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**IN THE COURT OF PRL. CIVIL JUDGE AND JMFC,
KANAKAPURA**

**Present: Sri. Suresh Annappa Savadi, B.A, L.L.B.,(Spl.)
Civil Judge & JMFC, Kanakapura**

C.C No.1435/2022

Dated this the 18th day of November 2023

COMPLAINANT: Harohalli Police Station,

Versus.

ACCUSED: Lepakshi Reddy and others

PARTIES ON APPLICATION U/SEC.239 OF CR.PC.,

APPLICANTS:

ACCUSED Lepakshi Reddy and others

-Versus-

OPPONENT:

COMPLAINANT Harohalli Police Station,

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ORDER ON APPLICATION U/SEC.239 OF CR.PC.,

The accused No.1 to 4 filed this application under Sec.239 of Cr.P.C. for their discharge.

2. In the application accused have contended that, the Harohalli Police have registered the case on the strength of the FIS given by the Jayaramareddy who is accused in C.C No.73/2022, on 01.01.2022 at about 09.00 a.m., alleging that, Jayaramareddy and his sons made galata by bringing JCB and assaulted with the knife and considering the contents of the FIS the Harohalli Police have registered the case in its crime No.2/22 for the commission of offence U/s 323, 324, 341, 447 and 504 r/w Sec. 34 of IPC. Further contended that, there is no truth in the information given by the Jayaramareddy and to counter blast the said case, filed this false case. There is a civil dispute between the sister of the accused No.1 and Jayaramareddy which is pending on the file of Senior Civil Judge and JMFC, Kanakapura in O.S No.30/2021. In order to settle the civil case, filed this false complaint against the accused.

3. Further contended that, the Hon'ble Apex Court in the case of Dilwar Babu Kurane V/s State of Maharashtra reported in AIR 2002 SC 564 wherein it has held that "The Judge should not act merely as post office, but should consider total effect of evidence and documents produced before the court". Further accused contended that time and again the Hon'ble Apex Court

held that, it is the duty of the Trial Court while considering the discharge application not to act in a near post office and it has to shift through evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total effect of evidence and documents produced in the case. In the case of Sanjay Kumar Rai V/s State of Uttar Pradesh, the Hon'ble Apex Court held that, discharge is a valuable right provided to the accused. Fairness of investigation and other related aspects. The accused No.2 was attending his college classes at National College, Jayanagara and as his studying in Bsc and residing in grand mother's house who is nothing to do with the incident. Even then, he was made as accused. The accused No.3 was working in a private firm at Mas Knits and he was also work on the company on 01.01.2022 and got punched his attendance at about 09.18 A.M on that day. The police have colluding with the Jayaramareddy and filed this false case and the dispute is of a civil in nature. The accused contended that, Jayaramareddy at about 10.45 A.M., has gone to Government Hospital, Kanakapura and alleged that Lepakshi assaulted him at about 09.00 A.M on 01.01.2022. On the other hand, wound certificate dated 06.01.2022 says that at about 09.30 A.M 3 persons have

assaulted the Jayaramareddy on 01.01.2022. Hence, with these set of contentions, prays to discharge the accused.

4. On the other hand, the learned APP filed objections and denied the contents of the application and the contents of the application cannot be considered at this stage. The accused has got ample power to cross-examine the witness. The learned APP relied the decision of the Apex Court reported in 2015(2) Crimes 139 (S.C) and 2015(2) SCC Crimes Page – 265 and also APP relied the decision of the State by Inspector of Police, Chennai V/s Selvi and another. The learned APP prays to reject the application.

5. Heard the both sides.

6. The points for my consideration are:

1. Whether the accused are entitled for discharge as prayed in the application filed U/s 239 of Cr.P.C.?
2. What Order?

7. My answers to the above points are :

- Point No.1 : In the Negative;
- Point No.2 : As per final order for the following:

:: R E A S O N S ::

8. **Point No.1:** As per the records, on the strength of the FIS given by the Jayaramareddy, the Harohalli Police have registered the case in its Crime No.02/2022 for the commission of offence U/s 323, 324, 341, 447 and 504 r/w Sec. 34 of IPC. The accused specifically contended and taken plea of Alibi in respect of the accused No.2 and 3. As the accused No.2 has a student and attended the college on the date of the incident and also the accused No.3 was working in a private company and he has put his attendance at about 09.18 A.M and also contended that, the dispute is in respect of property and in respect of the same, already a suit was pending before the Senior Civil Judge and JMFC, Kanakapura and also contended that, the accused relied the wound certificate by the accused and also accused relied the decision of the Hon'ble Apex Court in the case of Dilwar Babu Kurane V/s State of Maharashtra reported in AIR 2002 SC 564 and also Sanjay Kumar Rai V/s State of Uttar Pradesh. After going through the said decisions, with great respect the said decisions of the Appellate Court held that, the Judge should not act merely as post office but should consider total effect of evidence. This itself shows that, considered the evidence in the case. In this case, case is posted for issuance of summons to

accused at this stage appeared and filed this application. The contention raised by the accused is to be considered after recording the evidence. At this stage, before recording of evidence cannot be held that, the plea taken by the accused is correct and the same is to be testified by way of evidence. Hence, under such circumstances, the decisions relied by the accused with great respect not applicable to the present case on hand. Hence, considering the entire material, this court is of the opinion that, the accused has not made out any sufficient ground to allow the application. Hence this court answered the point No.1 in the **Negative**.

9. **Point No.2** For the reasons stated in the point No.1, this Court proceed to pass the following;

:: O R D E R ::

The application filed by the accused No.1 to 4 U/sec.239 of Cr.P.C. is hereby rejected.

**Prl. Civil Judge and J.M.F.C.,
Kanakapura.**