IN THE COURT OF MR. HARGURVARINDER SINGH JAGGI, ADDL. SESSIONS JUDGE (FTC– 01), SOUTH DISTRICT, SAKET COURTS, NEW DELHI

CA No.:	808/2025	
CNR No.:	DLST01-020631-2025	
Police Station:	Malviya Nagar	
u/Section:	138 NI Act, 1881 / 415 BNSS	

IN THE MATTER OF:

SMT. SONIA APTE **... Appellant/Accused**
D/o Sajeev R. Apte
R/o 11, Hemkunt Colony
Greater Kailash-1, New Delhi-110048

Through – Mr. Mohd. Jamal Ikhlas and Mr. Mukesh, Advocates for the Appellant.

v.

DR. ANIEL MALHOTRA **... Respondent/Complainant**
S/o Late Dr. Man Mohan Malhotra
R/o S-52, Panchsheel Park
New Delhi-110017

Through – Mr. Prashant Kumar Jha and Mr. Manish Kumar Chaudhary, Advocates for the respondent.

Date of filing of appeal:	**18.12.2025**
Date of allocation of appeal to this Court:	**23.12.2025**
Date of reserving judgment:	**31.07.2026**
Date of pronouncement of judgment:	**14.08.2026**

J U D G M E N T

14.08.2026

1. The present appeal has been preferred by the appellant, Sonia Apte under Section 415 read with Section 416 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), akin to Section 374(3) of the Code of Criminal Procedure, 1973 (CrPC), challenging the impugned judgment of conviction dated 23.09.2025 and the order on sentence dated 09.10.2025 pronounced by the Court of Ld. Judicial Magistrate First Class (NI Act)-07, South District, Saket Courts, New Delhi (Trial Court), in a complaint case titled as ***Dr. Aniel Malhotra v. Sonia Apte – CC No. 31988/2019***.

2. By virtue of the impugned judgment of conviction and sentencing order, the appellant/accused was convicted for the commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (NI Act). The Trial Court sentenced the appellant to pay the cheque amount of **₹6,75,085/-** *(Rupees Six lakhs seventy-five thousand eighty-five only)* along with simple interest @ 9% per annum from the date of the cheque, besides all pending litigation costs, to the complainant

within 30 days, in default of which she was directed to undergo simple imprisonment (SI) for a period of three months.

3. The appellant herein was the accused, whereas the respondent herein was the complainant before the Trial Court. For the sake of clarity and avoidance of confusion, the parties are interchangeably referred to by their rank and status before the Trial Court.

FACTUAL MATRIX

4. Briefly stated, the dispute arises from a lessor-lessee relationship. The complainant, Dr. Aniel Malhotra, acting as the joint owner and attorney holder of Sanjri Malhotra, inducted the accused, Sonia Apte, as a lessee in property bearing Apartment No. 01-33-B, Tower-1, Fairway West, M3M Golf Estate, Sector-65, Gurgaon, Haryana. The lease was executed *vide* agreement dated 15.02.2018 for a monthly rent of ₹1,25,000/- with a 10% annual escalation payable on or before the 7th of each calendar month.

5. Due to persistent defaults in the payment of rent, the complainant terminated the lease agreement in February 2019. Subsequently, at the request of the accused and her father, Sanjeev Apte, a fresh lease deed dated 26.02.2019 was executed for a period of 11 months. The cheques issued by the accused towards previous arrears at that stage were also returned unpaid, prompting the complainant to declare the second lease deed null and void.

6. On 14.05.2019, the accused and her father executed a written undertaking to clear all outstanding rent up to 10.06.2019 and to vacate the premises on the said date. In discharge of this accrued liability, the accused's father issued a cheque dated 17.05.2019 for ₹8,79,250/-, which was dishonoured.

7. Thereafter, in June 2019, a mutual settlement was reached between the parties, culminating in the execution of a memorandum of understanding (MOU) dated 18.06.2019. Under the terms of this MOU, the outstanding rental arrears and licensing fees up to 30.06.2019 were settled at a consolidated sum of ₹6,75,085/-. In discharge of this settled, crystallised liability, the accused issued the cheque in question, bearing cheque No. 011060 dated 18.06.2019 for ₹6,75,085/- drawn on ICICI Bank, Gurgaon Branch, DLF City Phase-I, Gurgaon, Haryana, with a request to present the same after 30.06.2019.

8. Upon presentation, the cheque in question was dishonoured *vide* bank return memo dated 03.07.2019 with the remarks "Funds Insufficient". The complainant issued the statutory legal demand notice dated 29.07.2019 *vide* speed post, which was duly delivered at the Gurgaon address of the accused on 01.08.2019.

9. It is the admitted case of the parties that the accused made two significant payments to the complainant's bank account through electronic mode:

9.1. ₹1,25,000/- on 18.07.2019 *via* IMPS, which was paid prior to the issuance of the legal demand notice dated 29.07.2019.

9.2. ₹4,00,000/- on 14.08.2019 *via* RTGS, which was paid within the statutory 15-day grace period following the delivery of the legal notice on 01.08.2019.

10. Despite receiving a total sum of ₹5,25,000/- out of the cheque amount of ₹6,75,085/-, the complainant proceeded to institute the criminal complaint under Section 138 of the NI Act on 14.10.2019, claiming the entire cheque amount of ₹6,75,085/-.

<u>THE PROCEDURAL HISTORY AND DELAY IN COGNIZANCE</u>

11. The statutory period of 15 days for making payment under the notice expired on 16.08.2019, and the cause of action to file the complaint arose on 17.08.2019. The one-month limitation period prescribed under Section 142(1)(b) of the NI Act expired on 17.09.2019. The complaint was eventually filed on 14.10.2019, revealing a delay of 27 days. Along with the complaint, the complainant moved an application under Section 142(1)(b) of the NI Act seeking condonation of the said delay.

12. On 14.10.2019, the predecessor Ld. Magistrate issued notice on the application for condonation of delay to the proposed accused. However, when the accused entered appearance through counsel on 12.01.2022, the Trial Court, owing to sheer

inadvertence, directed the accused to furnish bail bonds and surety bonds, and proceeded to frame notice of accusation under Section 251 CrPC against the accused on 20.05.2022, without ever hearing the parties on the condonation of delay and without passing any formal order condoning the same.

13. During the trial, upon discovering this fatal procedural and jurisdictional illegality, the accused preferred a criminal revision petition bearing ***Crl. Rev. No. 67/2023*** before the Ld. District & Sessions Judge, South District, Saket Courts, New Delhi.

14. While the aforesaid criminal revision petition was pending, the successor Ld. Magistrate, in a perfunctory manner, passed an order dated 24.02.2023 noting that the Ld. Predecessor had "inadvertently" framed notice under Section 251 CrPC without deciding the condonation of delay. The successor Ld. Magistrate then proceeded to retrospectively "condone" the delay and directed that the trial would "move prospectively" from the stage of the complainant's evidence. Consequently, the revision petition was disposed of as infructuous on 15.04.2023. The trial ultimately culminated in the conviction of the appellant.

<u>GROUNDS OF APPEAL</u>

15. The appellant/accused has assailed the impugned judgment and sentencing order on the following key grounds:

    15.1. That the Trial Court committed a grave and incurable jurisdictional error by taking cognizance and framing notice under Section 251 CrPC without first deciding the condonation of delay, rendering the trial void *ab initio*.

15.2. That the successor Ld. Magistrate had no legal authority to pass the order dated 24.02.2023 to retrospectively cure a jurisdictional void and validate a trial that was *non-est* in the eyes of law.

15.3. That the Trial Court completely ignored the admitted part-payments of ₹5,25,000/- made by the appellant. A demand notice seeking the full cheque amount of ₹6,75,085/- after a prior part-payment of ₹1,25,000/- was invalid, and the prosecution for the entire cheque amount despite a further payment of ₹4,00,000/- during the notice period is strictly barred under Section 56 of the NI Act and the binding ratio in ***Dashrathbhai Trikambhai Patel v. Hitesh M. Patel – 2022 INSC 1067***.

<u>SUBMISSIONS ON BEHALF OF THE PARTIES</u>

16. Mr. Mohd. Jamal Ikhlas, Ld. Counsel for the appellant, vehemently argued that the Trial Court lacked the territorial and subject-matter jurisdiction to issue process or frame notice under Section 251 CrPC without condoning the delay. He submitted that under Section 142(1)(b) of the NI Act, condonation of delay is a condition precedent, *sine qua non* for taking cognizance of a belated complaint. Bypassing this step violates the fundamental rule of *audi alteram partem* and is an incurable defect.

17. Mr. Ikhlas Ld. Counsel placed heavy reliance on ***S. Nagesh v. Shobha S. Aradhya – 2026 INSC 27*** and ***Prashant Goel v. State – 2006 DHC 15840,*** to argue that the subsequent retrospective order dated 24.02.2023 could not inject life into a dead trial.

18. Mr. Ikhlas Ld. Counsel further argued that the complainant, during his cross-examination, explicitly admitted receiving ₹1,25,000/- before the notice was sent and ₹4,00,000/- within 15 days of the notice. Relying on the landmark judgment of the Hon'ble Supreme Court in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel & Anr. – 2022 INSC 1067***, he submitted that since the complainant did not endorse these part-payments on the cheque and prosecuted the appellant for the full ₹6,75,085/-, the entire proceeding was legally non-maintainable.

19. *Per contra*, Mr. Manish Kumar Chaudhary, Ld. Counsel for the respondent/complainant, strongly defended the impugned judgment. The learned counsel urged that the appellant had admitted her signatures and details on the cheque, thereby attracting the absolute statutory presumptions under Sections 118 and 139 of the NI Act.

20. Mr. Chaudhary, Ld. Counsel argued that the delay in filing the complaint was merely 26 days and was caused due to the *bona fide* illness of the complainant's counsel. He argued that the successor Ld. Magistrate had correctly decided the condonation

of delay application *vide* order dated 24.02.2023, and since the appellant failed to challenge the said order, the procedural irregularity stood cured.

21. Regarding the part-payments, the Ld. Counsel argued that there was a recurring liability of rent, club charges, water, and electricity under the lease, and the complainant had correctly adjusted the payments of ₹5,25,000/- towards other outstanding dues and the rent for subsequent months, leaving the cheque liability untouched. He relied on the Trial Court's finding that the accused failed to produce specific acknowledgements to show the payments were made *in lieu* of the cheque liability.

POINTS FOR DETERMINATION

22. This Court, after considering the trial court record (TCR), the grounds of appeal, and the oral and written submissions of the parties, notes the following points for determination:

22.1. Whether the Trial Court committed an incurable jurisdictional error by taking cognizance and framing notice under Section 251 CrPC without first condoning the delay in filing the complaint, and whether the subsequent order dated 24.02.2023 could retrospectively validate the trial?

22.2. Whether the legal notice of demand and the subsequent complaint under Section 138 of the NI Act were legally maintainable in view of the admitted part-payments made before the notice and during the 15-day statutory period, without any endorsement under Section 56 of the NI Act?

<u>RELEVANT LEGAL PROVISIONS AND LEGAL PRECEDENTS</u>

23. Before entering into the factual analysis, it is necessary to highlight the statutory framework. Section 142(1)(b) of the NI Act provides that a complaint must be made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

> *"... ...*
>
> *Provided that the cognizance of a complaint may be taken after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making the complaint within such period."*

24. The Hon'ble Supreme Court in ***S. Nagesh v. Shobha S. Aradhya – 2026 INSC 27*** and the Hon'ble High Court of Delhi in ***Prashant Goel v. State – 2006 DHC 15840*** have unequivocally held that if a complaint is filed beyond the period of limitation, the Ld. Magistrate lacks the jurisdiction to take cognizance, summon the accused, or frame notice of accusation under Section 251 CrPC without first formally hearing the accused and condoning the delay. The right of the accused to contest the limitation at the pre-cognizance stage is a valuable statutory right, and its violation vitiates the trial.

25. Furthermore, Section 56 of the NI Act mandates that when a part of the amount has been paid, an endorsement of such

part-payment must be made on the instrument before it is presented for encashment, and the instrument can only be negotiated/presented for the balance outstanding.

26. In the watershed decision of ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel & Anr. – 2022 INSC 1067***, a three-judge Bench of the Hon'ble Supreme Court laid down the following binding principles:

26.1. The offence under Section 138 is only attracted if the cheque represents the "legally enforceable debt" *at the time of its presentation*.

26.2. If a part-payment is received by the complainant *after the cheque is drawn but before its presentation*, or *after its dishonour but before the legal notice is issued*, the complainant cannot demand the full cheque amount in the legal notice.

26.3. If the complainant demands the full cheque amount without adjusting the prior part-payment, the legal notice is invalid in law, and no offence is committed under Section 138 of the NI Act.

26.4. If a part-payment is made *during the 15-day statutory notice period*, the drawer's liability to pay the entire cheque amount stands extinguished, and the complainant can only prosecute for the actual balance. Presenting a complaint for the full cheque amount in such circumstances is a gross abuse of process and is non-maintainable.

27. This position was further reinforced in ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul – 2025 INSC 1133***, wherein the Apex Court held that a statutory demand notice that seeks a sum greater than or different from the actual legally enforceable debt due on the date of notice is invalid and quashes the prosecution under Section 138, NI Act.

ANALYSIS AND FINDINGS

Jurisdictional Nullity and Procedural Vitiation

28. An admitted and uncontroverted fact on record that the complaint was filed with a delay of 27 days. It is also undisputed that the predecessor Ld. Magistrate, without passing any order on the condonation of delay application, proceeded to summon the accused and framed notice under Section 251 CrPC on 20.05.2022.

29. This Court finds that the Trial Court committed a grave, fundamental, and incurable jurisdictional error. The jurisdiction of a Ld. Magistrate to take cognizance of a belated complaint under Section 138 read with Section 142 of the NI Act does not exist in a vacuum. The same is contingent upon the formal condonation of delay under the proviso to Section 142(1)(b). Until the delay is condoned, the complaint is, in the eyes of law, dead and cannot be acted upon. By summoning the accused and

framing notice under Section 251 CrPC, the Trial Court assumed jurisdiction which it statutorily did not possess.

30. The subsequent order passed by the successor Ld. Magistrate on 24.02.2023, attempting to retrospectively cure this defect, is wholly illegal and a nullity in law. The Ld. Magistrate observed that the trial must move prospectively from that stage. This approach turns criminal procedure on its head. A trial cannot be built on a collapsed foundation. The framing of notice under Section 251 CrPC is the very commencement of the trial in a summons case. If the notice was framed without jurisdiction, the entire subsequent recording of evidence was *coram non judice* and a nullity.

31. In ***Prashant Goel v. State***,[1] the Hon'ble High Court of Delhi held:

> *"After the order is passed condoning the delay the petitioner cannot now raise the issue of limitation as this issue already stands decided albeit in the absence of petitioner which is not permissible. The impugned summoning order is set-aside."*

32. The Hon'ble Supreme Court in ***S. Nagesh v. Shobha S. Aradhya***,[2] confirmed that the taking of cognizance of a belated complaint before condoning the delay is an illegality that cannot be cured by a subsequent retrospective condonation order. The Trial Court had no authority to bypass the mandatory statutory procedure under Section 142 of the NI Act.

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[1] *supra*
[2] *supra*

33. Therefore, this Court holds that the taking of cognizance, the summoning order, and the framing of notice under Section 251 CrPC were void *ab initio*, and the subsequent trial was a nullity. On this ground alone, the impugned judgment of conviction is liable to be set aside.

<u>Maintainability of the Complaint in View of Admitted Part-Payments</u>

34. On merits, the case of the complainant collapses completely under the weight of Section 56 of the NI Act and the law laid down by the Hon'ble Supreme Court in ***Dashrathbhai Trikambhai Patel.***[3]

35. The cheque in question was for a sum of ₹6,75,085/-. The timeline of payments and notices is crucial:

18.07.2019: The accused paid ₹1,25,000/- to the complainant *via* IMPS.

29.07.2019: The complainant issued the statutory legal demand notice.

14.08.2019: The accused paid ₹4,00,000/- to the complainant *via* RTGS.

36. It is a matter of admitted fact that before the legal notice dated 29.07.2019 was issued, the accused had already paid ₹1,25,000/-. Therefore, on the date the notice was issued, the actual outstanding debt under the cheque was only ₹5,50,085/-.

[3] *supra*

Yet, the complainant chose to issue a legal notice demanding the full cheque amount of ₹6,75,085/-.

37. Applying the strict *ratio* in ***Dashrathbhai Trikambhai Patel***[4] and ***Kaveri Plastics***[5], a statutory notice that demands an amount in excess of the actual due debt on the date of the notice is fundamentally invalid. Since the notice itself was invalid, the first mandatory pre-condition under the proviso (b) to Section 138 of the NI Act was never satisfied.

38. Furthermore, the legal notice was delivered to the accused on 01.08.2019. The statutory grace period of 15 days to make the payment expired on 16.08.2019. On 14.08.2019, which was well within the statutory 15-day grace period, the accused paid a further sum of ₹4,00,000/- to the complainant *via* RTGS. Therefore, within the statutory notice period, the accused had paid a total sum of ₹5,25,000/- out of the ₹6,75,085/- cheque amount, leaving a balance of only ₹1,50,085/-. Despite receiving 77% of the cheque amount before the filing of the complaint, the complainant proceeded to file a criminal complaint on 14.10.2019 claiming the entire original cheque amount of ₹6,75,085/-.

39. The Trial Court's reasoning that the accused failed to produce specific acknowledgements to show that these payments were made towards the cheque is legally perverse and factually

[4] *supra*
[5] *supra*

unsustainable. The lessor-lessee relationship and the execution of the MOU dated 18.06.2019 for rental arrears up to 30.06.2019 are admitted. The cheque was issued in terms of this very MOU.

40. Section 59 of the Indian Contract Act, 1872 reads as follows:

> *“**Appropriation of payments***
>
> ***59. Application of payment where debt to be discharged is indicated.**—Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.*
>
> *Illustrations*
>
> *(a) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June, A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.*
>
> *(b) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.”*

41. Under Section 59 of the Indian Contract Act, 1872, when a debtor makes a payment, the payment must be applied in accordance with the debtor’s express or implied intimation. When a tenant is facing the threat of criminal prosecution under Section 138 of the NI Act for a bounced cheque of ₹6,75,085/-, and pays ₹5,25,000/- during the notice period, the only logical,

reasonable, and legal inference is that the payment was made to discharge the cheque liability.

42. The complainant cannot unilaterally appropriate these payments towards some unpleaded, future, or uncrystallised claims, such as subsequent rent, electricity, or water charges to keep the sword of criminal prosecution hanging over the head of the accused for the full cheque amount. In a prosecution under Section 138, the complainant must prove that the cheque was presented for a "legally enforceable debt". If the debt had been substantially reduced by ₹5,25,000/- before the filing of the complaint, the complainant could not have maintained a prosecution for the entire amount of ₹6,75,085/-.

43. In ***Dashrathbhai Trikambhai Patel,***[6] the Hon'ble Supreme Court held:

> *"For the fee to be recoverable under Section 138, the cheque must represent the legally enforceable debt at the time of encashment. ... If the drawer pays a part of the debt, the payee must endorse the payment on the cheque under Section 56. If the cheque is presented for the full amount without endorsement, the prosecution under Section 138 cannot be sustained."*

44. Consequently, the complainant has miserably failed to satisfy the essential ingredients of Section 138 of the NI Act. The Trial Court's findings suffer from a fundamental error of law and a perverse appreciation of the admitted facts on record.

[6] *supra*

DECISION

45. On a careful re-appraisal of the evidence and the applicable statutory provisions and binding legal precedents, this Court finds that the view taken by the Trial Court is not a possible or plausible view. The Trial Court committed a manifest illegality by conducting a trial on a complaint that was procedurally dead, and by convicting the accused for the entire cheque amount despite clear, admitted evidence of substantial part-payments. The impugned judgment and sentencing order are fundamentally perverse, contrary to the record, and wholly unsustainable in law.

46. In view of the aforesaid legal provisions, legal principles, foregoing reasons, and observations, the instant criminal appeal preferred by the appellant, Sonia Apte, is allowed.

47. The impugned judgment of conviction dated 23.09.2025 and the order on sentence dated 09.10.2025 passed by the Court of Ld. Judicial Magistrate First Class (NI Act)-07, South District, Saket Courts, New Delhi, in ***CC No. 31988/2019*** are hereby set aside and quashed.

48. The appellant/accused, Sonia Apte, is hereby acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

49. The bail bonds and surety bonds of the appellant stand discharged. The fixed deposit receipts (FDRs) deposited by the

appellant with this Court in terms of the suspension of sentence order dated 23.12.2025 including the FDR of ₹25,000/- and FDR of ₹1,00,000/- are directed to be returned/released to the appellant *forthwith* upon proper identification. Let the requisite intimation be transmitted to the concerned bank(s).

50. However, in compliance with the mandate of Section 437A of the CrPC, the bail bond and surety bond of the appellant, now acquitted, shall remain alive for a period of six months from today.

51. Let a copy of this judgment along with the Trial Court Record (TCR) be transmitted *forthwith* to the Trial Court for information and necessary compliance. File be consigned to the Record Room on compliance of directions and as per applicable rules.

Hargurvarinder Singh jaggi

Digitally signed by Hargurvarinder Singh jaggi
Date: 2026.08.14 16:53:31 +0530

Pronounced in the open Court on August 14, 2026	**(Hargurvarinder Singh Jaggi) Addl. Sessions Judge (FTC-01) South District Saket Courts, New Delhi**

Note: *This judgment comprises **19** pages in total. The electronic signature certificate (digital signature) of the Presiding Officer has been appended on the last page of the electronic or digital copy (PDF) of this document.*