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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.9899 of 2023
and Crl.MP.No.6500 of 2023

B.Kumar

Petitioner/Respondent/Accused

.Vs.

B.Kalaiselvi

..Respondent/Petitioner/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the impugned order passed in Crl.MP.No.807 of 2021, in C.C.No.2030 of 2018 dated 12.4.2023 pending on the file of Fast Track Court-III, Metropolitan Magistrate, Saidapet, Chennai-15.

For Petitioner : Mr.S.N.Ravikumar

For Respondent : Mr.T.I.Ramanathan

ORDER

This criminal original petition has been filed challenging the Order passed by the Court below in Crl.MP.No.807 of 2021, dated 17.2.2023, allowing the application filed by the respondent under Section 311 Cr.PC., and permitting the respondent to recall PW.1 and to correct the mistake that had crept inadvertently while marking the cheque.

<https://www.mhc.tn.gov.in/> 2. The respondent/complainant has filed a private complaint against the



petitioner which is pending in C.C.No.2030 of 2018. Similarly, the respondent/complainant has filed another private complaint against the wife of the petitioner and the same is pending in C.C.No.2029 of 2018. Both these complaints are pending before the same Court viz., FTC-III Metropolitan Magistrate, Saidapet. During the course of trial, the cheque that was signed by the petitioner was marked in the complaint that was filed against the wife of the petitioner and the cheque that was signed by the wife of the petitioner was mistakenly marked in the complaint that was filed against the petitioner/husband. This mistake was noticed at a later point of time and the respondent wanted to rectify the mistake. It is under these circumstances, the application under Section 311 Cr.PC, was filed.

3.The learned counsel for the petitioner submitted that such application is not maintainable in order to rectify a fatal mistake that has been committed in this case and therefore, the learned counsel urged that the Order passed by the Court below is liable to be interfered by this Court.

4.In the considered view of this Court, there are admittedly two complaints that have been initiated/instituted by the respondent/complainant. One complaint is against the husband and the other complaint is against the wife. In the complaint initiated against the husband in C.C.No.2030 of 2018, the cheque that was supposed to be marked in the other complaint was inadvertently marked in this complaint. Similar mistake had taken place even in the other complaint. This was sought to be rectified.



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5.The Court below has very wide powers under Section 311 Cr.PC., in order to do substantial justice. The rectification of the mistake will not in any way prejudice the petitioner or his wife. Ultimately, they have to rebut the presumption under Section 139 of the Negotiable Instruments Act, 1881 based on the materials collected during the course of evidence.

6.This Court does not find any grounds to interfere with the Order passed by the Court below. The Court below shall take immediate steps to rectify the mistake and ensure that the correct cheque is marked in the respective complaints in C.C.Nos.2029 of 2018 and 2030 of 2018. Both these cases shall be disposed on its own merits and in accordance with law, within a period of **three months** from the date of receipt of a copy of the order.

This criminal original petition is disposed of in the above terms. Consequently, connected miscellaneous petition is closed.

09.01.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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N. ANAND VENKATESH,, J.



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To
Fast Track Court-III,
Metropolitan Magistrate,
Saidapet, Chennai-15.

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