

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M.P No. 1058 of 2017
With
I.A. No.53 of 2019

Md. Faiz Rabbani **Petitioner**

Versus

The State of Jharkhand & Anr. **Opp. Parties**

CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA

For the Petitioner	:Mr. Kamdeo Pandey, Advocate
For the State	:Mr. Shiv Shankar Kr. APP
For the O.P. No.2	:Mr. S.K. Singh, Advocate

04/Dated: 10.07.2019
I.A. No.53 of 2019

1. This interlocutory application has been filed for vacating the order of stay as granted by this court on 23.11.2017, in connection with Complaint Case No.896 of 2014 (T.R. No.1682 of 2014), pending in the court of Judicial Magistrate, 1st, Class, Giridih.

2. Learned counsel for O.P. No.2 has submitted that the order of stay has been granted on incorrect submission that petitioner Md. Faiz Rabbani was the Investigating Officer of Tilaiya P.S. Case No.346 of 2013. It is submitted that in fact, the Investigating Officers of Tilaiya P.S. Case No.346 of 2013 was one A. K. Jha and others. That the petitioner is in no way involved in the investigation of the case. There is a specific allegation that when the accused of aforesaid case were brought to the police station, this petitioner was forcing the accused (complainant of the instant case) to put his signature on the warrant of arrest and when the complainant refused to sign on the warrant of arrest, the petitioner along with other police personnel had assaulted the complainant.

Learned counsel has submitted that due to incorrect submission by the learned counsel for the petitioner, the further proceeding in complaint case no.896 of 2014 has been stayed. It is urged that the stay be vacated.

3. Learned counsel for the petitioner has submitted that perusal of the allegation would reveal that the offence under Section 379 and 448 of Indian Penal Code is not made out as against the petitioner. That the petitioner is a public servant and cognizance of the offence has been taken against the petitioner without the sanction as mandated under Section 197 of Cr.P.C.

4. Heard. It transpires from the order that the cognizance has been taken under Sections 448, 323, 341 and 379 of Indian Penal Code. From the recital of the impugned order and the complaint it is evident that offence under Section under Sections 379 and 448 of the Indian Penal Code is not made out as against the petitioner.

5. Learned counsels pray for time to argue on the question of law 'whether sanction under Section 197 Cr.P.C is required for taking cognizance against the petitioner.'

6. In the attending circumstances the court below shall proceed in the case as against other co-accused. The proceeding against this petitioner, Md. Faiz Rabbani shall remain stayed, till further orders.

7. For the foregoing reasons I.A. No. 53 of 2019 is allowed to that extent.

Cr. M.P No. 1058 of 2017

1. On prayer of the learned counsels, office to list this case on 28.08.2019.

(AMITAV K. GUPTA, J.)

Rohit /-