IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. of 2026
(arising out of SLP(Crl) No(s).19405-19408/2025)

JODHPUR DISCOMS **Appellant(s)**

VERSUS

LALIT SONI & ANR. ETC. **Respondent(s)**

O R D E R

1. Leave granted.

2. The appellant, *Jodhpur Discoms*, is in the appeals challenging the order(s) passed by the High Court discharging the below named respondents from the charges under Sections 135-138, 150 (1) (2) of the Electricity Act, 2003 (for short, 'the Act, 2003') arising out of FIR No.420/2012 registered at P.S. APT (Prevention of Electricity Theft, Rural), Jodhpur who were all working on the post mentioned against them:

a. Lalit Soni, respondent no.1 in SLP(Crl.) No.19405/2025 (Executive Engineer);

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Date: 2026.01.02 15:41:10 IST
Reason:

b. Nema Ram, respondent no.1 in SLP(Crl.) No.19406/2025 (Assistant Engineer);

c. Sur Singh, respondent no.1 in SLP(Crl.) No.19407/2025 (helper) and;

d. Vikash Jhanjadiya, respondent no.1 in SLP(Crl.) No. 19408/2025 (Junior Engineer).

3. One, Manish Sharma, Assistant Engineer (CVS), *Jodhpur Discom*, Jodhpur, who is the complainant herein, submitted a written application/ complaint to the S.H.O, Electricity Theft Prevention Police Station, Jodhpur Rural, Jodhpur, seeking registration of an FIR against the above mentioned respondents/ accused persons under the Act, 2003 in accordance with the Vigilance Investigation Report No.03700/14 dated 10.07.2012 and J.I.R. No. 552/36 dated 10.07.2012 to the effect that consumer, namely, *Balim Steel Pvt. Ltd. (*for short, *'Company')* and its representatives, have

committed theft of electricity by tampering the meter and in the said process, the accused persons have abetted the said Company to commit theft of electricity.

4. Upon investigation, charge sheet was filed and the learned Special Court, Electricity Act Cases also framed the charges and took cognizance of the offence vide its orders dated 05.02.2013 and 18.07.2014.

5. The consumer was said to have received a profit of Rs. 12,99,64,800/- by committing theft of electricity out of which, a sum of Rs.8,15,08,737/- still remains unpaid.

6. As against the Special Court's/ Trial Court's order of framing charges against the private respondents, revision petitions were preferred before the High Court which have been decided by a common order allowing the said revision petitions in favour of the above named respondents. However, in respect of some other accused, who are also the employees of the appellant/

company, *Jodhpur Discoms,* namely, *Pappulal Kumawat, Pappu Meena, Harlal Ram, Harchandlal and Rajender Kumar*, their revision petitions have been dismissed.

7. In the impugned order(s), the High Court has set aside the order taking cognizance in respect of below named respondents on the ground that before initiating prosecution against them, sanctions under Section 197 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') have not been obtained and thus, the prosecution is not competent.

a. Lalit Soni, respondent no.1 in SLP(Crl.) No.19405/2025 was an Executive Engineer;

b. Nema Ram, respondent no.1 in SLP(Crl.) No.19406/2025 was an Assistant Engineer;

c. *Vikash Jhanjadiya, respondent no.1 in SLP(Crl.) No. 19408/2025 was the Junior Engineer.*

8. However, in respect of respondent

no.1, *Sur Singh in SLP(Crl.) No.19407/2025,* the charges have been quashed on merits finding that the said respondent was only a helper and the entire charge sheet does not contain any such material against him which can be said to be forming the basic ingredients of the offence alleged against him.

9. We have heard learned counsel for the parties and perused the records.

10. Admittedly, the respondents, *Lalit Soni in SLP(Crl.) No.19405/2025, Nema Ram in SLP(Crl.) No.19406/2025 and* Vikash Jhanjadiya in SLP(Crl.) No. 19408/2025 are the employees of *Jodhpur Discoms* and they are neither appointed nor can be terminated by the State Government. No doubt that the said respondents are the public servants in view of Section 169 of the Act, 2003 yet, by virtue of the said provision, their appointing authority or the per-requisites of law attracting Section 197 of Cr.P.C, will not change.

11. In the matter of *Mohd. Hadi Raja*

Vs. State of Bihar and Anr.(1998 (5) SCC 91), **this Court has held that even if the employees of a Government Corporation or instrumentality of the State perform public function and are thus, public servant under Section 21 of the Indian Penal Code, 1860 (for short, 'IPC') however, their actions in the course of performance of their duty, cannot be held to be an action taken by or on behalf of the Government as such within the meaning of Section 197 Cr.P.C. The following has been held in paragraph nos. 20,21,26 and 27 which are reproduced hereunder for ready reference;**

> ***"20. Although the instrumentality or agency with a corporate veil, for all intents and purposes may be held to be a third arm of the Government and such instrumentality discharges the duties and functions which the State intends to do as indicated in Ajay Hasia case [(1981) 1 SCC 712 : 1981 SCC (L&S) 258] such instrumentality or agency is none the less a juridical person having a separate legal entity. Therefore, such instrumentality must***

be held to have an independent status distinct from the State and cannot be treated as a government department for all purposes. Therefore, even if an officer of such instrumentality or agency takes or receives, keeps or expends any property or executes any contract, such acts even though in ultimate analysis may be held to have been done in the interest of the State, such action cannot be construed, as of rule, an action of the Government by its employees or by an authority empowered by the Government. It may be indicated here that it is not necessary that persons falling under any of the descriptions given in various clauses under Section 21 of IPC need to be appointed by the Government. If such person falls under any of the descriptions as contained in various clauses of Section 21 of the Penal Code, 1860, such person must be held to be a public servant. Explanation 1 of Section 21 indicates that persons falling under any of the above descriptions are public servants whether appointed by the Government or not. Explanation 2 indicates that wherever the words "public servant"

occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation. Sub-clause (b) of clause twelve of Section 21 expressly makes the officers of local authority and corporation established by or under a Central, Provincial or State Act or a government-owned company as defined in Section 617 of the Companies Act, 1956, public servants. But protection under Section 197 CrPC is not available to a public servant unless other conditions indicated in that section are fulfilled.

21. It is to be noted that though through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has an independent status and the action taken by them, however important the same may be in the interest of the State cannot be held to be an action taken by or on behalf of the Government as such

within the meaning of Section 197 CrPC.

26. Therefore, it will not be just and proper to bring such persons within the ambit of Section 197 by liberally construing the provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by court.

27. Therefore, in our considered opinion, the protection by way of sanction under Section 197 of the Code of Criminal Procedure is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government. The appeals are disposed of accordingly. It is, however, made clear that we have not taken into consideration various other grounds raised in these appeals challenging the maintainability of the criminal

proceedings initiated against the officers concerned of the public undertakings or the government companies. It will be open to the accused concerned to challenge the validity of the criminal cases initiated against them on other grounds, if such challenge is available in law. Such questions, if raised, in these appeals are kept open to be considered in accordance with law by the appropriate authority.

12. Relying on and affirming *Mohd. Hadi Raja (supra)* this Court, in the matter of *Punjab State Warehousing Corporation Vs. Bhushan Chander and Anr. 2016(13) SCC 44*, has held thus in paragraph no 23 which is reproduced hereunder for ready reference:

23. In Mohd. Hadi Raja v. State of Bihar [Mohd. Hadi Raja v. State of Bihar, (1998) 5 SCC 91 : 1998 SCC (Cri) 1265 : AIR 1998 SC 1945] the question arose whether Section 197 CrPC was applicable for prosecuting officers of the public sector undertakings or the government companies which can be treated as

> ***State within the meaning of Article 12 of the Constitution of India. The Court referred to Section 197 CrPC, noted the submissions and eventually held that the protection by way of sanction under Section 197 CrPC is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government.***

13. It is, thus, fairly well settled that an employee of a Government instrumentality, does not *ipso facto* becomes a Government servant so as to be entitled for protection under Section 197 of Cr.P.C. merely because an employee is a public servant.

14. Thus, the very basis of the impugned judgment rendered by the High Court in favour of the respondents, namely, *Lalit Soni in SLP(Crl.) No.19405/2025, Nema Ram in SLP(Crl.) No.19406/2025 and* Vikash Jhanjadiya in SLP(Crl.) No. 19408/2025,

giving them protection under Section 197 of Cr.P.C, is flawed being contrary to the settled judicial precedent of this Court.

15. Accordingly, we set aside the impugned order(s) insofar as it has discharged the respondents, namely, *Lalit Soni in SLP(Crl.) No.19405/2025, Nema Ram in SLP(Crl.) No.19406/2025 and* Vikash Jhanjadiya in SLP(Crl.) No. 19408/2025, from the charges. However, since the High Court has not examined the case of the said three respondents against framing of charge on merits, we remit the matters back to the High Court to consider the criminal revision petitions of the above named respondents on merits as to whether on the basis of the material available in the charge sheet, the Trial Court was justified in taking cognizance of the matter and framing charges against them.

16. Accordingly, the matter is remitted back to the High Court and the criminal revision petitions of the below mentioned respondents is restored to their original

number to examine the above aspect.

a. Lalit Soni, respondent no.1 in SLP(Crl.) No.19405/2025 was an Executive Engineer;

b. Nema Ram, respondent no.1 in SLP(Crl.) No.19406/2025 was an Assistant Engineer;

c. Vikash Jhanjadiya, respondent no.1 in SLP(Crl.) No. 19408/2025 was the Junior Engineer.

17. The net result is that the present appeals *qua* respondent no.1, *Sur Singh, in SLP(Crl.) No.19407/2025* is dismissed and the appeals qua *respondent no.1, Lalit Soni in SLP(Crl.) No. 19405/2025, Nema Ram, respondent no.1 in SLP(Crl.) No.19406/2025 and* Vikash Jhanjadiya, respondent no.1 in SLP(Crl.) No. 19408/2025 are allowed.

18. The respondents *qua* whom the appeals are allowed, would be at liberty to make a prayer before the High Court for early disposal of their criminal revision

petitions.

19. Pending application(s), if any, shall stand disposed of.

.....J.
(PRASHANT KUMAR MISHRA)

.....J.
(SHREE CHANDRASHEKHAR)

New Delhi
14.10.2026

ITEM NO.13 COURT NO.11 SECTION II-D

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) Nos.19405-19408/2025

[Arising out of impugned final judgment and order dated 02-04-2025 in SBCRRP No. 635/2018 02-04-2025 in SBCRRP No. 1554/2022 02-04-2025 in SBCRRP No. 1555/2022 02-04-2025 in SBCRRP No. 1283/2023 passed by the High Court of Judicature for Rajasthan at Jodhpur]

JODHPUR DISCOMS Petitioner(s)

VERSUS

LALIT SONI & ANR. ETC. Respondent(s)

IA No. 290761/2025 - EXEMPTION FROM FILING O.T.

Date : 14-10-2026 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA
HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For Petitioner(s) :
Mr. S. Vallinayagam, Adv.
Ms. Bhavya Arora, Adv.
Ms. Durga Vallinayagam, Adv.
Mr. Yashraj Singh Bundela- 3281, AOR

For Respondent(s) :Mr. Gagan Gupta, Sr. Adv.
Mr. Anuj Tiwari- 4105, AOR
Mr. Vaibhav Vats, Adv.
Mr. Sameer Mishra, Adv.
Mr. Shivendra Nath Mishra, Adv.
Mr. V. Prasad Mishra, Adv.

Mr. Saurabh Rajpal- 3577, AOR
Mr. Vinay Kumar Singh, Adv.

Mr. Aditya Shukla- 4081, AOR

Mr. Shyam Singh Chauhan, Adv.
Ms. Ginni Jain, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Rishab Panchal, Adv.
Mr. Raj Singh Rana, AOR

Mr. V.s.dubey, Adv.
Ms. Kanika, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. Leave granted.

2. The present appeals *qua* respondent no.1, *Sur Singh, in SLP(Crl.) No.19407/2025* is dismissed, and the appeals qua *respondent no.1, Lalit Soni in SLP(Crl.) No. 19405/2025, Nema Ram, respondent no.1 in SLP(Crl.) No.19406/2025 and* Vikash Jhanjadiya, respondent no.1 in SLP(Crl.) No. 19408/2025 are allowed in terms of the signed order.

3. Pending application(s), if any, shall stand disposed of.

(NISHA KHULBEY) **(ANU BHALLA)**
COURT MASTER (SH) **COURT MASTER (NSH)**
(signed order is placed on the file)