

ORDER

The complainant filed application under Section 311 of Cr.P.C. and 138 of NI Act to recall complainant (PW 1) to produce the sworn statement.

In the application, it is stated that the complainant has filed the case against the accused for the offence punishable under Section 138 of NI Act. Now the case is posted for further chief-examination. At the time of filing the case, the complainant society due to inadvertently produced some other chief-examination affidavit which was not relating to this case. It is not intentional one. Now he intends to produce the sworn statement relating to this case. Hence, prays to recall the Order further chief-examination of complainant and given permission to produce the sworn statement relating to this case. If the application is not allowed, the complainant will be put to heavy loss and hardship which cannot be compensated in terms of money. On the other hand, the accused will not be put to any loss. At the

time of filing the present case some documents have been produced before this court. Hence prays that said documents may be marked and exhibited in the present case. Hence, he prays for allow the said application.

On the other hand, the accused filed objection and contended that the application is contrary to law and facts. The sworn statement which the complainant has produced on 06.04.2021 is not related to this case and also the zerox copies of the documents are also not related with the facts stated in the sworn statement. The complainant ought to have produced the original documents before this court at the time of filing this case. Now the complainant filed sworn statement after lapse of five years which is contrary to law and facts. If the application is allowed, the accused will be put to great loss and hardship. Hence, prays to dismiss the application.

Heard and perused the materials on record.

As per the complainant, at the time of filing the complaint, due to inadvertently the

complainant has produced some other sworn statement which is not related to this case which is not intentional. Now he intends to file sworn statement related to this case. According to the accused, The sworn statement which the complainant has produced on 06.04.2021 is not related to this case and also the zerox copies of the documents are not related with the facts stated in the sworn statement. Now after lapse of five years he intends to file the sworn statement before this Court which is against contrary to law and facts. Hence prays to dismiss the application.

On careful perusal of records, it is clearly noticed that this case is posted for further cross-examination of PW 1. Further, it is also noticed that the sworn statement of the complainant recorded on 6.4.2021 by the JMFC., Ankola. It is noticed that the present accused name is Savita Nagaraj Kharvi and as per the prosecution case, the accused issued a cheque bearing No.867731 on 16.2.2021 in favour of complainant institution for repayment of outstanding loan amount of Rs.2,64,518/-. But in the sworn statement

affidavit of the PW 1, it is due to mistake and oversight the complainant society had filed sworn statement affidavit of PW 1 relating to the case against the accused by name Santosh Chandrakant Kharvi. Therefore, when the learned counsel for the accused had cross-examined the PW 1 and elicited from the mouth of the PW 1 relating to complainant institution had filed the sworn statement affidavit against the accused by name Santosh Chandrakant Kharvi instead of above said accused Savita Nagaraj Kharvi. Thereafter, the complainant institution has filed above said application to recall the sworn statement of PW 1 and give the opportunity to the complainant to proceed the case against the accused. Already the substance of accusation read over to the accused and also statement of the accused under Section 313 of Cr.P.C. recorded on the basis of contents of the complaint. It is further noticed that the complainant society had filed so many cheque bounce cases against the offenders who have committed the offence punishable under Section 138 of NI Act. Then, it may be possible that due to oversight and mistake

instead of filing sworn statement affidavit against the above said accused by name Savita Nagaraj Kharvi. But they had filed the sworn statement affidavit against the accused by name Santosh chandrakant Kharavi. Then, the accused could not escape from the offence punishable under Section 138 of NI Act on the grounds by mistakenly filed sworn statement affidavit of another accused person. Therefore, it is necessary to give the opportunity to the complainant institution to proceed the case against the accused by producing the fresh sworn statement affidavit against the above said accused by name Savita Nagaraj Kharvi. Otherwise, it will cause prejudice to the complainant institution to proceed the case against the accused. Accordingly, I proceed to pass the following:-

ORDER

The application filed by complainant under Section 311 of Cr.P.C. and Section 138 of NI Act is hereby allowed with cost of Rs.1,000/- and recall the recording of sworn statement of PW 1.

The complainant is hereby directed to file fresh sworn statement affidavit and lead the evidence.

Call on : 3.6.2026.

sd/-

Sr.Civil Judge & JMFC., Ankola