abstraction, consumption or user of electricity.

8. It is further contended that the findings, recorded by the trial Court, that absence of an artificial device to abstract energy would not lead to an inference that no theft had been committed, is inherently flawed. In the absence of any

prima facie evidence, as to the manner in which the alleged theft was committed, the ingredients of the offence alleged, being deficient, the petitioners are entitled to be discharged.

9. It is further contended that even as per the case, as set out in the final report, the readings were supplied by V.K. Mahendru to H.S. Brar and Deepak Chopra. The actual readings were taken by Tarsem Lal, Junior Engineer. The readings were recorded in the log sheets on a day to day basis by Jagir Singh and Mangat Pal Gaur, Sub Station Attendants and, therefore, no case of theft or conspiring to commit theft was made out against these petitioners. It is contended that the trial Court erroneously held that cuttings in the log sheets and over-writings in the initial and final readings of daily consumption and that the readings, recorded by the BBMB staff and by the U.T. staff on the same date differed and where, therefore, sufficient to infer theft. These findings are factually incorrect and even otherwise insufficient to give rise to an inference of theft. It is further argued that the testing of the meter was inherently flawed and, therefore, reliance upon the test report was uncalled for.

10. The next point, pressed into service, by counsel for the petitioners that though authorised to investigate the alleged offences, the CBI had no jurisdiction to file a final report, and the trial Court no jurisdiction to take cognizance, as prosecution for offences under the Electricity Act could only be launched "at the instance of" the Government or a State Electricity Board or an Electric Inspector or a person aggrieved by the same", as mandatorily required by Section 50 of the Electricity Act. A perusal of the final report/charge-sheet does not disclose that prosecution was launched at the instance of the Government, the State Electricity Board, the Electric Inspector or at the instance of any person aggrieved. It is contended that Section 50 of the Electricity Act specifically prohibits institution of any prosecution except at the behest of the aforementioned authorities or a person aggrieved. In the present case, what to talk of the prosecution being instituted at the instance of the above authorities, the final report discloses that the FIR was lodged on "source information". It is, thus, submitted that as the initiation of prosecution, for offences, under the Electricity Act, is violative of the provisions of Section 50 of the Electricity Act, the trial Court has no jurisdiction to take cognizance of the offences, complained of.

11. It is further submitted that though the learned trial Court accepted that no order had been passed, u/s 50 of the Electricity Act, it proceeded to evade the issue and hold that as the question requires elaborate consideration, it cannot be adjudicated, at this stage. It is contended that the use of the words "at the instance of" signifies legislative intent that no prosecution be launched other than "at the instance of" the authorities, referred to in Section 50 of the Electricity Act and, therefore, while declining to consider this matter at the stage of framing charges, the trial Court committed an error of jurisdiction.

12. Reliance for the above proposition is placed upon *Dina Nath v. Emperor*, AIR

1935 Lah 191; Avtar Singh Vs. State of Punjab, ; Rama Shanker Sinha Vs. The State, ; Somashekarappa v. State of Karnataka, AIR 1992 Kar 206; Dhoolchand and Another Vs. The State, ; Suleman v. State of M.P., 1980 J.L.J. 117; Laxmanlal Vs. State of M.P., ; Hanu @ Sirish Chand Bahera v. State, 1993 (76) CLT 787; Arakhita Patnaik v. State of Orissa, 1994(78) CLT 31 and Biswanath ADA v. State of Orissa, 1997(84) CLT 899.

13. The next point, urged by counsel for the petitioners, is that the petitioners are charged with the commission of offences, under the Electricity Act, the Code and the P.C. Act. However, sanction to prosecute them, u/s 197 of the Code or Section 56(2) of the Electricity Act has not been granted. Section 56(2) of the Electricity Act protects a public servant against prosecution, without requisite sanction. Section 56 of the Electricity Act also bars cognizance of any offence without sanction. As sanction to prosecute was neither sought nor granted, the trial Court had no jurisdiction to take cognizance of the offences complained of. Similar arguments have been addressed with respect to the offences, under the Code, wherein by relying upon the provisions of Section 197 of the Code of Criminal Procedure (for short hereinafter referred to as "the Code"), it is contended that the trial Court had no jurisdiction to take cognizance, in the absence of any sanction by the State Government. It is further argued that as the petitioners, excluding B.B. Singhal, were employees of the Electricity Boards of Punjab and Haryana and, therefore, public officers/public servants, within the meaning of the Electricity Act sanction to prosecute them had to be obtained for offences, under the Electricity Act, from the respective State Governments in the cases of H.S. Brar, V.K. Mahendru, Jagir Singh from the State of Punjab, and M.P. Gaur, Tarsem Lal Aggarwal, Deepak Chopra from the State of Haryana. As no such sanction was obtained from the respective State Governments, whether under the provisions of the Electricity Act or the Code, cognizance of the offences, by the trial Court is without jurisdiction.

14. It is further argued that accepting the allegations, levelled in the final report, to be correct, the facts, narrated therein, clearly reveal that the alleged offences, are so inextricably linked to the performance of "public duties" that the cognizance of the alleged offences, without requisite sanction, is untenable.

15. It is further contended that the trial Court erroneously held that it was no part of the petitioners' duties to commit offences of criminal conspiracy and theft of electricity and, therefore, no sanction was required u/s 56(2) of the Electricity Act and Section 197 of the Code. The petitioners, excluding B.B. Singhal, being public servants, sanction to prosecute, was mandatorily required, u/s 56(2) of the Electricity Act and Section 197 of the Code and, therefore, the order directing framing of charges and the order whereby charges have been framed is without jurisdiction.

16. Reliance for the above proposition is placed upon Jaswant Singh Vs. The State of Punjab, ; Ram Kumar Vs. State of Haryana, ; The Public Prosecutor, High Court of Andhra Pradesh Vs. B. Babu and Another, ; B. Saha and Others Vs. M.S.

Kochar, ; R. Balakrishna Pillai Vs. State of Kerala, , Abdul Wahab Ansari Vs. State of Bihar Another, ; Sankaran Moitra v. Sadhna Das and another, 2006(2) RCR(Crl.) 389 : 2006 (1) AC 551 (SC) : 2005(4) SCC 512; Rangesh Sharma and Another Vs. State of U.P. and Another, ; Munshi Lal Shakya v. State of Rajasthan, 2004(4) RCR(Cri) 780; State of Goa v. Babu Thomas, 2005(4) RCR(Cri.) 349 : 2005(3) AC 351 (SC); K. Kalimuthu v. State by DSP, 2005(2) R.C.R.(Cri) 463 : 2005(2) AC 58 and Ashok Mehta v. Ram Ashre Singh, 2006(2) RCR(Cri) 330 : 2006(2) Apex Criminal 218 (SC).

17. As regards individual cases, it is argued by counsel for the petitioner-Harjinder Singh Brar, in Crl. R. No. 798 of 2006, that the petitioner was posted as SDO, and assigned a job to record monthly readings, for billing purposes. He was relieved on 23.7.1985 by Deepak Chopra, the petitioner in Crl. No. 757 of 2006, who remained posted upto July 1988. It is contended that the petitioner could not have been fastened with liability for the commission of the alleged offence, as the record does not reveal any discrepancy. Another contention urged is that no charge could be framed against him, u/s 116 of the Penal Code.

18. In so far as Deepak Chopra, petitioner in Crl. R. No. 757 of 2006 it is contended by his counsel that P.P. Gogia's report, is the foundation of the final report, the meter readings were taken by V.K. Mahendru, XEN and handed over to the petitioner. The report, u/s 173 of the Code, specifically states that the XEN was incharge and, therefore, no offence could be said to have been committed by Deepak Chopra. It is further argued that at no stage of the investigation, whether in the FIR or at any subsequent time, was Deepak Chopra ever cited as an accused. He was not arrested by the prosecution and in fact, his statement was recorded as a witness. This sudden change of track by the CBI, by citing the petitioner as an accused, is unwarranted. The petitioner has been made a scape goat, as the main accused, who are referred to in the FIR, have been exonerated, for reasons best known to the CBI.

19. Shri R.S. Cheema, learned Senior Advocate, in addition to the arguments noticed herein above, contends that cognizance of the offences, against B.B. Singhal was barred by limitation. The alleged offences came to the notice of the Electricity Board in the year 1990 and an inquiry was marked to Shri P.P. Gogia, the then Deputy Director, Enforcement-I, HSEB. He submitted his report on 19.11.1990 to the Chairman of the Board. The opinion of four responsible officers of the Board was sought and obtained on 10.12.1990, 3.1.1991, 7.1.1991 and 31.1.1991. The FIR was lodged on 14.12.1993. The report, u/s 173 of the Cr.P.C. was filed on 23.2.2001 and charges were eventually framed, vide the impugned orders. It is contended that as per the charge- sheet, Shri B.B. Singhal is alleged to have committed offences, punishable with imprisonment upto three years and, therefore, as per Section 468 of the Code, cognizance was required to be taken, within three years of the offences coming to knowledge. As the offences came to the knowledge of the Board in the year 1990 or at best 19.11.1990, when Shri P.P. Gogia submitted his report, this statutory period of three years had long

expired, when cognizance of the offences was taken by the learned trial Court. It is further contended that the final report, u/s 173 of the Code, does not set out any explanation for delay and no plea was raised for extension of the period of limitation. It is further argued that this submission was urged, before the trial Court, but has not been adverted to by the learned trial Court. Reliance is placed upon *State of Punjab v. Swaran Singh*, 1981 SCC (Cri) 625; *J.S. Maini v. Thakur Hari Singh*, 1989 (2) RCR (Cri) 210 (P&H); *Amar Singh and others v. State of Punjab*, 2003(2) RCR(Cri) 679 (P&H); *Ahmed Nawaz Alladin v. Station House Officer*, 1999 (3) RCR(Cri) 40 (AP) and *Sanjay Gupta and others v. State and another*, 2003(1) RCR(Cri) 113 (Del).

20. Counsel for the CBI, on the other hand, contends that the expression, used in Section 50 of the Electricity Act, namely, "at the instance of" merely means "at the solicitation of or at the request of". As sanction to prosecute the petitioners, excluding B.B. Singhal, has been granted and the order of sanction refers to offences under the Electricity Act, the investigation and the institution of the prosecution would be deemed to be "at the instance of the respective electricity board/electricity authorities". It is further contended that the FIR was lodged on source information i.e. on the basis of Shri P.P. Gogia's report. The offences, under the Electricity Act, though non-cognizable, in the States of Punjab and Haryana, the CBI had jurisdiction to investigate and launch prosecution, as these offences were intertwined with offences, under the P.C. Act, in respect whereof sanction was specifically granted. It is further contended that the Delhi Police Establishment Act, read with the notifications, issued u/s 3 thereof, empowers the CBI to investigate and launch prosecution with respect to commission of offences under the Electricity Act. The offences were committed in the Union Territory, Chandigarh, and, therefore, Section 3 of the aforementioned Act, and the notifications issued thereunder, would be sufficient to conclude that investigation was launched "at the instance of the Central Government".

21. It is further argued that a perusal of the orders, granting sanction, reveal that sanction to prosecute has been granted not only under the provisions of the P.C. Act but also under the provisions of the Electricity Act and Section 197 of the Code. Sanction, granted by the Chairman of the HSEB, refers to Section 56 of the Electricity Act also and sanction to prosecute has been granted under all enactments relevant to the present case. It is further argued that it is the essence of the order granting sanction and not the statutory provisions, referred to therein, which determine the true import of the sanction granted.

22. It is further contended that it was not necessary to obtain sanction under the provision of Section 56 of the Electricity Act or u/s 197 of the Code. It was no part of the official duty, of the petitioners, to conspire and steal electricity. The protection, provided by Section 56 of the Electricity Act and 197 of the Code, is a discharge or purported discharge of official duties, by a public servant, performed in good faith, and where the alleged offence is so inextricably linked to the discharge of official duties, as to be inseparable therefrom. In the present case,

the situation is entirely different. The petitioners hatched a conspiracy to steal electricity. The modus operandi was that no meter was installed at the premises of the BIC. Wrong readings were taken and the electricity consumed was incorrectly reflected in the bills, causing a huge loss to the Board and a gain to BIC. It is further contended that by no stretch of imagination can theft of electricity or a conspiracy hatched to steal electricity be construed to be a bona fide discharge of official duty. The judgments, cited by counsel for the petitioners, have no applicability to the present controversy. It is, thus, contended that as the petitioners' acts do not fall within the beneficial provisions of Section 56(2) of the Electricity Act and Section 197 of the Code, the absence of sanction would not detract from the validity of the prosecution launched and the cognizance taken by the trial Court. It is further argued that where charge is one of conspiracy, no sanction is required, as it is no part of the official duty, of an accused, to conspire to commit offences.

23. In so far as the plea with respect to limitation, it is contended that the question of limitation is a mixed question of fact and law. It is argued that a perusal of the report, filed u/s 173 of the Cr.P.C., sets out the reasons for delay in launching of the prosecution and as the Code permits cognizance even after expiry of period of limitation, the present revision petitions be dismissed. It is further submitted that no such point was urged before the learned trial Court and, therefore, cannot be urged, for the first time, in the present revisions petitions.

24. I have heard learned counsel for the parties, perused the impugned orders, as also the paper books.

25. Impugned herein are orders directing framing of charges against the petitioners, as also the orders, whereby charges have been framed.

26. The word "charge" is not defined in the Code. However, as commonly understood, it is a precise formulation of the specific accusations levelled against a person, who is entitled to know its nature at the earliest stage. It is, thus, a prima facie expression of opinion that sufficient grounds exist to proceed against an accused. A court endeavours at the stage of framing charges to ascertain, whether the prosecution has placed sufficient material before it to enable it to proceed to try an accused. Even a strong suspicion may, in the facts and circumstances of a case, be sufficient to frame charges. Thus, an order framing charges is a prima facie formulation of specific accusations, levelled against a person with the object of informing him of the nature of the offences, levelled against him that enables a Court to proceed to try an accused.

27. The first point, urged by counsel for the petitioners, that an appraisal of the report, filed u/s 173 of the Code, does not disclose any material to prima facie conclude that there was sufficient material on record to charge the petitioners for theft of electricity and a conspiracy in respect thereof. The learned trial Court, upon an appraisal of the report, filed u/s 173 of the Code, and upon a detailed

consideration of contentions, raised before it, arrived at a conclusion that there was sufficient material on record to frame charges against the petitioners. The trial Court recorded a finding that though there was no direct evidence of use of an instrument for abstraction of energy, but the circumstances surrounding the case were sufficient to prima facie suggest that the acts, which are described as "mere irregularities" by the petitioners, were in fact offences, committed under the Electricity Act, the Code and the P.C. Act. It was also held, while referring to each of the accused, that there was sufficient evidence to frame charges against them. I find no reason to take a different view from the one recorded by the trial Court. There is sufficient material on record to draw a prima facie inference that the petitioners are required to be charged for the offences, complained of. The conspiracy alleged, the method adopted to establish theft of electricity, the duties assigned to the accused, the manner of supply of electricity, the absence of any electric meter to the consumer's premises, cutting and over-writings in the log sheets and the official records etc. are cumulatively sufficient to charge the petitioners. The contentions, raised by counsel for the petitioners that the formula, adopted by the CBI, primarily based upon the report, submitted by P.P. Gogia, is inherently flawed, would be a matter to be considered at the stage of the trial. The correctness of the method, adopted by the prosecution to infer theft, the legal value to be assigned to the report, submitted by P.P. Gogia, are matters for the prosecution to establish, on the basis of evidence. To draw a definite opinion as to the legality of this material, at this stage, would, in the facts and circumstances of the present case, be inappropriate.

28. The contentions, raised by the counsel for Deepak Chopra and H.S. Brar, in my considered opinion are insufficient, to hold that there is no material on record to warrant the trial Court proceeding to frame charges against them. The material, placed on record, by the CBI, in my considered opinion, was correctly appraised by the trial Court. Its conclusions do not call for any interference and the findings recorded do not suffer from an error of jurisdiction, law or such factual perversity as would necessitate rectification.

29. The next contention, urged by counsel for the petitioners, is that prosecution has not been launched "at the instance of" an authority named in Section 50 of the Electricity Act and, therefore, the CBI had no jurisdiction to file a final report and the trial Court no jurisdiction to take cognizance.

Section 50 of the Electricity Act reads as follows :-

50. Institution of prosecutions. - No prosecution shall be instituted against any person for any offence against this Act or any rule, licence or order thereunder, except at the instance of the Government or a State Electricity Board on an Electrical Inspector, or of a person aggrieved by the same.

30. Section 50 of the Electricity Act bars prosecution against any person for any offence against the Electricity Act or any rule, licence or order thereunder, except "at the instance of" the Government, the State Electricity Board, the Electrical

Inspector, or a person aggrieved. The expression "at the instance of" and as held in a judgment reported as Vishwanath Vs. Emperor, , would necessary mean "at the behest of" or "at the solicitation of". While approving the judgment of the Allahabad High Court, in Vishwa Nath's case (supra), the Hon''ble Supreme Court in Avtar Singh's case (supra), held that the object of Section 50 of the Electricity Act is to prevent prosecution for offences against the Act as these offences can be proved only by men possessing special qualifications. It was also held that the onus to prove that prosecution was launched "at the instance of" a proper person, mentioned in Section 50 of the Electricity Act, lies upon the prosecution. The relevant extract of the judgment in Avtar Singh's case (supra) is reproduced herein below :

If it had been the intention of the Legislature that no case should be instituted in Court except by the Electric Company itself or the other persons mentioned in Section 50 of the Act, the Legislature would, we think, have used the ordinary phrase "on the complaint of" and the section would have been on the lines that no Magistrate should take cognizance of any offence referred to in Section 50 of the Act, except upon the complaint of certain persons. The phrase "at the instance of" means merely "at the solicitation of or at the request of", and we think that the Legislature meant only that prosecution should not be instituted by some independent busy-body who had nothing to do with the matter. In this case the police instituted the prosecution in form, but there can be no doubt that the Electricity Company desired that the applicant should be prosecuted for the offence. The officers of the Company discovered the theft and they reported it to the police and asked the police to make an investigation. We feel that there can be no real doubt that they intended that a prosecution should follow according to the result of the investigation. They made further reports to assist the police and their officers came into Court and gave evidence. We are satisfied that the prosecution was really at the instance of the Electric Company, although they may not have made the immediate complaint on which the Magistrate took cognizance of the offence. We consider that there is no ground for interference in revision. We reject the application.

31. This expression, namely, "at the instance of" appearing in Section 50 of the Electricity Act, was subject matter of interpretation by the Hon''ble Supreme Court in State of Karnataka Vs. Adimurthy alias B. Moorthy, , relevant extract of which reads as follows :-

The expression `at the instance of" in the context in which it appears in Section 50 means `at the behest of, or at the solicitation of". But Section 50 does not require that the authorisation should be by a notification published in the Official Gazette. `Instance" does not imply the same degree of obligation to obey as does `command". Where, therefore, a person acting for and on behalf of the Board lodges a complaint with the police in respect of unlawful extraction of electric energy and the police in turn file a charge- sheet, the prosecution must be regarded as instituted at the instance of the Board, which is an artificial

person. In the present case the Supervisor was authorised to lodge a complaint with the police. The Board being a public authority placing on record a copy of the Manual containing the relevant notification by the prosecution was sufficient proof of the authorisation requisite u/s 50.

32. The other judgments, cited by counsel for the petitioners, are in essence on similar lines and need not be dilated upon.

33. A perusal of the aforementioned judgments reveals that prosecution has to be launched "at the instance of" the authorities, referred to in Section 50 of the Electricity Act. In the present case, it would be premature, at this stage, to return a finding that prosecution has not been launched "at the instance of" any of the authorities, referred to in Section 50 of the Electricity Act. A complaint was received by the Electricity Board, with respect to theft of electricity by the BIC. This theft was the subject matter of an inquiry by P.P. Gogia. His report was subjected to a detailed scrutiny by officers of the Board, who apparently disagreed with the report. The report was eventually forwarded to the CBI, which lodged the present FIR, though categorizing it as one on "source information". It would also be appropriate to notice that while granting sanction to prosecute, specific reference has been made to the commission of offences under the Electricity Act. A perusal of various sanction orders, passed in the case of the petitioners, except B.B. Singhal, a private individual, reveals that the authority, i.e. the respective Electricity Boards and its functionaries, while granting sanction have clearly opined that the acts, committed by the petitioners, constitute offences amongst others, under the Electricity Act. Whether reference to offences under the Electricity Act, in the order granting sanction, can be construed to be sufficient within the meaning of the words "at the instance of", appearing in Section 50 of the Electricity Act, in my considered opinion, is a question of fact and as onus to prove that prosecution was launched "at the instance of" the authorities, referred to in Section 50 of the Electricity Act, lies upon the prosecution, as held by the Hon'ble Supreme Court in Avtar Singh's case (supra), the question should be left to be determined by the trial Court, on the basis of evidence to be adduced by the prosecution. The trial Court, while considering this argument, rightly held that it was too early to say that the instant prosecution had not been instituted "at the instance of" the authorities, referred to in Section 50 of the Act.

34. At this stage, it would be appropriate to notice certain submissions, advanced by counsel for the CBI to justify the prosecution launched by the CBI. The contention that the CBI was competent to launch prosecution and, therefore, the Court could take cognizance in view of the provisions of Section 3 of the Delhi Special Police Establishment Act, 1946 and the notifications, issued thereunder, in my considered opinion, cannot be accepted. It is true that under the aforementioned Act, and pursuant to a notification, issued thereunder, powers have been conferred on the officers of the CBI to investigate offences, committed under the Electricity Act. However, in view of the provisions of Section 4(2) and

Section 5 of the Code, where a special Act regulates the manner of investigation, inquiry, trial or otherwise dealing with such offences, the offences shall be dealt with, in accordance with the procedure, prescribed under the Special Act. The Electricity Act does not prescribe a specific procedure for investigation. Section 50 of the Electricity Act, however, lays down that no prosecution shall be launched except "at the instance of the Government, State Electricity Board and Electric Inspector or a person aggrieved" and, therefore, the provisions of Section 50 of the Electricity Act would have to be adhered to. Thus, contention of counsel for the CBI that by issuance of notification u/s 3 of the Delhi Special Police Establishment Act, 1946, the CBI was empowered to launch prosecution de hors the provisions of Section 50 of the Electricity Act, cannot be accepted. However, as it has already been held that the question as to whether the prosecution was launched, in terms of Section 50 of the Electricity Act, being the question of fact, onus whereof lies upon the prosecution, the said question would be determined by the trial Court, during the course of the trial.

35. Consequently, the contentions, raised by counsel for the petitioners that the prosecution was not launched "at the instance of" the authorities, referred to in Section 50 of the Electricity Act, the order, framing charges be quashed, cannot be accepted at this stage.

36. The next point, urged by counsel for the petitioners, is that in the absence of sanction to prosecute, as required by Section 56(2) of the Electricity Act and Section 197 of the Code, the trial Court could not have taken cognizance of the offences, under the aforementioned Acts. The trial Court, while considering this matter, has held that the petitioners, excluding B.B. Singhal, being public servants, were not enjoined with any public or official duty to enter into a criminal conspiracy to steal electricity and, therefore, their criminal acts would not attract the provision of Section 56(2) of the Electricity Act and Section 197 of the Code. I find no illegality or infirmity in the findings, returned by the trial Court. The petitioners were allegedly part of the conspiracy to grant illegal benefits to BIC. Though it was the job of Deepak Chopra and H.S. Brar, during the period they remained posted to record meter readings, the readings were provided to them by V.K. Mahendru and were recorded by Tarsem Lal, Jagir Singh and M.P. Gaur. The records, maintained by the latter official, as noticed by the trial Court, reveal incorrect readings, cuttings and overwritings. Section 56(2) of the Electricity Act protects "any thing done or in good faith purporting to be done under the Electricity Act". The petitioners cannot be heard to urge that theft of electricity or conspiring to facilitate theft is an act done in good faith or purporting so to be done. Consequently, these contentions do not merit acceptance. It is true that where the offence alleged is so inextricably linked to the official duty, as to be inseparable from the official duty, sanction to prosecute is necessary. However, in the present case, as it was no part of the official duty of the petitioners, to conspire to facilitate the theft of electricity, they cannot be heard to urge that their alleged criminal acts were so entwined with the discharge of their official duties as to enable them to invoke the protection of

Section 56(2) of the Electricity Act and Section 197 of the Code. The Hon'ble Supreme Court, while considering the scope of Section 197 of the Code, in K. Kalimuthu's case (supra), held as follows :-

10. Such being the nature of the provision the question is how should the expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", be understood ? What does it mean ? "Official" according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In B. Shaha v. M.S. Kochar, it was held : (SCC pp. 184-85, para 17)

The words `any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, `it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision.

Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to act or omission in the course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that the act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective

of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar u/s 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dobey v. H.C. Bhari* thus : (SCR pp 933 & 934-35)

The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner, with the discharge of official duty. .... There must be a reasonable connection between the Act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim), but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

37. It is, apparent that the expression "official duty" applies to an act or omission by a public servant in the course of his service. However, this protective cover does not extend to every act or omission and only those acts or omissions as are so inextricably linked to the discharge of official duties, as to be inseparable therefrom would be protected then also on the facts and circumstances of each case, which would vary from case to case. The nexus between the acts complained of and the official duty would be a question of fact to be determined on facts and was, therefore, rightly negated by the trial Court.

38. The next contention, namely, that sanction to prosecute the petitioners for offences under the Electricity Act and the Code was to be granted by the "State Government", the expression used in Section 56(2) of the Electricity Act, and Section 197 of the Code, but has, in fact, been granted by the respective Electricity Boards or the authorities competent to dismiss an employee and, therefore, cannot be deemed to have been granted sanction to prosecute the petitioners, in terms of the Electricity Act and the Code. It is true that sanction under the Electricity Act, the Code on the one hand, and the P.C. Act on the other, are to be granted by different authorities, namely, the State under the Electricity Act and the Code, and the authority, entitled to dismiss an employee, under the P.C. Act. The sanction to prosecute has been granted by the authority competent to dismiss the petitioners and not by the State Government and as the question with respect to sanction has been left open to be decided at the stage of the trial, the aforementioned question would be taken into consideration by the learned trial Court.

39. In so far as Shri H.S. Brar, the petitioner in CrI.R. No. 798 of 2006, counsel for the petitioner contends that the learned trial Court erred in framing charges, u/s 39-A of the Electricity Act, as Section 39-A of the Electricity Act was incorporated in the Electricity Act on 12.8.1986, whereas the petitioner was relieved in July, 1985. This contention merits outright rejection, as no charge has

been framed against H.S. Brar, u/s 39-A of the Electricity Act. The other contention that charges could not have been framed against this petitioner, u/s 116 of the Penal Code does not merit interference. As referred to herein above, an order, framing charges, is a mere expression of opinion that an accused can be tried for the offences charged and, therefore, the arguments, addressed by counsel for the petitioner that no offence had been committed, u/s 116 of the Penal Code, would be suitably considered and adjudicated by the trial Court, during the course of the trial.

40. The last contention is that charges could not have been framed against B.B. Singhal, as cognizance thereof was barred by limitation. It is contended that the alleged offence came to the notice of the Electricity Board in 1990. Shri P.P. Gogia submitted his report on 19.11.1990. The FIR was lodged on 14.12.1993 and the final report/charge-sheet presented before the Special Court on 23.2.2001. The petitioner has been charged with offences, punishable upto a period of three years" imprisonment and, thus, cognizance against B.B. Singhal was apparently time barred. The CBI has not set out any explanation for the delay in the charge-sheet nor has it filed any application for condonation of delay.

41. The question that merits consideration is whether, and in view of the facts, noticed herein above, the trial Court was justified in taking cognizance against B.B. Singhal. Section 473 of the Code reads as follows :-

473. Extension of period of limitation in certain cases. - Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

42. Section 473 of the Code confers powers upon a Court notwithstanding anything contained in the provisions of Chapter XXXVI to take cognizance of offences, where cognizance is barred by limitation. Section 473 of the Code confers powers to condone delay in two separate and distinct situations, one independent of the other. The first part of Section 473 of the Code empowers a Court to take cognizance, where cognizance of an offence is barred by limitation, if, for reasons to be disclosed, a Court is satisfied as to the sufficiency of the cause shown. The second part of Section 473 of the Code empowers a Court to condone delay, if "interest of justice" so demands. The expression "interest of justice" appearing in Section 473 of the Code, is not ejusdem generis to the power, conferred by the first part of Section 473 of the Code and confers an independent power upon a Court to condone delay. An order condoning delay must disclose a judicious exercise of discretion. The discretion, so exercised, must not be capricious or arbitrary and must be supported by a process of reasoning culminating in a reasoned order.

43. The facts of the present case, as disclosed in the final report, and as narrated herein above, reveal that the petitioners are accused of theft of electricity.

Electricity is public property, a commodity that runs the wheels of an economy, without which our modern way of life would come to a standstill. Theft of public property is a grave and serious offence. The expression "interest of justice" is not an empty platitude to the word justice. It inheres, not merely a power but an obligation to advance the cause of justice. All offences are invariably offences against public interest and, therefore, it may be canvassed with a decree of conviction, that if delay is condoned, in the interest of justice, it would render the provisions of Section 468 of the Code otiose. There is a palpable difference between offences, which involve theft of public property, and other offences. Theft of electricity or public property cannot be equated with other offences and, therefore, as circumstances, being exceptional, they require that the petitioners be tried for the offences charged delay notwithstanding.

In view of what has been stated above, I find no merit in the present revision petitions, which are consequently dismissed. The trial Court shall, however, make every endeavour to conclude the trial within one year from the next date of hearing.