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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4856/2024 and CRL.M.A. 18410/2024**
JULIEYANA BALMANNPetitioner
Through: Mr.Om Prakash Gupta and
Mr.Radheyshyam, Advocates

Versus

RANDHIR SINGHRespondent
Through: Ms.Shikha Sagar, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
26.11.2024

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1. The present petition has been preferred on behalf of the petitioner seeking setting aside of the order dated 05.04.2024 passed by the learned Additional Sessions Court in CA No.120/2023.
2. Vide the aforesaid order, the learned ASJ, during the appeal proceedings, noted that the order on sentence incorrectly records the name of the accused/petitioner and thus, remanded back the matter to the Trial Court for addressing the arguments on point of sentence.
3. Notably, the present petition arises in the context of the proceeding initiated under Section 138 NI Act by the respondent/complainant. The trial resulted in passing of the judgment of conviction dated 10.05.2023. Concededly, there is no error in recording of the facts or the title in the judgment of conviction, however, in the order on sentence passed on 08.06.2023, while noting the facts of the case correctly, in paragraph 6 thereof, the name of the accused/petitioner has been incorrectly referred to as *Rani Mishra* instead of *Julieyana Balmann*. The petitioner is aggrieved



that the same being only a clerical error, learned Sessions Court erred in remanding back the matter for addressing the arguments on sentence. He submits that vide order on sentence, the petitioner has been sentenced to undergo TRC (till rising of the Court) as well as fine of Rs.5,75,000/-, in default whereof, to undergo SI for two months.

4. The petition is resisted by the learned counsel for the respondent, who submits that the error in the name of the petitioner goes to the root of the matter and would rather show that the order on sentence was not passed after appreciating the entire facts and evidence on record.

5. I have heard learned counsels for the parties and have also gone through the material placed on record including the judgment of conviction and the order on sentence as well as the impugned order.

6. Positive reference is also made by this Court to the decision of the Division Bench of this Court in Mahesh Mishra v State of UP reported as **2023 SCC OnLine Del 4314**, wherein it was observed that:-

“19. What amounts to a "clerical" or an "arithmetical" error was explained by the Supreme Court in the case of Master Construction Co. (P) Ltd. v. State of Orissa (1966) 3 SCR 99 wherein it was observed that a clerical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of record and does not depend upon its discovery on argumentation or disputation. An arithmetical error is a mistake on calculation and clerical mistake in writing or typing. The Court also held that the slip or omission may be attributed to the judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself.”

7. As noted above, learned counsels for the parties have stated that neither any fact nor any evidence has been incorrectly mentioned either in the judgment of conviction or order on sentence. It is only in paragraph 6 of the order on sentence that the name of the accused/petitioner has been



incorrectly mentioned. I have also carefully gone through the facts. The factual details of the complaint case being the Complaint Case Number, the cheque details, the drawee bank, the date of demand notice, the date of framing of notice as well as the other particulars of the subject cheque and return memo have been correctly mentioned in the judgment of conviction. Even in the order on sentence, the Complaint Case Number and the cheque amount have been correctly stated.

8. Keeping in view the facts and circumstances, the bar of Section 362 Cr.P.C. does not come into play. The error, a typing mistake, being only clerical in nature, the impugned order is restricted to remand only for correction of the said order to that extent

9. In view of the above, the present petition is disposed of alongwith the pending application.

MANOJ KUMAR OHRI, J

NOVEMBER 26, 2024

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