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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 9444/2023 & CRL.M.A. 35311/2023**
PREM KUMAR GUPTA THROUGH ITS GPA NARESH KUMAR
AGGARWALPetitioner

Through: Mr. Abhinav Kaushik, Mr. Rishabh
Athi, Mr. Himanshu Sehrawat, Mr.
Prafful and Mr. Kuldeep Singh,
Advocates.

versus

ANKUSHRespondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

ORDER
20.03.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the Cr.P.C. seeks the following prayers: -

“1. Set aside the impugned order dated 20.10.2023 passed by Ms. Neha Goel, MM(NI Act-02, Central) THC, Delhi in Ct. Cs. 5860/2017, titled as Prem Kumar Gupta Vs. Ankush and the Ld. Trial Court be directed to decide the case as per law, in the interest of justice and/or,

2. pass any other order/relief this Hon'ble court may deem fit, in the interest of justice.”

3. Court notice was issued to the respondent *vide* order dated 20.02.2025 and the same has been served. Despite service of notice, there is no appearance on behalf of the respondent.
4. In view of the above, this Court proceeds to hear the matter.
5. In the present case, the aforesaid complaint case was fixed for passing



of judgment after hearing arguments on behalf of both the parties, however, after perusing the record, the learned Trial Court observed that the documents filed in the complaint and alongwith the pre-summoning evidence have not been correspondingly marked as exhibits. The learned Trial Court in these circumstances, directed the GPA of the petitioner, Mr. Naresh Kumar Aggarwal as well as the present petitioner to appear before the Court for re-examination for the purpose of exhibiting the said documents.

6. Learned counsel appearing on behalf of the petitioner draws attention of this Court to the affidavit by way of evidence dated 17.04.2017, wherein the exhibits of the documents have been mentioned, however, the same were not correspondingly endorsed on the documents. Attention of the Court was also drawn to notice under Section 251 of the Cr.P.C. served on the respondent/accused 04.04.2018 which records as under:

**“CC No. 5860/17
04.04.2018**

**IN THE COURT OF SH. SUNIL GUPTA, MM (C-02)/Delhi.
Notice U/s 251 Cr.P.C**

I, Sunil Gupta. MM (C-02) / Delhi, do hereby serve notice upon you Sh. Ankush S/o Sh. Krishan Kumar, that you in discharge of legally recoverable debt towards the complainant issued a cheque bearing No.000095 dated 28.02.2017 for sum of Rs. 1,00,000/- drawn all Bank of Baroda, Branch Jawahar Nagar, New Delhi, in favour of the complainant which was returned unpaid due to the reason, ***"funds insufficient"*** vide cheque returning memo dated 03.03.2017, and despite notice of demand dated 31.03.2017 served upon you, you failed to make the payment of the said cheque amount within stipulated time and thereby you committed an offence punishable under section 138 of Negotiable Instruments Act, 1881 and within my cognizance. I hereby directed that you be tried by this court on the above notice.

(Sunil Gupta)



MM(C-02)/Delhi

Notice has been read over and explained to the accused, who is asked the following question.

Q. Have you understood the notice?

A. Yes

Q. Do you plead guilty or have any defence to make?

A. I do not plead guilty and claim trial. My plea of defence is as under:

I admit my signature on cheque in question. I also admit that I did receive the legal notice. I admit by liability towards the complainant to the tune of amount as reflected in cheque in question. I also admit that the cheque was issued for discharge of said liability. I am ready to pay the entire amount. I need sometime for the same.

Q. Do you want to lead DE?

A. Yes.

RO & AC

(Sunil Gupta)
MM(C-02)/Delhi
04.04.2018”

It is submitted that the respondent/accused did not even contest the authenticity of the document or his liability to pay the cheque amount.

7. Learned counsel appearing on behalf of the petitioner has placed reliance on the judgment of Hon’ble Supreme Court in **Vimla Devi and Others v. National Insurance Company Limited and Another, (2019) 2 SCC 186**, wherein it has been observed and held as under: -

“20.8 Seventhly, if the Court did not exhibit the documents the appellants referring to them at the time of recording evidence, then in such event, the appellants cannot be denied of their right to claim the compensation on such ground. In our opinion, it was nothing but a procedural lapse, which could not be made basis to reject the claim petition. It was more so when the appellants adduced oral and documentary evidence to prove their case and the respondents did nothing to counter them.”



8. It is pointed out that the GPA holder (Mr. Naresh Kumar Aggarwal) of the petitioner- Mr. Prem Kumar Gupta, *i.e.*, complainant is suffering from Cancer and is bed-ridden and is unable to appear before the Court. In these circumstances, this Court is of the considered opinion that the re-examination is only for the purpose of putting the exhibits on the documents, which can be done through the duly appointed counsel on behalf of the GPA holder of the petitioner. For the said purpose, physical appearance of CW-1/Naresh Kumar Aggarwal will not be required. He can appear through Video Conferencing.

9. In these circumstances, the order dated 20.10.2023 passed by Ms. Neha Goel, MM(NI Act-02, Central) Tis Hazari Courts, Delhi in Ct. Cases. 5860/2017, titled as 'Prem Kumar Gupta Vs. Ankush', is set aside.

10. Let the matter be placed before the concerned learned Trial Court on 02.04.2025, who will proceed to exhibit the documents in presence of the GPA holder-Naresh Kumar Aggarwal through Video Conferencing and the same shall be permitted to be done through the learned counsel for the petitioner before the learned Trial Court.

11. With the aforesaid directions, the petition is disposed of.

12. Pending application(s), if any, are also disposed of.

13. Copy of this order be communicated to the learned Trial Court for necessary information and compliance.

14. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

MARCH 20, 2025/bsr/sc

Click here to check corrigendum, if any