



\$~13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.L.P. 343/2018**

MUKESH JAIN

.....Petitioner

Through: **Ms. Saguna Gupta, Mr. Anuj Gupta,**
Advs.

versus

PARDEEP SHARMA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **06.02.2025**

CRL.L.P. 343/2018

1. This is an seeking grant of leave to appeal to challenge the impugned order dated 16.08.2017 passed by learned MM-02, Patiala House Courts, New Delhi in Complaint Case No. 25988/2016 titled "*Mukesh Jain vs. Pardeep Sharma*" whereby the respondent was acquitted of the offences punishable under section 138 of the Negotiable Instruments Act, 1881.
2. In the present case, the complaint under section 138 of the Negotiable Instruments Act, 1881 filed by the petitioner was dismissed on the ground that the complainant/petitioner, who was produced for cross-examination during the trial (pursuant to the permission granted under 145(2) of the NI Act) had not filed any affidavit in his examination in chief. The affidavit in examination in chief was of the petitioner's attorney namely, Mr. Santosh Kumar who was examined as a witness during the pre-summoning stage. Further, the petitioner himself appeared, adopted the pre-summoning evidence led by his attorney.
3. Hence, the learned MM was of the view that this course of action



cannot be adopted and the complaint filed by the petitioner under section 138 of the Negotiable Instruments Act, 1881 was dismissed.

4. I am of the view that no prejudice was caused to the respondent on account of the petitioner adopting the affidavit of his attorney. The attorney was familiar with the facts of the case and deposed on behalf of the petitioner, based on the power of attorney granted to him.

5. In the present case, the respondent has been served, however, nobody is appearing on behalf of the respondent since 18.07.2023.

6. For the said reasons and in view of my observations, the leave to appeal is granted and the application is disposed of.

CRL.M.A. 9566/2018

7. The present application has been filed seeking permission to lead additional affidavit by filing fresh affidavit in post summoning evidence.

8. Since the learned MM was of the view, that the petitioner did not lead his examination in chief and the affidavit at pre-trial stage was filed by his attorney, Mr. Santosh Kumar, the petitioner seeks to lead additional evidence by way of affidavit before the learned MM, in order to avoid any technical issue raised by the learned MM.

9. For the said reasons, and since nobody is appearing on behalf of the respondent, the application is allowed and the petitioner is permitted to lead additional evidence by filing fresh affidavit at the post summoning evidence stage.

CRL.A. /2025

10. Since the leave to appeal has been allowed, the registry is directed to number the present appeal.

11. This is a petition filed under section 378(4) seeking setting aside of the



order dated 16.08.2017 passed by learned MM-02, Patiala House Courts, New Delhi in Complaint Case No. 25988/2016 titled “*Mukesh Jain vs. Pardeep Sharma*” whereby the respondent was acquitted of the offences punishable under section 138 of the Negotiable Instruments Act, 1881.

12. Since the only reason for the acquittal of the respondent was that the petitioner did not lead any examination in chief and the examination in chief was by his attorney i.e. Mr. Santosh Kumar, and Mr. Santosh Kumar was not produced for post summoning evidence, I am of the view that in the present case, the petitioner has adopted the pre-summoning examination in chief of Mr. Santosh Kumar and has added nothing new in his examination in chief.

13. Since the attorney was not available, the petitioner entered the witness box at post summoning stage to be cross-examined.

14. The power of attorney shows that Mr. Santosh Kumar was duly authorized to represent the petitioner and depose on his behalf.

15. Lastly and most importantly, since application 9566/2018 for leading additional affidavit by the petitioner at post summoning stage has been allowed, consequently, the appeal is allowed and the impugned order dated 16.08.2017 is set aside.

16. The parties shall appear before the concerned CMM, Patiala House Courts on 20.02.2025, wherein the learned CMM shall assign the case to concerned court.

JASMEET SINGH, J

FEBRUARY 6, 2025/DM

[Click here to check corrigendum, if any](#)