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HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 1168 of 2016

1. Prashant Jain, S/o. Shri Anil Kumar Jain, Aged About 39 Years, Director of Manav Met Caste Private Limited Corporation.
 2. Smt. Usha Jain, W/o. Shri Anil Kumar Jain, Aged About 66 Years, Director of Manav Met Caste Private Limited Corporation,
- Both are R/o. Quarter No. D-59, Ashwarya Kingdom, Kachna Road, Post Office -Saddu, Police Station -Vidhan Sabha, District -Raipur, Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh, Through : Secretary, Department Of Home, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. The Director General of Police, Police Head Quarter, Raipur, Chhattisgarh.
3. The Inspector General of Police, Raipur Range, Division Raipur, Chhattisgarh.
4. The Superintendent of Police, District Raipur, Chhattisgarh.
5. The Station House Officer, Police Station- Amanaka, Tahsil & District Raipur, Chhattisgarh.
6. The Chief Executive Engineer, Raipur, Chhattisgarh State Power Distribution Company Limited, C.S.P.D.C.L., Division-I, Raipur, Chhattisgarh.
7. The Executive Engineer, Chhattisgarh State Power Distribution Company Limited, C.S.P.D.C.L., Division-I, Raipur, Chhattisgarh.

-----Respondents

For Petitioners	: Mr. Ashok Kumar Shukla, Advocate
For Respondent/State	: Mr. Anil S. Pandey, Govt. Advocate
For Respondent No.6 & 7	: Mr. Aman Kesharwani, Advocate,

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

28/07/2017

Heard.

1. It is submitted by the counsel for petitioners that they are directors of the Manav Met Cast Private Limited. On 16.08.2016, the factory

premises of petitioners were raided to inspect the consumption of electricity. On 17.08.2016, a memo was issued by the respondent No.7 to deposit Rs.10,55,100/- as penalty, which has been deposited by the petitioners. Thereafter one FIR has been lodged in the Police Station, which has been registered as Crime No.189/2016 for the offence U/s. 379 of I.P.C. and 135(C) of Electricity Act. This offence has been registered against the petitioners merely for the purpose of harassment. Petitioners have not committed any theft of electricity. Hence prayed for quashment of FIR.

2. It is submitted by the counsel for the petitioners that FIR registered against the petitioners is dated 22.08.2016 in Police Station – Amanaka, Raipur. Section 135 of Electricity Act in second proviso to sub-section 1(a) provides that on detection of theft of electricity, the supply shall be disconnected and immediately within a period of 24 hours, one FIR shall be lodged in the Police Station having jurisdiction. This is a mandatory provision which has not been complied with. Hence only for these reasons, the FIR against the petitioners is not sustainable and liable to be quashed.
3. Counsel for the respondent No.6 and 7 submits that there is no occasion to invoke the extra ordinary jurisdiction of this Court under Section 482 of Cr.P.C.. Payment of penalty by petitioners does not absolve them from the criminal proceedings against them. It is statutory duty of the respondent official to lodge a complaint in case theft of electricity is found.
4. Counsel for the petitioners further submits that amount paid by them

is composition amount, hence, the offence, if any, is found to be committed stands compounded under the provisions of Section 152 of Electricity Act, 2003, to which the counsel for respondent No.6 & 7 have replied that amount paid is towards the penalty for the theft of electricity, which can not be adjusted by way of composition money as Section 152 of the Act clearly provides for mode of composition of offence. It is not denied by the counsel for the respondent No.6 & 7 that offence registered against the petitioners can be compounded.

5. As per the statement made by the petitioners, it appears that petitioners are ready and willing to compound the offence. There is no requirement as per Section 152 of Electricity Act, 2003 that charge-sheet has to be filed before the parties enter into a compromise. Hence the offence is compoundable even at this stage when the petitioners have not been charge-sheeted.
6. Hence this petition is disposed of with a direction that petitioners shall approach respondent No.6 & 7 with their proposal for composition of offence registered against them as per the provisions under Section 152 of the Electricity Act, 2003 and respondent No.6 & 7 are also directed to duly consider the proposal of compromise and do the needful in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge