

(2011) 01 PAT CK 0139

In the Patna High Court

Case No : Cr. Misc. Nos. 13248 and 14332 of 2009

Binay Kumar Singh and Others

APPELLANT

Vs

The State of Bihar and Others
 Swapan Mukherjee and
Others Vs Cabinet (Vigilance) Department, Electricity Board
Cell and Another

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0139

Final Decision : Dismissed

Judgement

Shyam Kishore Sharma and Dinesh Kumar Singh, JJ.—Petitioners of the aforementioned two Criminal Miscellaneous Applications and Criminal Writ Application have prayed for quashing of the entire criminal proceeding including the First Information Report of Vigilance Police Station Case No. 67 of 2008 (Spl. Case No. 43 of 2008) registered on 16.9.2008 under Sections 166, 109, 119, 406, 420, 465, 467, 468, 120B of the Indian Penal Code, under Sections 135 & 138 of the Electricity Act, 2003 and u/s 13(1)(d) of the Prevention of Corruption Act, 1988 and also for quashing of the entire criminal prosecution of Vigilance Police Station Case No. 34 of 2009 dated 3.4.2009 (Spl. Case No. 26 of 2009) registered under Sections 13(1)(d) of Prevention of Corruption Act, 1988 and Section 120B of the Indian Penal Code.

2. In Vigilance Police Station Case No. 67 of 2008 M/s Dadiji Steels Ltd., and its members of the Board of Directors, namely, Binay Kumar Singh, Ramesh Chandra Gupta, Vijay Kumar Gupta, Shri Sachint Agrawal, all partners of M/s Dadiji Steels Ltd., and all persons connected with the management of the company were made accused without specifically naming them.

3. In Vigilance Police Station Case No. 34 of 2009 Shri Swapan Mukherjee, Chairman, Bihar State Electricity Board, (retired); Shri M.I. Ansari, Chief Engineer (Commercial), Bihar State Electricity Board (retired); Ratneshwar Jha, Retired Electricity Engineer (Commercial), Bihar State Electricity Board; Shri C.N.

Prakash, General Manager-cum-Chief Engineer, Central Supply Region, Patna; Shri R.N. Singh, Superintendent Electrical Engineer, Central Supply Circle, Patna; Shri P.K. Singh, Executive Engineer Electricity (Commercial), Bihar State Electricity Board and 4 members of the Board of Directors of M/s. Dadiji Steels Ltd., namely, Vinay Kumar Singh, Ramesh Chandra Gupta, Shri Sachint Agrawal and Shri Vijay Kumar Gupta were also made accused.

4. M/s Dadiji Steels Ltd., Vinay Kumar Singh, Ramesh Chandra Gupta and Vijay Kumar Gupta have prayed for quashing of Vigilance P.S. Case No. 67 of 2008 (Spl. Case No. 43 of 2008) through Cr.W.J.C. No. 921 of 2008 whereas Vinay Kumar Singh, Ramesh Chandra Gupta, Vijay Kumar Gupta being the Directors of M/s Dadiji Steels Ltd., have filed Cr. Misc. No. 14332 of 2009 u/s 482 of the Code of Criminal Procedure. for quashing of Vigilance P.S. Case No. 34 of 2009 (Special Case No. 26 of 2009).

5. Swapan Mukherjee, M.I. Ansari, C.L. Prakash, R.N. Singh, P.K. Singh and Ratneshwar Jha have filed Cr. Misc. No. 13248 of 2009 u/s 482 of the Code of Criminal Procedure for quashing of the entire prosecution of Vigilance P.S. Case No. 34 of 2009 (Special Case No. 26 of 2009).

6. At the admission stage, the interim orders for not taking any coercive steps were passed on 6.4.2009, 15.4.2009 and on 24.11.2009.

7. Subsequently, while considering the contentions of the parties, the learned Single Judge on 24.11.2009 referred the matter to Division Bench broadly on three points which is as follows:

This Court finds that these aspects of the matter have to be decided and controversy settled once and for all and therefore, I find that this being an important question and as there is no decision on this issue, should be decided by a Division Bench. I, accordingly, refer this matter to the Division Bench.

(i) The Issue is whether the Vigilance Department can institute a case of theft of Electricity in view of the provision of Sections 135, 151 and 151(A) of the Electricity Act.

(ii) It would be of vital importance to consider whether in a case where the Petitioners have been able to establish a semblance of a right specially by way of the provisions of a statute, whether those acts can amount to a theft?

(iii) Another issue, which is of equal importance, is whether the officers of the Vigilance Cell are competent to decide technical question as to how and what should be rate of Tariffs to be charged from the licensee as also whether grant of remission as per statute would amount to an offence in the facts stated in this case.

8. Since all the three applications basically raise the same questions and were clubbed at the initial stage of admission, hence, all the three applications are being considered together.

9. To consider the points of reference, it is desirable to have a look on the basic accusation of both the First Information Reports.

10. Though the factual matrix of both the First Information Reports are almost the same but for the proper appreciation, separate accusations of both the First Information Reports are mentioned hereunder:

Vigilance P.S. Case No. 67 of 2008 (Special Case No. 43 of 2008):

11. The First Information Report was lodged on 16.9.2008 on the basis of the written report submitted by Yogendra Prasad Singh, Deputy Superintendent of Police (Vigilance Department), Electricity Cell, Vidhyut Bhawan, Patna, against M/s Dadiji Steels Ltd., and its Directors under various provisions of the Indian Penal Code, Electricity Act, 2003 and Prevention of Corruption Act, 1988, as mentioned above, alleging inter alia:

(i) An Inspection team was constituted for making inspection of M/s Dadiji Steels Ltd., Sabalpur, Patna, in view of the confidential report of electricity theft by conspiracy;

(ii) Consequently on 6.5.2008 at 19.14 hrs the constituted team made a surprise inspection of meter bearing No. BEB 08091 and other appliances relating to supply of electricity in the premises of M/s Dadiji Steels Ltd., in presence of Electrical Executive Engineer (Supply), Fatuha; Assistant Electrical Engineer, Deedarganj, Patna, representative of M/s Secure Meter Ltd., and representatives of Petitioner No. 1.

(iii) During the course of inspection, data of the meter was downloaded by common meter reading instrument (hereinafter referred to as CMRI), and thereafter the Meter Reading Instrument (hereinafter referred to as MRI) was sealed in presence of inspection team, officials of the Electricity Board and representative of the Company.

(iv) On 7.5.2008 the seal of CMRI made on 6.5.2008 was removed and the MRI was downloaded in presence of Executive Engineer, representative of M/s. Secure Meter Ltd., and representative of the Company.

(v) The downloaded data reflected 13 instances of C.T. Short between 2.3.2008 and 13.3.2008.

(vi) Downloaded data from MRI necessitated expert investigation and suggestion. Accordingly, FAX messages were sent to M/s National Physical Laboratory, Delhi, but no response was received. Thereafter, reminder was also sent to the said laboratory.

(vii) On 9.7.2008, Electrical Executive Engineer and R.D., Electricity Board, Patna, were directed to seize the meter and produce it to Electricity Vigilance, Patna.

(viii) The Electrical Executive Engineer, on the basis of being the member of

Inspection team on 6.5.2008 and on the basis of reproduced data of MRI, submitted a note to DG, Vigilance, suspecting some interference with the meter for committing theft of electricity. In such circumstances, it was decided to get the meter tested by an independent expert. Hence, the meter was sent to Central Power Research Institute (hereinafter referred to as CPRI), Bhopal. On 17.7.2008 CPRI, Bhopal, transmitted its report reflecting tampering of C.T. Shorting in March 2008. It is relevant to state here that the meter records the tampering if the meter has been by-passed from outside or inside. In view of the report of CPRI, Bhopal, it was suspected that the Electricity theft was committed by C.T. Shorting due to which the Electricity Board had suffered loss and the consumer got illegal gains. The MRI downloaded report dated 7.5.2008, which reflects theft of electricity, was handed over to the representative of M/s Dadiji Steels Ltd. Thereafter, on 27.6.2008, the consumer made voluntary disclosure under Clause 11.4 of Bihar State Electricity Supply Code, 2007.

(ix) It is further alleged that in the agreement between M/s Dadiji Steels Ltd., and the Electricity Board, the category of the Tariff is mentioned as HTSS-I, whereas in the Tariff Notification of the Board issued between 1.11.2006 to 31.8.2008 there is no reference of HTSS-I Tariff. It is not clear as to from where HTSS-I Tariff figured in the agreement and whether such an error was under ignorance or deliberately.

It is also alleged that in the bill raised to the consumer, the category is mentioned as HTSS, which is valid for Induction Furnace, whereas in the premises of the consumer, apart from Induction Furnace, Rolling Mill is also situated and the readings of the consumption of electricity is jointly recorded by a single meter. Hence, the Electricity Board has been raising the bill on the basis of common consumption on a fixed rate applicable for Induction Furnace only. Thus, the consumer has been using energy at a lower rate by which huge economic loss has been suffered by Electricity Board and it is not clear as to why separate meter has not been installed by Electricity Board for Induction Furnace and for Rolling Mills separately.

(xi) By allowing the consumer for availing common consumption on a fixed rate, it is not clear from the agreement that how much load is sanctioned separately for each Rolling Mill and Induction Furnace, out of total sanctioned load of 120.51 kVA. Further the sanctioned load of 120.51 kVA to the consumer, HTSS-I is not under any Tariff and yet how the load was sanctioned and how the bill is being raised is not clear, as even the HTSS category is only applicable for Induction Furnace whereas in agreement the object of supply is for production of MS Ingots and MS Rods. Thus, the authorities of the Electricity Board in an arbitrary manner, prima facie, put the consumer in a wrong category of Tariff and sanctioned the load of 120.51 kVA, which does not fall under any Tariff category for the purpose of causing economic loss to the Electricity Board and gain to the consumer.

(xii) It is also alleged that the Board ought to have raised the bill as stipulated in

Annexure-7(B)(i) of Bihar State Supply Code, 2007, which prescribes charging of double amount of consumption of the last 12 months, if it is found that the electrical energy supplied is used for such purpose for which higher Tariff is applicable. Hence, from April 2008, the bill ought to have been prepared @ Rs. 4.20 per unit as against Rs. 1.35 per unit because the consumer was running Rolling Mill alongwith Induction Furnace. Thus, it appears that for the purpose of providing illegal gain to the consumer such billing has been made.

(xiii) It is also alleged that even when the consumer made a voluntary declaration under Clause 11.4 of Bihar State Electricity Supply Code, 2007 the bill was raised @ 1.35 per unit instead of Rs. 4.20 per unit as a result of which the Board suffered a huge loss of Rs. 3.41 crores.

(xiv) It is further alleged that after the Vigilance inspected the premises of M/s. Dadiji Steels Ltd., several old matters of electricity theft were raked up and hurriedly five F.I.Rs., were lodged, which reflects the connivance of employees of Electricity Board. Hence, it was recommended for lodging of the case against the employees of the Board also, but the formal part of the F.I.R reflects that the F.I.R. was lodged only against M/s Dadiji Steels Ltd., its members of Board of Directors, partners and the managing employees and not against any officers of the Electricity Board but the F.I.R. was registered under Sections 166, 109, 119, 406, 420, 465, 467, 468, 120B of the I.P.C. and under Sections 135, 138 of the Electricity Act, 2003 and u/s 13(1)(d) of the Prevention of Corruption Act, 1988.

Vigilance P.S. Case No. 34 of 2009 (Special Case No. 26 of 2009)

12. The First Information Report was lodged on 2.4.2009 alleging therein inter alia:

(i) A confidential information was received by Vigilance Cell of Electricity Board in March-April, 2008 regarding various consumers having HT and HTSS connections, having indulged in large scale electricity theft in conspiracy with higher officials of Electricity Board, resulting in large scale wrongful loss to the Electricity Board and wrongful gain to the consumers.

(ii) It is also alleged that when the Vigilance accelerated its activities then the Electricity Board hurriedly lodged several cases of Electricity theft.

(iii) On 6.5.2008 surprise inspection was conducted in the premises of M/s. Dadiji Steels Ltd., by Ratan Kumar, Electrical Executive Engineer, deputed in Vigilance Cell alongwith Yogendra Prasad Singh, Dy. S.P., Sh. N.L Ram, Electrical Executive Engineer (Supply) and consequently Vigilance P.S. Case No. 67 of 2008 was registered on 16.9.2008 against M/s Dadiji Steels Ltd., and its employees.

(iv) Finding the Vigilance Cell active, the Electricity Board started investigating some old tampered meters and obtained specialist reports and also got F.I.R registered. Though these meters were earlier removed only by saying that they were defective meters and new meters were installed but the whole thing was done within the knowledge of the top officials of Electricity Board, which further

gets proved by the decision of the Board to send these defective meters to the laboratory of M/s Secure Meters Ltd.

(v) It is further alleged that advertisement for voluntary disclosure under Clause 11.4 of Bihar State Electricity Supply Code was hurriedly made to save the consumers indulging in meter tampering and thereby gain of Rs. 19 crores has been made by the consumers as the Chairman of the Board allowed the voluntary disclosure under Clause 11.4 in spite of protest by the Vigilance Department.

(vi) It is also alleged that in the public advertisement there was allurements as well as threat of coercive action and as such any thing done in view of the advertisement cannot be said to be a voluntary act and the said advertisement could be seen as an evidence of conspiracy. The voluntary disclosure made by the M/s, Dadiji Steels Ltd., on 27.6.2008 under clause 11.4 of the Bihar Electricity Supply Code, 2007 appears to have been accepted in utter haste on 9.7.2008 and a bill of Rs. 1.19 crores was issued, which was immediately deposited by the consumer though the authorities of the Board had the knowledge of meter tampering case giving rise to Vigilance P.S. Case No. 67 of 2008.

(vii) It is also alleged that in accordance with Annexure-7 of the Bihar State Electricity Supply Code, 2007, the Electrical Executive Engineer, Ratan Kumar calculated the penal bill to the tune of Rs. 20.98 crores. However, calculations were nullified by the benefit extended to the company resulting in wrongful loss of Rs. 19 crores to the Electricity Board and such benefit was extended to the consumer in connivance with the top officials of the Electricity Board.

(viii) It is also alleged that Electrical Superintending Engineer, Electric Supply Division, Patna, vide letter dated 14.5.2008 was informed about inspection of the meter made by the Vigilance in the premises of M/s Dadiji Steels Ltd., and vide letter No. 1084 dated 9.7.2008, the removal of the meter was also informed. It is further alleged that the Chairman of the Electricity Board, in his letter dated 9.3.2008 addressed to the Deputy Secretary, Department of Energy, stated that he has no information regarding the action being taken by the Vigilance Department. However, it was also said that if any action was taken by Investigating Agency from before and any case u/s 135 of Electricity Act is made out then voluntary disclosure will be not in operation. Accordingly, the Chairman had the knowledge of action taken by the Vigilance against the consumer.

(ix) It has further been alleged that in spite of F.I.R. being lodged against the consumer, no penal bill has been raised by the Board, which shows their intention.

(x) It is also alleged that Sh. Ratneshwar Jha, in course of his statement, has stated that the entries of the application of the consumer, making declaration under Clause 11.4 of the Bihar State Electricity Supply Code, 2007, was not done serially and date-wise, hence, the procedure adopted appears to be hasty one.

(xi) It is also alleged that the extra generosity was shown by the Chairman to M/s Dadiji Steels Ltd., as payment of security amount were allowed to be made in instalments and other generosity was shown with regard to fuel surcharge. Consequently, Vigilance P.S. Case No. 34 of 2009 (Spl. Case No. 26 of 2009) was registered on 2.4.2009 u/s 120B of the I.P.C and 13(1)(d) of the Prevention of Corruption Act, 1988 against the Chairman of Electricity Board, its officials and 4 members of the Board of Directors of M/s Dadiji Steels Ltd.

13. The fulcrum of the accusation in both the F.I.Rs. is the suspected theft committed by M/s Dadiji Steels Ltd., and the voluntary declaration accepted by the Electricity Board under Clause 11.4 of the Supply Code, 2007 after the inspection of the Vigilance and allowing the consumer to consume the electricity on the same connection for Induction Furnace as well as for Rolling Mill under HTSS-I Tariff, which is nowhere mentioned in the 2006 Tariff Notification.

14. The contention of the vigilance is that quashing of F.I.R. is not maintainable u/s 482 Code of Criminal Procedure. and Article 226 of the Constitution of India, moreover, loss was being caused to the Electricity Board by corrupt means, hence with regard to theft of Electricity, the Vigilance is empowered to register the case under Memo No. 4119 dated 25 April, 1991, whereby the Governor of Bihar authorized Electricity Vigilance Cell to register the case under Electricity Act, 1910 in Vigilance Police Station. The remission under Clause 11.4 under Bihar Electricity Supply Code was not permissible. Moreover, consumer could not have run the Rolling Mill and Induction Furnace under one connection.

15. The main contention of the Petitioners is that the Vigilance Cell of the Electricity Board is not empowered to institute the case for theft of electricity, make assessment or fix the Tariff in view of the specific provisions in the Electricity Act, 2003 and the Bihar Electricity Supply Code, 2007 but the malicious prosecution has been launched only to harass the innocent Petitioners. Moreover, the prosecution is barred under Sub-clause "C". of Clause 11.4 of the Supply Code and above all the question of theft and the fixation of Tariff and assessment is specifically authorised, under the Act and the Supply Code, to the officers of Electricity Board. The quashing of F.I.R. is maintainable both u/s 482 Code of Criminal Procedure. as well as Article 226 of the Constitution of India.

16. The contention of the Electricity Board is that the prosecution has maliciously been launched, as the Vigilance has no power to institute a case for electricity theft, fix the Tariff or raise question with regard to the remission granted by the Board under the provisions of the Act and the Supply Code.

17. The brief contention on behalf of the consumer/Petitioners is that M/s Dadiji Steels Ltd., is a company incorporated under the provisions of the Companies Act, 1956, which established the Rolling Mill in the year 1997 and applied for H.T. Industrial connection, which was granted on 15.9.1997 for a contract demand of 835 kVA at 11 kVA. Subsequently, the consumer company got the connection converted into 33 kVA line at contract demand of 1000 kVA exclusively for the

Rolling Mill as till then the consumer company had not installed the Induction Furnace.

18. The consumer, in the year 2005 installed an Induction Furnace and for the said purpose HTSS-I (Induction Furnace Tariff) issued vide Notification No. 166 dated 28.5.2001 was applicable and according to this notification the consumer company was liable to pay fixed charges @ 600 kVA per M.T. capacity of each Induction Furnace in terms of Clause 2 of the Tariff Schedule and since the firm had installed the Induction Furnace with capacity of 8 M.T. therefore, it applied for additional contract demand for 4800 kVA. However, on measurement of Induction Furnace, it was found to be having capacity of 8.42 M.T., therefore, the consumer company was granted the contract demand of 5051 kVA for Induction Furnace. Therefore, the total contract demand of Rolling Mill of 1000 kVA and for the Induction Furnace of 5051 kVA comes to 6051 kVA, for which the consumer company became liable to make payment. Subsequently the consumer company again installed 2 more Induction Furnace of 5 tonnes capacity each and accordingly it raised this contract demand of 6000 kVA and accordingly the contract demand for Induction Furnace came to be 11051 kVA and 1000 kVA for Rolling Mills, hence the total contract demand came to be 12051 kVA.

19. As per Clause 17 of the Tariff Notification No. 166/2000 dated 28.5.2001, additional load for the other Induction Furnace was permitted and in pursuance to Clause 17 of the 2001 Tariff Notification, the consumer was allowed to consume the electricity under one connection.

20. Certain dates are being recorded hereunder for the proper appreciation of the issue in question:

6.5.2008 Inspection by Vigilance Cell in premises of M/s. Dadiji Steels Ltd.

7.5.2008 Seal of CMRI made on 6.8.2008 was removed and data in the meter was downloaded.

4.6.2008 Advertisement for voluntary disclosure published in " Hindustan" daily.

27.6.2008 Voluntary disclosure by the consumer under Clause 11.04 of the Bihar State Electricity Supply Code, 2007.

9.7.2008 Electricity Board raised the bill under Clause 11.04 of the Supply Code.

23.7.2008 Vigilance P.S. Case No. 67 of 2008 instituted.

2.4.2009 Vigilance P.S. Case No. 34 of 2009 instituted.

2.4.2009

Complaint case No. 895 (C)/2009 lodged by the Chairman of Electricity Board against D.G. Vigilance, for alleged occurrence of 30.3.2009, alleging use of filthy language and using unparliamentarily words with threat of arrest.

21. The brief provisions of the Electricity Act and the Supply Code are traced

hereunder for the proper appreciation of the issue involved:

22. Electricity Supply Industries in India were being governed by three enactments, namely, Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act 1998 but all the Acts have been repealed by the Electricity Act, 2003.

23. u/s 82 of the Act, the State Regulatory Commission was required to be set-up by the State which had to determine the Tariff for generation, supply and transmission of the electricity.

24. In view of the provisions prescribed u/s 82 of the Electricity Act 2003, the State of Bihar also constituted the Bihar Electricity Regulatory Commission, which in turn had framed the Tariff for different category of consumers in exercise of the statutory power vested under the Act.

25. In exercise of the power conferred by Sections 181(1) and 181(2) read with Sections 50, 43(1), 44, 46, 47(4) and 56 of the Electricity Act, 2003, the Bihar Electricity Regulatory Commission made Bihar Electricity Supply Code, 2007 (hereinafter referred to be the "Supply Code") to govern supply and retail sale of electricity by the licensee and procedure thereof and the powers, function and obligation of the licensee and the rights and obligations of the consumers and matter connected therewith and incidental thereto.

26. The supply of electricity to any category of the consumers is governed by the provision of the Tariff Notifications i.e. Tariff Notifications of 1993, 2001, 2006, 2008 and the condition of supply is governed by the Bihar Electricity Supply Code, 2007. Chapter III of Bihar Electricity Supply Code, 2007, provides for system of supply and classification of consumers. Clause 3.2 of Bihar Electricity Supply Code 2007 has classified Low Tension, High Tension, Extra High Tension consumers. Clause 4.71 of Bihar Electricity Supply Code, 2007 talks about H.T. Supply. Clause 7.8 of the Code provides for change of category. Chapter 9 of the Code provides for the billing under different category. Chapter 10 provides for payment and disconnection, whereas Clause 10.14 provides for disputed and erroneous bills.

27. Chapter 11 of the Supply Code, provides for the provisions relating to unauthorised use of electricity.

28. Clause 11.1 of the Bihar State Electricity Supply Code provides power for inspection and Clause 11.1(c) provides for hearing and final assessment. Clause 11.1(d) provides for appeal before the Appellate Authority against Final Assessment. Part-XII of the Electricity Act, 2003 deals with "Investigation and Enforcement", Section 126 deals with the manner of assessment, which is as follows:

Assessment.-(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to

the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges, payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under Sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this Section shall be made at a rate equal to (twice) the Tariff applicable for the relevant category of services specified in Sub-section (5).

Explanation.--For the purposes of this Section -

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity-

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee;
or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised;
or

(v) for the premises or areas other than those for which the supply of electricity was authorised.

29. Thus, it is evident from the Supply Code that specific provision for

assessment of unauthorised use of energy has been made and the same is required to be done only by designated Assessing Officer and none else. If the consumer feels aggrieved, then appeal can be preferred.

30. Clause 11.2 of the Supply Code contains provisions for theft of the electricity, which is governed by Section 135 of the Electricity Act. Clause 11.1(a)(vi) stipulates that "within 3 working days of the date of inspection, the Assessing Officer shall analyze the case after carefully considering all the evidence including the consumption pattern, wherever available and the report of inspection. If it is concluded that no unauthorised use of electricity has taken place, no further action will be taken.

31. It is evident from the aforesaid provision that in the case of unauthorised use of electricity or theft, the assessment has to be made by the authorised officer.

32. Clause 11.6 of the Code deals with the situation of the conflict between the Act and the Supply Code in the following words:

Offences and penalties in respect of supply of electricity have been dealt in detail under Sections 135 to 152 of the Electricity Act, 2003 amended from time to time which shall be binding both for licensee-or supplier as the case may be or the persons concerned. In case of any deviation in any of the provision specified in the Code from the provisions of the Act the latter shall prevail.

33. Hence, it becomes clear that in case of conflict between the Act and the Supply Code, the provisions of the Act shall prevail.

34. Thus, from perusal of Section 126 of the Electricity Act, it appears that on inspection if any consumer is found indulged in unauthorised use of electricity then the provisional assessment will be made, subject to objections and then the final assessment will be made. The explanation clearly suggests that the "Assessing Officer" means, an Officer of State Government, Board or licensees, as the case may be, as designated as such by the State Government. Such Assessing Officer has been designated vide Memo No. 3087 dated 4.8.2006, to be the Assistant Engineer of Electricity Supply Division of Bihar for the purpose of Section 126, which is Annexure-9 to the Cr.WJ.C 921 of 2008.

35. In view of the provisions u/s 126 of Electricity Act, 2003 the Vigilance has no power u/s 126 of the Electricity Act to make inspection and come to the conclusion that the unauthorised use of electricity has been made. Since the Board is of the view that no unauthorised use of electricity was made by the consumer then in such circumstance the question of raising the issue by the Vigilance regarding unauthorised consumption of electricity has no meaning. Moreover, Explanation (b) of Section 135 of the Electricity Act, elaborates the meaning of unauthorised use of electricity to be, use of electricity by artificial means or by a means not authorised by the concerned person, authority or licensee but in the present case, the Board admits that the consumption is as per the authorisation. Hence, the question of unauthorised consumption does not

arise and the question of unauthorised consumption has to be conclusively decided by the authorised officers of the Board and not by the Vigilance Cell. Hence, any accusation with regard to unauthorised consumption has no legs to stand.

36. The claim of the Vigilance that the bill ought to have been raised under Sub-section 5 of Section 126 is absolutely misconceived as the computation of the bill under sub-clause (Sub-section) 5 of the Section 126 of the Act can only be made if the Assessing Officer, reaches to the conclusion that unauthorised use of electricity has taken place and the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place but when the unauthorised period of consumption is not ascertained then the bill can be raised " only for a period of 12 months immediately preceding the date of inspection. Hence, the bill of the consumer could not have been computed as per Sub-section 5 of Section 126, as claimed by the prosecution.

37. The other ground of accusation by the Vigilance is that the bill ought to have been computed as per Annexure-7 of Bihar Electricity Supply Code. Annexure-7 is the parameter for computing the bill of unauthorised consumption under Clause 11.1(b)(i) of the Supply Code for provisional assessment when the Assessing Officer comes to the conclusion that unauthorised use of electricity has taken place in the premises then there is requirement of giving 7 days notice to file objection and then assessment under Annexure-7 of the Supply Code is permissible, which is absolutely not applicable in the present case.

38. Clause 11.2.1(2) specifically lays down as to who can make inspection of the premises in suspected case of unauthorised use of electricity or theft in following words:

Any officer of the licensee or supplier as the case may authorised in this behalf by the State Government may:

(a) enter, inspect, break open, search any place or premises in which he has reason to believe that electricity has been, is being or is likely to be used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article, which has been, is being, or is likely to be, used for unauthorised use of electricity;

(c) examine or seize any books of account or documents, which in his opinion shall be useful for or relevant to, any proceeding in respect of the offence under Sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

39. Clause 11.2.4 of the Supply Code provide for compounding of the offence in terms of Section 152 of the Electricity Act, 2003. From the reading of this provision, it appears that compounding of the offence can be made after lodging

of the F.I.R. and on payment of money as prescribed for compounding in the table. The compounding may be accepted and the acceptance of the compounding money shall be deemed to amount to an acquittal within the meaning of Section 300 of the Code of Criminal Procedure, 1973.

40. The nucleus of accusation in both the F.I.Rs., is theft of electricity by M/s. Dadiji Steels Ltd.

41. Section 135 of the Electricity Act comes within Part-XIV of the said Act under the heading "Offences and Penalties" which reads as follows:

Theft of electricity. (1) Whoever, dishonestly-

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity or

(d) uses electricity through a tampered meter; or

uses electricity for the purpose other than for which the usage of electricity was authorised.

So as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use

(i) does not exceed 10 Kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second or subsequent conviction of a person

where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1-A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

(2) Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity (has been or is being) used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which (has been or is being) used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under Sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain

present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

42. From perusal of the provisions u/s 135 of the Electricity Act and Clause 11 of Supply Code, it appears that it is a complete Code for dealing with the offence of electricity theft, which prescribes detecting theft of electricity or the use of electricity other than the authorised use by the consumer.

43. Section 135(1-A) provides disconnection of electricity immediately after detection of theft but in the present case, the inspection was done on 6.5.2008 but no disconnection was made which suggests that no theft was suspected which further gets confirmed from the test report of CPRI, Bhopal that no conclusive proof of theft was found.

44. From perusal of the aforesaid provision, it appears that u/s 135 or Clause 11 of the Supply Code, it was the Officer authorised by the Board or the licensee who has the power to inspect, seize and lodge the complaint. The provision with regard to the theft of electricity is very specific in the aforesaid two provisions and it has to be done in the manner it has been prescribed under the Act and the Supply Code, which has a statutory force. Clause 11.1(a)(vi) prescribes for taking action within 3 working days of the date of inspection but in the present case, the inspection was done on 6.5.2008, whereas the F.I.R., being Vigilance P.S. Case No. 67 of 2008 was lodged on 16.9.2008. In the meanwhile neither disconnection was made nor any seizure was made and the meter was removed on 9.7.2008 but since nothing was done within three days of the inspection, hence under the aforesaid provision it can be inferred that no unauthorised use of electricity has taken place and hence no action was required.

45. Thus, from the aforesaid facts it appears that neither the inspection was done by the person, who was authorised to make inspection nor the F.I.R., was lodged by the person authorised to do the same. Since the Assistant Engineer and an Officer ranking above him in the Electricity Department was authorised to make inspection or to lodge an F.I.R., hence, the inspection by the Vigilance was absolutely without jurisdiction as the principle is well established which flows from a Latin maxim expression, "Unius Est Exclusio Alterius". This legal principle is evident from the judgment of the Apex Court in the case of *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, , which reads as follows:

It is well settled that where a power is required to be exercised by certain authority in a certain way, it should be exercised in that manner or not at all and

all other modes of performance are necessarily forbidden....Hence, in this context, the making of the inspection or lodging of the F.I.R. in a suspected case of theft by Vigilance is not permissible, and more so, when the Electricity Act, 2003 being a Special Act provides the provision u/s 135 for detection of the electricity theft and punishment coupled with Clause 11 of the Supply Code, 2007, then in the light of the same the Vigilance cannot usurp that power.

46. So far as the question of theft is concerned, from both the F.I.Rs, it appears that on 6.5.2008 inspection was done on suspecting theft, when the seal of the meter was found intact and nothing was mentioned in the inspection report which suggests that theft was only suspected, by the investigating team. This gets further fortified by the fact that after four months of the inspection, the F.I.R. for the electricity theft was lodged on 16.9.2008 being Vigilance P.S. Case No. 67 of 2008 though the meter was removed on 9.7.2008, whereas the provisions under the Act and the Supply Code specify that in case of theft, disconnection should be done immediately which has not been done in the present case, which further supports the contention of the Petitioners that the Vigilance was not sure about the theft.

47. Though the report of the CPRI, Bhopal, based on downloaded data of the meter, reflects 13 instances of CT Shorting between 2.3.2008 and 13.3.2008 but the testing centre of CPRI, Bhopal also found the meter and its seal intact. However, when the Chief Engineer of the Electricity Board inquired about the report from Central Power Research Institute, Bhopal, it was informed to the Electricity Board vide Letter No. 63(544) as contained in Annexure-16 of Cr.W.J.C. No. 921 of 2008 that the duration of shorting recorded in MRI does not lead to confirm case of theft in following words:

We would like to inform that during analysis of meter No. BEB 08091, we find that the meter seals and ultrasonic welding was intact. As per our opinion, based on the nature of duration and frequency of CT Shorting recorded in MRI report dated 6.5.2008 of above meter, confirm case of energy theft is not established.

48. As the seal of the meter are intact and the meter has not been tampered from inside, hence, the claim of the Vigilance with regard to the theft has not been established. In such circumstances, the allegation of connivance of the Officials, particularly the Chairman has no legs to stand. So far as giving a single tariff for Induction Furnace and Rolling Mill is concerned, it is as per the rule and the direction of Regulatory Commission and which cannot lead to confirm case of energy theft.

49. For the purpose of electricity theft, Section 135(1-A) prescribes disconnection on determination of theft and the officer of the licensee or supplier is authorized to lodge complaint within twenty four hours of disconnection relating to commission of theft. Such authorization has been done vide Memo No. 204 dated 4.6.2008 by the Bihar State Electricity Regulatory Commission which empowered Assistant Engineer of Bihar State Electricity Board or any officer above the said

rank as authorized person to exercise the power u/s 135(1-A) of the Electricity Act. Hence on this score also the institution of both the F.I.Rs., by Electricity Vigilance making allegation of electricity theft is devoid of any authority.

50. The conclusion of electricity theft also gets clouded in view of the consistency of the bill from December 2007 to June 2008, which has been brought on record by way of Annexure-7 in Cr.WJ.C No. 921 of 2008, which reflects the consistency of the bill as follows:

Dec. 07 Jan. 08 Feb. 08 Mar. 08 Apr. 08 May 08 June 08

1.35 1.4 1.4 1.43 1.45 1.58 1.51

Crore Crore Crore Crore Crore Crore Crore

51. The extract of the user manual of the Electronic Meter of M/s Secure Meter Ltd., has been brought on record as Annexure-11 in Cr.WJ.C. No. 921 of 2008. The said manual has prescribed 13 reasons for tampering and fraud detection and logging. Hence, the test report suggesting 13 occasions of C.T. Shorting may be due to several outside disturbances.

52. The Vigilance has tried to justify its action of lodging two F.I.Rs., on the basis of Notification dated 25 April 1991, as contained in Annexure-A to the Supplementary Counter Affidavit filed by the Vigilance in Cr.WJ.C. No. 921 of 2008, which is to the effect that the Vigilance Cell was created in the Electricity Board for taking care of corruption cases and the present case is one of them. Secondly, the Vigilance has relied upon Memo No. 4119 dated 25 April, 1991, whereby the Governor of Bihar authorized the Vigilance Cell to register the case under the Electricity Act, 1910 for investigation in the HQ Police Station of the Cabinet Vigilance Department, Bihar, Patna, in following words:

The Governor, orders that the offence under the Indian Electricity Act, 1910 shall be registered for investigation in the HQ Police Station of the Cabinet (Vigilance) Department; Bihar, Patna.

53. There is no doubt that the Electricity Vigilance was created to take care of the corruption cases and the authorisation was there for Vigilance also to take care of the electricity theft under the 1910 Act, but the Vigilance has failed to produce any notification whereby the Vigilance was authorized to take care of the electricity theft cases under 2003 Act, as Section 135 of the Electricity Act and Clause 11 of the Supply Code are a complete Code for dealing with Electricity theft. It is made clear that in the Electricity Act, 1910 there was no provision similar to Section 135(1-A), which specifically authorizes the Officers authorized by the supplier/licensee to lodge the complaint. Hence, the aforesaid notification, in no way, helps the Vigilance. It is true that vide Notification dated 6 June, 1993, the Vigilance P.S. was created for registration of corruption cases. Hence, the Vigilance has the power to register cases restricted to the corruption matters but in the present case, the theft and unauthorized consumption of electricity are the basis of registration of the two F.I.Rs., which is impermissible in view of

specific provisions under the Electricity Act, 2003 and Bihar Electricity Supply Code, 2007.

54. The other ground of accusation is that the voluntary declaration of the consumer was accepted by the Board after the inspection of the premises of the consumer by the Vigilance.

55. Voluntary Declaration of Tampered Meters as stipulated in Clause 11.4 of the Supply Code, reads as follows:

In case a consumer comes forward and voluntarily declares tampering of meter and/or seals:

(a) The tampered meter shall be replaced with a new meter by the Licensee/consumer, as the case may be, immediately and the Licensee shall raise the assessment bill at normal tariff for the period of last 3 months for domestic and agriculture, and 6 months for all other consumers reckoned from date of declaration.

(b) The energy bill, for the period the meter is not replaced, shall be sent as per the procedure for defective meters.

(c) No case shall be lodged in case a consumer voluntarily declares the tampered meter and pays the requisite charges in time.

(d) In case of default in payment, the procedure for booking the case of consumer shall be followed.

56. The allegation in Vigilance P.S. Case No. 34 of 2009 is mainly based on the fact that the Electricity Board, particularly, the Chairman ought not to have allowed the voluntary disclosure under Clause 11.4 of the Supply Code in view of the fact that the Board was aware about the inspection of the consumer.

57. The provision under Clause 11.4 of the Supply Code does not stipulate any pre-condition that if the inspection was done or even if F.I.R. was lodged for electricity theft, then the provision of voluntary declaration cannot be exercised. In the instant case, the voluntary declaration was done on 27.6.2008 though the inspection was done on 6.5.2008 but the Vigilance took no action, particularly with regard to making out a case of theft, lodging of any case, making disconnection or informing the Board. The bill was raised on 9.7.2008 in pursuance to the voluntary declaration, which was paid on 23.7.2008, whereas the Vigilance P.S. Case No. 67 of 2008 was lodged on 16.9.2008. Hence, by operation of the provisions of Clause 11.4 of the Supply Code, which has statutory force, the Vigilance is debarred from raising any objection. Clause 11.4(c) specifically stipulates that no case shall be lodged in case a consumer voluntarily declares the tampered meters and pays the requisite charges in time. Hence, on this score also the lodging of the FIR is hit by statutory bar.

58. It appears that when the Vigilance realised that Vigilance P.S. Case No. 67 of 2008 is hit by Clause 11.4(c) of the Supply Code then the Vigilance P.S. Case No.

34 of 2009 was registered.

59. It is well settled principle that the voluntary declarations are aimed at minimizing the litigation and for increasing the collection of the revenue at earliest point of time. Such schemes are very popular under Income Tax Act and one of such cases is of Sushila Rani Vs. Commissioner of Income Tax and Another, wherein the Apex Court in paragraph No. 5 highlighted the benefits of such voluntary disclosures schemes under Kar Vivad Samadhan Scheme, 1998 in following words.

Litigation has been the bane of both direct and indirect taxes. A lot of energy of the Revenue Department is being frittered in pursuing large number of litigations pending at different levels for long period of time. Considerable revenue also gets locked up in such disputes. Declogging the system wilt not only incentivise honest tax payers, it would enable the Government to realise its reasonable dues much earlier but coupled with administrative measures would also make the system more user friendly....

60. Hence the Apex court held that u/s 91 of KVSS, making a declaration is conclusive as to the matter stated therein and cannot be reopened for proceeding under any law for time being in force, except on the ground of false declaration by the declarant. The said principle has also been reiterated in case of Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi, .

61. Thus, in the present case, once the consumer has exercised the option of voluntary declaration under Clause 11.4 of the Supply Code it cannot be reopened by filing FIR by the Vigilance, in view of statutory bar under Clause 11.4(c) of the Supply Code.

62. Hence, it is absolutely a misconceived stand of the Vigilance that voluntary disclosure would not have been accepted when the premises was already inspected. As indicated above Clause 11.4 of the Supply Code does not stipulate that this benefit of voluntary disclosure cannot be conferred after inspection. Hence, this stand of Vigilance is absolutely unreasonable, particularly, in view of the fact that prior to acceptance of the voluntary disclosure no F.I.R. was lodged by the Vigilance, rather the Vigilance lodged the F.I.R. two months after the deposit of the raised bill under Clause 11.4 of the Supply Code and once the bill was deposited, Clause 11.4(c) of the Supply Code comes into play, which debars any prosecution of the consumer. Hence, on this score the accusation against the Chairman and other Officials of the Board, absolutely constitutes no offence.

63. Under Clause 11.4 of the Supply Code, the Chairman and the other officials were under the statutory obligation to accept the voluntary declaration and raise the bill and after deposit of the bill, the statutory immunity began operating under Sub-clause "C" of Clause 11.4 and this immunity debars the prosecution of the consumer and hence on that score, the Officials of the Board cannot be allowed to be prosecuted.

64. So far as the accusation on the basis of making advertisement for voluntary disclosure is concerned, there is no bar for making advertisement under the Supply Code. Moreover, the advertisement was also made in pursuance to State Legal Authority directives for making people aware about the provisions of Clause 11.4 of the Supply Code. The objection with regard to the purport of the advertisement has no relevance since no consumer made any such objection.

65. It appears that more than 40 persons were given the remission under Clause 11.4 of the Supply Code and the Vigilance was intimated but only M/s Dadiji Steels Ltd., has been singled out, which appears to be unreasonable. So far as the accusation of the voluntary disclosure not being entered into the records of the Electricity Board, serialwise and datewise, is concerned, Vigilance has not brought any documentary evidence on record to prove its contention. So far as making allegation with regard to fuel surcharge is concerned, it appears from the record that it was in pursuance to resolution of the Board and it was conferred to several other consumers.

66. So far as the accusation of raising the bill under wrong tariff and allowing the consumer to make consumption on a single meter for both Induction Furnace and Rolling Mill is concerned, the question of determination of tariff is provided u/s 62 of the Electricity Act, which is as follows:

62. Determination of tariff.?(1) The Appropriate Commission shall determine the Tariff in accordance with the provisions of this Act for-

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of Tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of Tariff for retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of Tariff.

(3) The Appropriate Commission shall not, while determining the Tariff under this Act, show undue preference to any consumer of electricity but may differentiate

according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No Tariff or part of any Tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require licensee or a generating company to comply with such procedure as may be specified for calculating the expected revenues from the Tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the Tariff determined under this Section, the excess amount shall be recoverable by the person who has paid such price or charge alongwith interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

67. The Bihar Electricity Board vide Notification No. 166 of 2000 dated 28.5.2001 (Annexure-4 of Cr.W.J.C. No. 921 of 2008), in partial supersession of earlier Notification dated 15 March, 2000, notified the Tariff to be effective from 1.4.2001, Clause 17 of which provided the permissibility of Additional Load for other than Induction Furnace, which reads as follows:

Additional Rate Other Than Induction Furnace:

Thus, the consumer who are having rolling or re-rolling mill in the same premises will take additional contract demand for rolling or re-rolling mill, over and above the contract demand required for Induction Furnace at the rate of 600 kVA per tonne of melting capacity. The consumer will have the option to segregate the Rolling/Re-rolling Mill and take separate new connection following all prescribed formalities with a separate transformer. This new connection, if taken by consumer will be allowed to be billed in appropriate Tariff schedule. Such Rolling or Re-rolling Mills will be allowed to avail power of 33 kVA.

68. From perusal of the 2001 Notification, it appears that the consumer had the option to have single connection for Rolling Mill as well as Induction Furnace or to have separate connection. Once the consumer opts for the single connection, then charging of separate Tariffs becomes an impossibility.

69. Subsequently, the Bihar State Regulatory Commission in exercise of its power vested in it u/s 62(1)(d) read with Sections 62(3) and 64(3)(a) of the Electricity Act, partially modified the Tariff Notification, which was made effective from 1.11.2006, which has been brought as Annexure-9 in Cr.W.J.C. No. 921 of 2008. Clause 1.4 deals with HTSS Tariff, which prescribes the demand charges as Rs. 750.00 per month and energy charges as Rs. 1.35 per unit, which is as follows:

1.4 HTSS (11 kV/33kV)

70. The tariff is applicable for supply of electricity to all consumers, who have

contract demand of 300 kVA and more for Induction Furnace loads. This Tariff will not apply to casting units having Induction Furnace of melting capacity of 500 Kg. and below:

Character of Service: AC 50 cycles, 3 Phase at 33kV/11 kV.

Tariff Rates:

Demand Charge

Energy Charges

Rs/KVS/Month of billing

Paise unit

demand Rs. 750.00

All units 135 p.

71. From perusal of 2006 Tariff Notification, it is apparent that the earlier tariff were just modified by 2006 Notification, though the 2006 Notification, does not talk about composite connection for Induction Furnace and Rolling Mill. It is true that 2006 Notification talks about HTSS Connection, whereas the agreement has been done under the heading HTSS-I, which has been admitted by the Board that it was by mistake, as all the bills raised by the Board reflects the Tariff under the HTSS head.

72. In 2008, the Bihar State Electricity Regulatory Commission brought another Tariff (Annexure-5 of Cr.W.J.C. No. 921 of 2008), Clause 7.4 of which again reiterated option for consumer to have segregated connection for Rolling Mill and Induction Furnace. The relevant portion of Clause 7.4 reads as follows:

...Those consumers who are having Rolling or Re-rolling Mill in the same premises will take additional contract demand for Rolling/Re-rolling Mill over and above the contract demand required for Induction Furnace. The consumer will have the option to segregate the Rolling/Re-rolling Mill and take separate new connection following all the prescribed formalities with a separate transformer. This new connection, if taken by the consumer will be allowed to be billed in appropriate Tariff schedule. Such Rolling/Re-rolling Mill will be allowed to avail power at 33 KV.

73. From the aforesaid provision, it appears that the Board was empowered to fix the Tariff as per Tariff Notification and if the Board and Regulatory Authority has no objection to the Tariff paid by the consumer under single connection for Rolling Mill and Induction Furnace then the claim of the Vigilance that the two Tariff should be charged is not permissible under the Supply Code and the Tariff Notification. The parties to the agreement are the consumer and the Electricity Board and unless the agreement is annulled/cancelled, the consumer cannot be compelled to make payment at a different rate. Moreover, it is the Electricity Board and the Regulatory Commission to decide the Tariff and if the Board

specifically says that under the HTSS Tariff the bill was raised but by mistake, in the agreement, it has been mentioned as HTSS-I though the bills reflect HTSS connection and this has been informed by the Board vide Annexure-16 to the Vigilance in view of the query (vide Annexure-17) made by the Vigilance, then it appears that nothing is left with regard to the dispute of the bill being raised against the consumer.

74. So far as accusation for availing composite connection for Rolling Mill and Induction Furnace is concerned, when the Tariff Notification envisages the option to the consumer of either to keep one connection for both Rolling Mill and Induction Furnace or to have separate connection, then it cannot be claimed by the Vigilance that the consumer ought to have two connections and the bills ought to have been raised separately. This contention of Vigilance appears to be paradoxical in view of the fact that the Tariff Notification gives option to consumer to keep one connection for both i.e. for Induction Furnace and the Rolling Mills, then in that case two bills cannot be raised because it is impossible to segregate the consumption load. Hence the accusation of allowing the lower tariff appears to be misconceived in view of the stand of the Board that under HTSS fixed Tariff, the bill was raised as under the fixed Tariff, the demand is higher than the HTSS-II Tariff and in the agreement by mistake the Tariff has been mentioned as HTSS-I but all bills reflect the Tariff as HTSS.

75. So far as the Tariff is concerned, for that also under the Act and the Supply Code, the Electricity Board is empowered to fix the Tariff and raise the bill and whoever has any objection can raise the objections before the appropriate forum as the power of assessment is incorporated u/s 126 of the Act. Hence, with regard to the Tariff also, prima facie no offence is made out.

76. It appears that after the coming into force of the 2006 modified Tariff Notification, the Chief Engineer directed all the General Manager-cum-Chief Engineers, Electrical Superintending Engineers of Electric Supply Circle on 21.6.2007 vide Memo No. 285 to allow 6 months time to the consumers for having separate connection but the Bihar State Electricity Regulatory Commission vide letter No. 265 dated 16.7.2007 observed that the Board without the prior approval of the Commission is issuing direction to the field officers with regard to separate and distinct connection for Induction Furnace and Rolling Mill. Hence, so far as the Tariff is concerned, the Regulatory Commission is the final authority and accordingly, so far the accusation based on consumption of electricity under wrong Tariff is concerned, it makes out no case against the Petitioners. However, the consumer has pleaded that for the Induction Furnace, the prescribed rate was Rs. 1.35 per unit but the fixed charges are Rs. 750.00 per kVA.- therefore, for 1000 kVA at 70% load factor the fixed charge comes to Rs. 7.5 lacs and on 11051 kVA fixed charge comes to Rs. 82,88,250.00. So far as the Rolling Mill is concerned, if the calculation is made on the basis of HTSS-II Tariff then the demand charge is Rs. 175 per kVA and the unit charge is Rs, 4.20 per unit, therefore, the demand charge for 1000 kVA comes to Rs. 1,75,000.00.

Thus in case of H.T.S.S. II Tariff for 1000 kVA connection a consumer shall be required to deposit Rs. 1,75,000 as fixed charge and Rs. 4.20 per unit charge. Hence, the separate charges for HTSS-II Tariff for the Rolling Mill would be lesser than the fixed charge prescribed for the Induction Furnace. The aforesaid contention of the Petitioner may be the reason for the Regulatory Commission to allow composite connection for Rolling Mill and Induction Furnace.

77. Vigilance P.S. Case No. 67 of 2008 is also not maintainable since none of the public servants have been named in the F.I.R. Though there is a vague allegation with regard to entire Officials of Electricity Board in the accusation portion of the F.I.R. but in such circumstance, the validity of the Vigilance P.S. Case No. 67 of 2008 gets clouded as no accusation can be levelled u/s 13(1)(d) of Prevention of Corruption Act which makes a public servant liable for committing an offence, if he by corrupt or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant obtains for any person any valuable thing or pecuniary advantage without any public interest. But in the instant case no specific accusation in terms of Section 13(1)(d) has been specifically levelled against any particular officer of the Board rather on the contrary the accusation u/s 13(1)(d) has been attempted to be framed by questioning the acceptance of voluntary disclosure of bill raised under a particular Tariff and suspected case of electricity theft which is outside the domain of power of the Vigilance Cell.

78. Since, in the Vigilance P.S. Case No. 67 of 2008 none of the accused persons are public servant, hence on this score also the prosecution is not maintainable at the behest of Vigilance.

79. It is well settled law that the private person can be made accused alongwith public servant when there is allegation of abetment or conspiracy against the private person with the public servant and this principle has been explained in the case of State of West Bengal and Others Vs. Manmal Bhutoria and Others, as well as in the case of P. Nallammal Etc. Vs. State Rep. by Inspector of Police, , wherein it has been held by the Apex Court that the offence u/s 13(1)(e) of the Prevention of Corruption Act can be abetted by nonpublic servant. The aforesaid two judgments visualize the prosecution of the private persons alongwith public servant on the charge of abetment or conspiracy but in the Vigilance P.S. Case No. 67 of 2008 neither any public servant has been specifically named in the formal part of the F.I.R., nor in the accusation part of the written report. In this circumstance, the allegation of conspiracy or abetment cannot be made out.

80. Abetment has been defined u/s 107 of the I.P.C., which reads as:

A person abets the doing of a thing who:

First.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

81. From bare reading of the definition, it appears that the person, who is alleged to abet the offence with other person, his identity has to be disclosed for constituting an offence of abetment but in Vigilance P.S. Case No. 67 of 2008, not a single public servant's name has been disclosed even in the accusation part. Hence, by virtue of allegation of abetment also, the case under Prevention of Corruption Act is not maintainable.

82. So far as Section 109 of the I.P.C. is concerned, it prescribes punishment for abetment, if the act abetted is committed in consequence and where no express provision is made for its punishment. There is specific provision for abetment under the Electricity Act u/s 150. Moreover, in the F.I.R., none has been named, to whom the private accused persons are alleged to have abetted.

83. Section 120(A) of the I.P.C. defines Criminal Conspiracy, which reads as follows:

When two or more persons agree to do, or cause to be done:

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

84. The criminal conspiracy must lead to action and so long as a crime is generated in the mind of accused but not acted upon, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character often involuntary but the offence should have been said to be committed and then only it takes a concrete shape of a crime.

85. What is, therefore, necessary is to show the meeting of mind of two or more persons for doing or causing to be done an illegal act or an act with illegal means. Hence, meeting of mind of two or more persons for constituting the offence of conspiracy is essential but in the entire prosecution case, it is not mentioned as to with whom the consumer has conspired rather only general allegation against all officials of the Electricity Board has been levelled. Hence, on this score also no case of conspiracy is made out.

86. So far as the offences alleged under the Indian Penal Code in the Vigilance

P.S. Case No. 67 of 2008 is concerned, they are not made out against the private accused as Section 166 of the I.P.C., deals with public servant disobeying law, with intent to cause injury to any person but public servant is not made accused in the F.I.R.

87. No offence u/s 119 is made out as the offence under Sections 119 of the I.P.C., is made out when a public servant is accused of concealing design to commit offence which it is his duty to prevent.

88. No offence u/s 406 and 420 I.P.C., is made out as nothing has been dealt in the F.I.R., with regard to the entrustment and breach of that trust or with regard to cheating done by the accused persons, and if at all there was any entrustment it was made by the Electricity Board, who is not alleging anything against the accused persons.

89. No offence u/s 465 I.P.C., is made out, as it prescribes punishment for forgery but no ingredients of forgery forms part of accusation. Section 467 of the I.P.C., deals with forgery of valuable security or will. From the accusation no such offence is made out. Similarly no offence u/s 468 of the I.P.C., is also being made out.

90. So far as the second case being Vigilance P.S. Case No. 34 of 2009 is concerned it was admittedly lodged on 2.4.2009, whereas the Vigilance P.S. Case No. 67 of 2008 was lodged on 16.9.2008. The Vigilance P.S. Case No. 34 of 2009 has to be considered in the background of the fact that the Complaint Case No. 895(c) of 2009 was lodged by the Chairman of the Electricity Board on 2.4.2009 under Sections 323, 363, 448, 451, 504, 506 of the I.P.C., with allegation that the D.G., Vigilance Cell, Electricity Board entered into the chamber of the Chairman Electricity Board, abused the Chairman in very filthy language and threatened to arrest him. Hence, in that background, it is claimed by the Petitioner (Chairman) that the Vigilance P.S. Case No. 34 of 2009 was lodged as a retaliatory measure to the complaint filed by the Chairman by ante-timing the F.I.R. The accusation made in Vigilance P.S. Case No. 34 of 2009 hinges on the allegation that the theft was committed by M/s Dadiji Steels Ltd., in the knowledge of the Board, the bill was raised under the wrong tariff as both Rolling Mill and Induction Furnace were permitted to run on single connection and thereby causing loss to the Board and the voluntary declaration made under Clause 11.4 of the Supply Code was accepted in haste, ignoring the Vigilance inspection. Such accusation is not only contrary to the provisions of the Act and the Supply Code but under the misconception of the provision of Clause 11.4 of the Supply Code. Clause 11.4 as quoted above suggests that in case of tampering of the meter or seal, the tampered meter shall be replaced by new meter immediately and the licensee shall raise the assessment bill at the normal Tariff rate for a period of last three months for domestic and agricultural consumer and six months for all other consumer, reckoned from the date of declaration. In the present case, disclosure was made on 27.6.2008 and the Board raised the bill from that date and there is no illegality in that. The claim of

the Vigilance that the bill ought to have been raised u/s 126(5) of the Electricity Act is not applicable and that provision envisages of making assessment and raising of the bill if the Assessing Officer reaches to the conclusion that unauthorized use of electricity has taken place and when period of unauthorized use of electricity cannot be ascertained then such period shall be limited to the period of 12 months immediately preceding the date of inspection. In the present case, the power u/s 126 of the Act was never being exercised rather under the provision of 11.4 of the Supply Code, voluntary declaration was made where normal bill of six months prior to the date of declaration are charged and the same has been charged from the consumer.

91. So far as the power of Vigilance to institute a case is concerned, the Vigilance cannot institute a case since the cognizance is barred if the complaint for any cognizable offence under the Electricity Act is not made by the Appropriate Government, Commission and their authorized agents u/s 151 of the Electricity Act, which reads as follows:

151. Cognizance of offences.-No Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:

Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed u/s 173 of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided further that a Special Court constituted u/s 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.

92. So far as the claim of the Vigilance that they can also lodge F.I.R., against the consumer for electricity theft is concerned, it cannot be disputed that for theft and unauthorized use of the electricity, there is specific provision under Electricity Act and Bihar Electricity Supply Code. Hence, the Vigilance cannot usurp the power and lodge the cases under I.P.C., or the provisions of a Electricity Act.

93. The principle is well settled that where the special Act covers any specific situation then the general Act will not prevail over that as it has been reiterated in a case of *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, . The relevant portion of paragraph 9 reads as follows:

...The rule is that whenever there is a particular enactment and general enactment in the same statute and latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only other parts of the statute to which it may properly apply.

94. The relevant extract of paragraph 10 reads as follows:

Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases, which are not covered by the special provision....

95. Hence, in the present situation when the alleged theft is covered under the Electricity Act and Supply Code being the Special Act, such situation cannot be taken care of by the general Act.

96. It is further contended that Prevention of Corruption Act is also a special Act. It is true that the Prevention of Corruption Act is also a special Act but it deals with the corruption and corrupt behaviour of the public servant. Though Electricity Vigilance is empowered to lodge cases for the corruption in the Electricity Department but since the basic accusations in both the F.I.Rs., are with regard to the unauthorized use of electricity/theft of electricity and charge of bill under a wrong Tariff which are fully covered under the Electricity Act and Supply Code. Hence, both the special Acts covers two different spheres of offences.

97. Since Prevention of Corruption Act is a special Act and Electricity Act is also a special Act, in such a situation the special Act enacted subsequently will prevail as has been held in case of *Solidaire India Ltd. Vs. Fairgrowth Financial Services Ltd. and Others*, that if there are two Special Acts, then subsequent one will prevail and in the present case, the Prevention Act is of the year 1988 whereas the Electricity Act is of 2003. Hence, in the present case the Electricity Act will prevail.

98. The non-ostensive clause has been incorporated in Sections 173 and 174 of the Electricity Act which are as follows:

173. Inconsistency in laws.-Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.

174. Act to have overriding effect.- Save as otherwise provided in Section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

99. Hence, in view of the aforesaid non-obstantive clause as incorporated in Sections 173 and 174 of the Electricity Act, no other provisions of any Act will prevail over the provisions of Electricity Act.

100. So far as loss to the Board is concerned, the loss calculated by the Vigilance, appears to be misconceived as the loss has been calculated on the basis of two Tariffs being envisaged by the Vigilance for Induction Furnace @ Rs. 1.35 per unit and for Rolling Mill @ of Rs. 4.20 per unit under HTTS-II Tariff but

the entire load has been calculated at the rate of Rs. 4.20 per unit and the penal rent has been applied for. Moreover, the calculation has been made as per the procedure provided in Section 126(C) of the Act and Annexure-7 of the Supply Code, which is not applicable in the case of voluntary disclosure under Clause 11.4 of the Code. Hence, it appears that the calculation is not as per the parameters provided under the Act and the Supply Code.

101. It is contended by the Petitioners that the complaint was lodged maliciously because the Director General (Vigilance Cell), Electricity Board was not on good terms with the Chairman of the Board. It appears that on 2.4.2009, the Chairman lodged a complaint case being Complaint Case No. 895(C) of 2009 against D.G., Vigilance Cell for abusing and threatening to arrest and on the same day the Vigilance P.S. Case No. 34 of 2009 was registered, which is alleged to be antetimed. It appears from the materials on record that with regard to theft of electricity, the consumer M/s Dadiji Steels Ltd., has been singled out as it appears that the similar bills have been raised to Balaji Ingot, M/s Balmukund Concast and M/s Ganesh Foundary.

102. It is the specific case of the Board that no information was given by the Vigilance with regard to inspection. Though the Vigilance claims that information was given to the Superintending Engineer (Supply) but it appears that the consumer demanded for inspection report and downloaded data from the Vigilance, which was not supplied on one pretext or the other with regard to which the Vigilance claims that the representative of the consumer was present when the data was downloaded but the documents does not reflect as such. Moreover, the letter dated 8.6.2010 transmitted by Central Power Research Institute, Bhopal, which was brought on record as Annexure-19 of the Petitioners of Cr.W.J.C No. 921 of 2008, reflects that the Vigilance was not happy with regard to the test report supplied to the Electricity Board by CPRI, Bhopal, as a result of which the Vigilance objected to it and the reply amply reflects that the tampering was not found inside the meter as no case of theft was established but it also reflects the manner in which the Vigilance was trying to withhold the test report which reads as follows:

With reference to your letter cited under reference (1) this is to inform you that our letter cited under reference (2) written to the Chief Engineer (Commercial), BSEB, Patna, is not another report. It is only a clarification of our test report asked by the Chief Engineer (COM), SEB, with written request. Copy of the letter has been enclosed for our ready reference. As a Govt, of India laboratory we cannot hide information from the concerned parties and have to function in transparent manner. As the request was received from BSEB itself, we had to reply their letter. We understand BSEB and Vigilance Cell of BSEB are both entities of Govt, of Bihar.

In our report (Annexure-3) under Heading "Observations on Physical verification" it is clearly written that the seals are intact and meter is working satisfactory. However, in case of other two meters (Annexures-1 and 2) we have mentioned

that the seals were tampered/meter found tampered. Our report under Annexure-3 has been misinterpreted at your end.

It may please be noted that the remarks given in the above report is not our conclusion. The remarks given are the contents of the MRI report of the meter. The remark "meter records this tamper even if the meter has been by-passed from outside or inside the meter" only indicates the circumstances under which the tamper recording in MRI can happen. Duration of shorting recorded in MRI does not lead to confirm case of theft. As the seals of the meters are intact it is clear that the meter has not been tampered from inside. Tampering from outside, if any, cannot be established in the laboratory. We have not concluded in our report that the meter was tampered. The same was clarified to the Chief Engineer, BSEB.

103. The aforesaid facts suggest that the stand of the Vigilance was not very fair in the entire episode.

104. So far as the question of quashing of the F.I.R., is concerned, the law is well settled that when the F.I.R., discloses commission of cognizable offence then definitely the court should withhold its hands but if no cognizable offence is disclosed and still more no offence of any kind is disclosed, police would have no authority to undertake the investigation.

105. Considering the question of the quashing of the FIR or the investigation, the Apex Court in case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, while considering the famous case of AIR 1945 18 (Privy Council) , in para 21 came to the conclusion, that:

The condition precedent to commencement of investigation under 157 of the Code is that F.I.R., must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have a unfettered discretion to commence investigation u/s 157 of the Code. Their right of inquiry is conditioned by existence of reason to suspect the commission of the cognizable offence and they cannot reasonably have reason so to suspect unless the FIR prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. On the other hand if the FIR does not disclose the commission of cognizable offence, the court would be justified in quashing the investigation on the basis of Information as laid or received.

106. It has been further held that:

There is no such thing like unfettered discretion in the realm of powers defined by the statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of the personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on condition on which it is granted by the Code.

107. The Apex court has finally held that where an offence has been disclosed or not, must necessarily depend on the facts and circumstances of each particular

case. In considering whether an offence into which the investigation is made or to be made is disclosed or not, the Court has mainly to take into consideration the complaint or the F.I.R., and the court may in appropriate cases take into consideration the relevant facts and circumstances of the case.

108. On circumstances and the relevant materials, the court has to come to conclusion whether an offence is disclosed or not. If on circumstances and the relevant material, the court comes to conclusion that the offence is disclosed, the court will normally not interfere with the investigation and will generally allow the investigation into an offence to be complied for collection of material for proving the offence. If on the other hand, the court on circumstances of the relevant materials is satisfied that no offence is disclosed, it is the duty of the court to interfere with any investigation and stop the same to prevent any kind of uncalled for and unnecessary harassment to the individual.

109. In the present case on bare perusal of the F.I.R., it appears that by operation of law i.e. Clause 11.4 of Supply Code, the accusation became redundant and part of accusation is due to misconceived appreciation of the provision of the Bihar State Electricity Act and the Supply Code.

110. The aforesaid discussion clearly suggests that the second F.I.R., being Vigilance P.S. Case No. 34 of 2009 has been based on the same facts with regard to giving the voluntary disclosure benefits to the consumer under Clause 11.4 and for not raising two separate bill for Induction Furnace and Rolling Mills, which is barred in view of the principle laid down in T.T. Antony Vs. State of Kerala and Others, . While holding as such, this Court is conscious of the principle laid down in Kari Choudhary Vs. Most. Sita Devi and Others, . and in Nirmal Singh Kahlon Vs. State of Punjab and Others, where it has been held that two F.I.Rs., can be maintainable with regard to the same offence with different version or when a new discovery is made on the factual foundation but in the instant case, the factual foundation of both the F.I.Rs., are one and the same i.e. giving benefit of voluntary disclosure of M/s Dadiji Steels Ltd., under Clause 11.4 of the Supply Code after suspected theft and raising one bill for Induction Furnace and Rolling Mill under a wrong tariff allowing composite consumption through one meter and the Vigilance has not brought on record any subsequent facts after lodging of the F.I.R.

111. The second F.I.R., is also not maintainable on the ground that the accusation against all the officials of the Electricity Board were made in the accusation part of the Vigilance P.S. Case No. 67 of 2008 but no official of the Board or Chairman was made accused but after 5 months of lodging of the first F.I.R., on the same set of facts the second FIR was lodged alleging conspiracy without specifying the specific act of conspiracy.

112. From the discussions above, it is apparent that no case u/s 13(1)(d) of the Prevention of Corruption Act is made out against the Petitioners.

113. The broad guidelines for quashing of the criminal prosecution as laid down

in State of Haryana and others Vs. Ch. Bhajan Lal and others, reflects that the inherent powers u/s 482 Code of Criminal Procedure or under Article 226 of the Constitution of India, the following category of the cases can be quashed, in exercise of the aforesaid power, to prevent the abuse of the process of court or otherwise to secure the ends of justice. The seven broad guidelines are as follows:

- (i) 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.
- (ii) 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 u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (iii) Where the uncontroverted allegations made in the FIR 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.
- (iv) Where, the allegations in the FIR 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 u/s 155(2) of the Code.
- (v) Where the allegations made in the F.I.R., 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.
- (vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act concerned (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.
- (vii) 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.

114. While applying the principles of Bhajanlal case, this Court finds that the First Information Report taken at its face value and if accepted in their entirety, do not prima facie constitute any offence or make out a case against accused. The allegation made in the F.I.Rs., appear to be inherently improbable on the basis of which no prudent person can ever reach to a just conclusion that there is sufficient ground for proceeding against the accused.

115. Clause 7 of the parameters as envisaged in the Bhajanlal case also applies in the present case as the F.I.R., was under an express legal bar under Sub-clause "C of Clause 11.4 of the Supply Code which clearly envisages that on the

payment under the voluntary disclosure, the consumer gets immunity from being prosecuted, even then after about three months of the payment of the bill raised under 11.4 of the Supply Code, the F.I.R., was lodged which justifies the contentions of the Petitioners and the Electricity Board that the criminal prosecution lacks bona fide as the F.I.Rs., were maliciously instituted with ulterior motive for wreaking vengeance which also gets justified in view of the fact that on 2.4.2009 the complaint was lodged by the Chairman of Board against the D.G., Vigilance Cell.

116. So far as the objection of the Vigilance with regard to quashing of the F.I.Rs. while exercising the power u/s 482 of the Code of Criminal Procedure. is concerned, this issue is well settled even as per the principles laid down in *State of Haryana v. Bhajanlal* which clearly says that the criminal prosecution can be quashed exercising the power u/s 482 or Article 226 of the Constitution of India. The said principles have also been reiterated in case of *Fakruddin Ahmad v. State of Uttaranchal* and Ors. 2008 (17) SCC 157, paragraph 20, which reads as follows:

So far as the scope and ambit of the power of the High Court u/s 482 of the Code is concerned, the same has been enunciated and reiterated by this Court in a catena of decisions and illustrated circumstances under which High Court can exercise jurisdiction for quashing the proceeding have been enumerated. It would suffice to state that though the power possessed by the High Court under the said provisions are very wide but this should be exercised in appropriate cases, *ex debito justitiae*, to do real and substantial justice for the administration for which alone the court exists. The inherent powers possessed by the High Court are to be exercised very carefully with great caution so that the legitimate prosecution is not stifled.

117. In case of *V.Y. Jose and Another Vs. State of Gujarat and Another*, , lays down the parameter for exercise of power u/s 482 of the Code of Criminal Procedure, which reads as follows:

Section 482 of the Code of Criminal Procedure saves the inherent power of the court, it serves a salutary purpose viz., person should not undergo harassment of litigation for a number of years although no case has been made out against him.

The parameters of interference u/s 482 of the Code of Criminal Procedure. have also been laid down in case of *Hiralal and Ors. v. State of Uttar Pradesh* and Ors. reported in 2009 (9) SCC 89, paragraph No. 12, which reads as follows:

The parameters for interference with criminal proceeding by High Court in exercise of its jurisdiction u/s 482 of the Code are well known. One of the grounds for such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is *mala fide*.

118. The parameter for exercise of the powers u/s 482 of the Code of Criminal Procedure. has also been laid down in the case of R. Kalyani Vs. Janak C. Mehta and Others, reads as follows:

It is further more well known that no hard and fast rule can be laid down, each case has to be considered on its own merits. The court while exercising its inherent jurisdiction although would not interfere with the genuine complaint keeping in view the purport and object for which the provision of Section 482 Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise this jurisdiction in appropriate cases. One of such paramount duty of the superior court is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

119. Keeping in view the aforesaid principles, this Court finds that it is a fit case for exercise of power u/s 482 of the Code of Criminal Procedure. and under Article 226 of the Constitution of India as no case is made out against the Petitioners and under misconception and malice, the case has been instituted.

120. The prosecution of the Chairman or the other officials of the Electricity Board is also prohibited u/s 168 of the Bihar State Electricity Act which reads as follows:

168. Protection of action taken in good faith.-No suit, prosecution or other proceeding shall lie against the Appropriate Government or Appellate Tribunal or the Appropriate Commission or any officer of Appropriate Government or any Member, officer or other employee of the Appellate Tribunal or any Member, officer or other employee of the Appropriate Commission or the Assessing Officer or any public servant for anything done or in good faith purporting to be done under this Act or the rules or regulations made thereunder.

121. In view of the aforesaid discussion, the point of reference is answered in affirmative that the Vigilance Department cannot institute a case of theft of Electricity in view of the provisions of Sections 135, 151, 151-A of the Electricity Act and Clause 11 of Electricity Supply Code as this power vests with the Authorized Officers of the Board under the Electricity Act, 2003 and Bihar Electricity Supply Code, 2007. Though after institution of the case, the investigation can be done by the police as per the provisions u/s 151-A of the Code. Hence, the very institution of both the F.I.Rs., is without authority and on that ground alone, both the F.I.Rs., deserves to be quashed.

122. So far as the second point of reference is concerned, the official of the Electricity Board has the right to institute the case with regard to theft, unauthorized use of electricity and to accept the voluntary declaration of tampered meters under Clause 11.4 of the Supply Act, hence, any exercise of their right under the statute either by the consumer or by the officials of the Board cannot amount to theft.

123. So far as the referred Issue No. 3 is concerned, the official of the Vigilance Cell are not competent to decide the technical question of the rate of tariff to be charged from the consumer, as the Board Officials are the experts of the technicalities of the Electricity Supply that is why the statute authorises right from the institution of the case to the assessment and for arriving at a conclusion with regard to unauthorized use of the Electricity to the officials of the Electricity Board.

124. The exercise of power u/s 11.4 cannot amount to an offence as for exercise of such power, no precondition has been prescribed by the statute. Moreover, once the power under 11.4 is exercised, the immunity from prosecution under sub-clause "C" of Clause 11.4 comes into play.

125. Hence, the points of reference Nos. 2 and 3 are also answered accordingly.

126. This Court is of the view that the action of Board authorities is bona fide, as contended by the learned Counsel for the Electricity Board, and is in accordance with the provisions of the Electricity Act and the Supply Code. Hence, on this score also officers of the Electricity Board cannot be prosecuted under the immunity provided u/s 168 of the Electricity Act.

127. Hence, on the basis of aforesaid discussion, this Court finds that the lodging of both the F.I.Rs., was not only without jurisdiction and contrary to the provisions of Electricity Act and Supply Code, but both the F.I.Rs., in the teeth of the provisions of the Electricity Act and the Supply Code make out no cognizable offence. As a result, the entire prosecution including the F.I.R., of Vigilance P.S. Case No. 67 of 2008 (Special Case No. 43 of 2008) and Vigilance P.S. Case No. 34 of 2009 (Special Case No. 26 of 2009) are hereby quashed and all the three applications being Cr. Misc. No. 14332 of 2009, Cr. Misc. No. 13248 of 2009 and Cr.W.J.C. No. 921 of 2008 are hereby accordingly allowed.