IN THE COURT OF SH. ANKUR JAIN-1: ADDITIONAL SESSIONS JUDGE-04, CENTRAL, TIS HAZARI COURTS, DELHI.

CA NO: 156/2024
CNR No. : DLCT-01-005123-2024

M/s Om Shanti Telecom
Through its Proprietor Mr. Kapil,
5168, Gali No.114, B-Block,
Sant Nagar, Burari,
Khushal Chowk, Delhi 110084

….Appellant

Versus

M/s Kay Ess Trade Links
Through its AR Mr. Tarun Goel,
7B, Plot No. Old 51A, Sri Nagar
Colony, Delhi-110052

.... Respondent

Date of Institution of Appeal	**: 16/04/2024**
Date on which order reserved	**: 20/07/2026**
Date on which order pronounced	**: 14/09/2026**
Final order	**: Dismissed**

<u>O R D E R:-</u>

1. The present order shall dispose of the appeal filed by accused who has been convicted by the Ld. Trial court for the offence punishable u/s 138 Negotiable Instruments Act (hereinafter referred to as N.I. Act) and has been sentenced to SI for 2 months and also to pay a fine of Rs. 5,50,000/- along with simple interest @ 9% p.a. from 23/11/2020 till 22/11/2023.

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2. The parties shall be referred to as per their status before the Ld. Trial Court. The appellant was the accused and respondent was the complainant.

3. A complaint u/s 138 N.I. Act was filed by the complainant through AR Mr. Tarun Goel stating that complainant is the sole proprietor and is engaged in the business of mobile phone. Accused was the proprietor of M/s Om Shanti Telecom. It was the complainant that they are in business relation wherein accused used to purchase mobile phones from the complainant for further selling. It is stated that in discharge of his liability accused had issued a cheque of Rs.5,50,000/- which on presentation was dishonored vide memo dated 29/09/2020. The complainant got issued legal noticed dated 30/09/2020. Despite service of notice. Neither any reply was given nor any payment was made. Hence, the present complaint.

4. Vide order dated 03/12/2020, accused was summoned to face trial for committing an offence punishable u/s 138 N.I. Act. Vide order dated 05/01/2021, notice u/s 251 Cr.P.C. was framed to which accused pleaded not guilty and claimed trial. Complainant examined himself as CW-1. CE was closed on 30/06/2023. Statement of accused was recorded on 01/08/2023. Accused chose not to examine any witness and DE was closed accordingly. Vide the impugned judgment and order, the accused was convicted and sentenced accordingly.

5. Ld. counsel for the accused/appellant has argued that legal notice was never served. Ledger and bills are forged as no e-way bill were filed. The proprietor Shweta Goel was never examined. The complainant did not file the GST record or the ITR. It is

submitted that these facts have not been considered by the ld. Trial Court and hence, the judgment is liable to be set aside. Consequently, the accused is liable to be acquitted.

6. On the other hand, Ld. Counsel for the respondent submits that legal notice was sent to the address wherein, the accused was summoned, the bail bonds also bears the same address. Hence, there is a presumption that legal notice was duly served. It is submitted that the bills were never challenged as forged and fabricated. It is argued that accused was unable to rebut the presumption and as such, there is no infirmity or illegality in the order of the ld. Trial Court.

7. I have heard Ld. Counsels for the parties and perused the record.

8. The Hon'ble Supreme Court has laid down the basic ingredients forming the basis of the offence under Section 138 of N.I.Act in the following structure in ***'Gimplex Private Ltd. vs Manoj Goel'*****, (2022) 11 SCC 705**. The relevant paras are reproduced as under:-

> (i) The drawing of a cheque by person on do account maintained by him with the banker for the payment of any amount of money to another from that account.
>
> (ii) The cheque being drawn for the discharge in whole or in part of any debt or other liability.
>
> (iii) Presentation of the cheque to the bank arrange to be paid from that account.
>
> (iv) The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount.
>
> (v) A notice by the payee or the holder in due course making a demand for the payment of the

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amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and

(vi) The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.

9. The first submission of the counsel for the appellant was that legal demand notice was never served. The ld. Trial Court in para 13 has noted the said submissions and has rejected the contention by placing reliance upon section 27 of the General Clauses Act. In the present case, legal notice is Ex.CW-1/B, the address on the legal notice has been mentioned as 5168, Gali No.114, B-Block, Sant Nagar Burari, Khushal Chowk, Delhi-84, alongwith the legal notice complainant has placed on record the postal receipt as well as the tracking report, the tracking report clearly shows that the legal notice was duly delivered. Accused himself never stepped in the witness box. The perusal of the record suggests that when notice u/s 251 Cr.PC was framed, the accused admitted the address mentioned on the notice as correct but disputes the receipt of the legal notice. The record reflects that summons were served on the very same address. The bail bond also bears the same address. Therefore, presumption is liable to be raised in favour of the complainant and against the accused that legal notice was duly served. The accused ought to have led positive evidence that he did not receive the legal notice in order to rebut the presumption u/s 27 of the General Clauses Act, which he failed to do and as such the contention of the Ld. Counsel for the appellant is liable to be rejected.

10. It is argued that ledger is forged and fabricated as the e-way bill were never filed. The ledger was exhibited as CW-1/E and the invoices were exhibited as Ex.CW-1/F. The ledger statement is from 01/04/2019 to 30/09/2020. The ledger contain description of nine bills, the first being on 29/02/2020 and the last of 14/03/2020. The last two bills i.e. on 08/03/2020 and 14/03/2020, shows that goods worth Rs.1,00,404/- and Rs.1,44,882/- were sold against which the exact amount of cash was received, clearly suggesting that sale had taken place against cash payment. In the cross examination, seven bills were confronted i.e. qua the sales which took place on 29/02/2020, 01/03/2020, 04/03/2020, 05/03/2020 and 06/03/2020. The accused never disputed the sale of the goods which took place qua the aforesaid two bills and therefore, non filing of e-way bill qua the sales which had taken place is thus of no consequences. The perusal of the bill shows that there is receiving of the bills but the name of the person who have received the same is different, at times, name of the person who has received same is also not clear. Barring those two bills dated 08/03/2020 & 14/03/2020, all the other bills are duly stamped by the proprietorship firm of the accused. It is not the case of the accused that the stamp is forged and fabricated. The business relation is duly admitted. No suggestion was given to CW-1 that he was not aware about the facts of the present case what was put to him is that he was never authorized by the wife. Thus, it cannot be said that ledger, bills were forged and fabricated simply because the e-way bills were never filed or that AR of the complainant was not a competent witness.

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11. It was argued that no ITR has been filed reflecting the transactions in the ITR returns which suggest that no such transactions took place. The Hon'ble Madras High court in **'*K.T.S. Sharma Vs. Subramaniam*' 2001 (4) CTC 486** held that even if the amount is not shown in ITR, it would entail penalty under the I.T. Act but cannot be considered sufficient to disprove the money transactions. Reliance can also be placed upon the judgment of **'*Shalu Sharma Vs. Mahendra Pal*' (2016) ACD 1022 (Delhi High Court).**

12. The Hon'ble Delhi High Court in **'Uma Lata Sharma vs State of NCT of Delhi & Anr.', 2025 SCC Online Del 10579** has held that non reflection of the loan amount in the ITR does not diminish the liability u/s 138 NI Act.

> *38. While income tax returns may serve as a relevant indicator of a lender's financial capacity, they cannot be treated as the sole or decisive criterion. The law does not mandate that every financial transaction must be reflected in tax filings for it to be deemed legitimate or enforceable. If the lender's financial capacity and the existence of the loan are otherwise substantiated through credible and cogent evidence, such as bank records, credible testimony, or other reliable documentation, the mere omission of entries in income tax returns cannot, and should not, extinguish the statutory presumption of liability under Section 138 of the NI Act. To hold otherwise would unjustly penalize a rightful claimant and provide an undue advantage to a defaulting borrower, contrary to both the letter and spirit of the law.*

13. In light of the aforesaid judgment, even non filing of ITR will not have any consequences. In any case, the perusal of the cross examination would show that appellant did not get the cross examination deferred for production of the ITR when it was specifically stated by complainant that he can produce the ITR of the relevant year.

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14. Once the signatures on the cheque are admitted the presumption u/s 139 N.I. Act r/w Section 118 kicks in that the same was issued in discharge of legally recoverable debt. In **'*Bharat Barrel & Drum Manufacturing vs Amin Chand*', 1999 3 SC(35)**, it was held that the court will necessary presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. The appellant failed to rebut the presumption.

15. I find no infirmity, illegality in the judgment of conviction dated 22/11/2023 and order of sentence dated 29/11/2023.

16. Appeal stands dismissed.

17. Appellant is directed to surrender before the ld. Trial Court forthwith. In case the appellant does not surrender, ld. Trial Court shall take action in accordance with law. Parties are directed to appear before ld. Trial Court on 17/09/2026.

18. Copy of this order along with TCR be sent back to the Ld. Trial Court for information.

19. Appeal file be consigned to Record Room.

Announced on this
14th September, 2026

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