

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12169 of 2013

Arising Out of PS.Case No. -231 Year- 2010 Thana -CIVIL LINE District- -

=====

Dinesh Kumar @ Pal Dinesh Kumar

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Mukesh Kr.Singh(App)

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 25-06-2015 Heard learned counsel Mr. Anil Saxena for the
petitioner.

2. This criminal miscellaneous application has been filed for quashing the order dated 26.11.2012 passed by learned Chief Judicial Magistrate, Gaya in Civil Lines P.S. Case No.231 of 2010 whereby the court below has taken cognizance under Section 323 I.P.C.

3. The learned counsel for the petitioner submitted that the petitioner is own brother of the informant and partition suit is pending between them. The petitioner has earlier filed F.I.R. against the informant under Sections 323, 341, 337 and 427 I.P.C. in the year 2009, therefore, the informant has falsely filed this present case against the petitioner. In investigation also the police did not find the case under other sections i.e. 341 and 379 I.P.C. to

be true and charge sheet has been submitted only under Section 323 I.P.C. According to the learned counsel, because the case is false case, the offences under other sections were found to be false. In such circumstances the case under Section 323 I.P.C. is also a false case lodged by the informant.

4. Perused the F.I.R. lodged by the informant.

5. There is direct allegation of assault by this petitioner and other co-accused persons. So far the submission of learned counsel for the petitioner that the case is false because the case was registered under Sections 323, 341, 379/34 I.P.C. but the investigating agency found the case only under Section 323 I.P.C. to be true is concerned, it may be mentioned here that in India the maxim *falsus in uno, falsus in omnibus* is not applicable. This matter is to be tried by the Court and at the time of trial the Court can record a finding on the basis of evidence. In exercise of jurisdiction under Section 482 Cr.P.C. this Court cannot embark upon any enquiry as to whether the allegations made in the F.I.R. are false or incorrect. The Hon'ble Supreme Court in **(2008) 4 SCC 471 (Central Bureau of Investigation Vs. K.M. Sharan)** has held that the High Court in its jurisdiction under Section 482 Cr.P.C. is not called upon to embark upon an inquiry whether the allegations in the F.I.R. and the charge sheet were reliable or not

and thereupon to render definite finding about truthfulness or veracity of the allegations. In the present case, since there is direct allegation of assault, which has been found to be true by the investigating agency and on the basis of the material available in the charge sheet the court below has taken cognizance, it cannot be said that even if the allegation levelled against this petitioner in the F.I.R. is taken to be true, no case is made out.

6. In such circumstances, in exercise of jurisdiction under Section 482 Cr.P.C. this Court cannot quash the order whereby the court below has taken cognizance. Therefore, this criminal miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Harish/-

U			
---	--	--	--