

**IN THE COURT OF MS. DEEPTI DEVESH
ADDITIONAL SESSIONS JUDGE, SPL.FAST TRACK COURT
PATIALA HOUSE COURTS, NEW, DELHI**

**Criminal Appeal No. 89/25
CNR No. DLND01-001809-2025**

IN THE MATTER OF:

Manoj Pundir
S/o Sh. Mangat Singh
R/o B-34, Sector 44, Noida,
Gautam Buddh Nagar, UP-201305

.....Appellant

Versus

1. Sun Rose Trading Pvt. Ltd.
Add: 2, 4th Floor TDI Centre, Plot no.7
Jasola, New Delhi-110025

2. State

.....Respondents

Instituted on	:	26.03.2025
Reserved on	:	11.12.2025
Pronounced on	:	14.03.2026

-.:JUDGMENT:-

1. The present appeal has been preferred by the appellant (accused before Ld. Trial Court) against the impugned judgment dated 20.01.2025 and order on sentence dated 10.02.2025 of Ld. JMFC (NI Act)-02, NDD, Patiala House Courts, passed in complaint case u/s 138 NI Act. By way of

the said impugned judgment, the appellant was convicted of offence punishable u/s 138 NI Act and sentenced to payment of fine of Rs. 66,50,000/-, payable as compensation to the respondent (complainant before Ld. Trial Court). For the sake of convenience, both parties shall be referred as their original position before the Ld. Trial Court, i.e. as complainant and accused.

2. The facts relevant for deciding the present appeal, in brief are as follows. The complainant company is owner of lease hold rights in respect of property bearing no. 34, B-Block, Sector -44, Noida, U.P. vide transfer deed dated 20.03.2013. The accused entered into an agreement to purchase lease hold rights of the said property with the complainant company for a total consideration of Rs. 2,96,05,000/- and registered transfer deed dated 06.12.2019 was executed. For payment of the part consideration of Rs. 45,35,950/-, accused gave cheque in question. The complainant presented cheque bearing no. 001799 dated 06.12.2019 for Rs. 45,35,950/-, issued and signed by the accused, which cheque was dishonored for the reason '*Funds Insufficient*' vide memo dated 26.02.2020. Thereafter, legal notice was issued to the accused dated 13.03.2020. Thereafter, the accused failed to make payment to complainant and the complaint was filed before Ld. Trial Court.

3. After recording of pre-summoning evidence, the Ld. Trial Court summoned accused vide order dated 03.12.2021. Notice u/s 251 Cr.P.C was given to accused on 02.02.2023, in which he pleaded not guilty and stated that the cheque in question was given as security cheque and that he had no liability towards the complainant, rather the complainant owed money to

him. Permission to cross-examine complainant was granted vide order dated 02.02.2023. Complainant was cross-examined and discharged on 21.09.2023 and complainant evidence was closed. Statement of accused u/s 313 Cr.P.C was recorded on 21.09.2023, in which he stated that he wants to lead defence evidence. Accused examined himself and one public witness Arjun Singh as DW1 and DW2 respectively. Accused deposed that he had agreed to purchase the property in question for Rs. 2,96,00,000/- only and had given the cheque in question as security cheque. He further deposed that initially the consideration was agreed to be Rs. 3,10,00,000/- but later on it was reduced to the above-said amount. In order to cover the difference in the two amounts, he gave another cheque bearing no. 001798 for Rs. 15,00,000/- as security, which has also been misused in another case by the complainant. He also deposed that he has no liability towards the complainant, rather he has to recover Rs. 1,96,00,000/- from the complainant. DW2 has deposed that in December 2019, the complainant and the accused had entered into a settlement, during which accused had handed over the cheque in question for the purpose of registry and complainant had handed over a cheque of Rs. 1.9 crore to accused for overdues. Thereafter, both the witness were cross-examined and discharged and defence evidence was closed on 05.09.2024. Thereafter, final arguments were advanced and the impugned judgment and order on sentence were pronounced.

4. Now, the accused has filed the present appeal challenging the impugned judgment and order on sentence on the following grounds:

a) that the Ld. Trial Court has failed to appreciate that accused has no liability towards complainant, rather the complainant has to make payments to accused.

b) that the Ld. Trial court failed to appreciate that the complainant has not produced relevant evidence as to which person on behalf of the complainant company made offer for sale of property and negotiated the consideration amount, as AR of the complainant is unaware of the facts of the case.

c) that the Ld. Trial court failed to appreciate the defence taken by accused during trial in totality and selectively relied upon the statement u/s 313 Cr.P.C.

d) that the Ld. Trial court failed to appreciate that the accused had successfully rebutted the presumption in favor of complainant in his defence evidence.

5. The accused has reiterated the above said averments in his appeal at the time of advancing oral arguments in the present appeal.

6. Per contra, the complainant has challenged the grounds raised in the present appeal. No written reply to the present appeal has been filed, but oral arguments have been advanced on behalf of complainant. It has been submitted by the complainant that all the necessary ingredients of the alleged offence have been satisfied by the complainant during trial and the accused has miserably failed to rebut the presumptions in favor of the complainant.

7. Arguments have been heard. Record has been perused. Trial court record was also summoned and same has been perused.

8. The accused has faced trial for offence punishable u/s 138 NI Act. The essential ingredients for offence punishable u/s 138 NI Act are as follows -

- a. that a cheque was drawn in favor of complainant by the accused,
- b. the cheque drawn was in discharge of whole or part of legally enforceable debt or liability,
- c. the cheque so drawn was presented for encashment by the complainant at his bank within period of its validity or three months, whichever is earlier,
- d. the cheque so presented was returned dishonored as unpaid due to specific reasons informed by the bank,
- e. that within 30 days of dishonor of cheque, legal notice in writing was issued by the complainant to the accused calling for payment of the dishonored cheque,
- f. that accused failed to make payment of the cheque amount within 15 days of receipt of legal notice,
- g. that after failure of accused to make payment of cheque amount within 15 days of receipt of legal notice, within 30 days complainant presented the complaint u/s 138 NI Act before the LD. Trial Court.

9. Apart from the necessary ingredients of offence punishable u/s 138 NI Act, the presumptions attached to the said offence under the provisions of section 118 and 139 NI Act are also pertinent to be noted. As per the presumption in favor of complainant, once the complainant establishes that the cheque in question was executed by the accused in his favor, it would be presumed under law that the cheque in question was drawn for consideration and the complainant received it in discharge of debt or liability. The nature of presumption u/s 118 and 139 NI Act is rebuttable and the said presumptions are not evidence in favor of the complainant, but aids in establishing the prima facie case for the complainant. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in *Hiten P. Dalal Vs. Bratindranath Bannerjee (2001)' 6 SCC 16*. Furthermore, both the

said presumptions as contained in section 118 and 139 of NI Act are raised in favor of complainant, when the accused does not dispute the signatures on the cheques in question. In this regard, reliance is placed upon the observations on Hon'ble Supreme Court of India in ***K. Bhaskaran Vs. Shankaran Vaidhyan Balan 1999 (4) RCR (Criminal) 309***, wherein it has been held,

“as the signatures in the cheque is admitted to be that of the accused, the presumption envisaged in section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date when the cheque bears. Section 139 of the Act enjoins on the court to presume that the holder of the cheque received it for the discharge of any debt or liability.”

Reliance is also placed upon the observations of Hon'ble Supreme Court in ***Rangappa Vs. Mohan AIR 2010 SC 1989*** in this regard.

10. The AR of complainant has examined himself as complainant witness during trial. He relied upon the following documents to establish all the necessary ingredients for offence punishable us/ 138 NI Act:

S.No.	DOCUMENTS	EXHIBITS
1A.	Evidence affidavit	Ex.CW1/A
1.	Board Resolution passed by board of directors of the complainant company	Ex.CW1/1
2.	Copy of transfer deed dated 06.12.2019	Mark -1
3.	Original cheque of cheque bearing no. 001799 dated 06.12.2019 for Rs. 45,35,950/-, drawn on ICICI Bank, Connaught Place	Ex.CW1/2
4.	Bank memo dated 26.02.2020	Ex.CW1/3
5.	Office copy of demand notice alongwith postal receipt	Ex.CW1/4

11. Accused examined himself and his one friend as witnesses during trial. During cross-examination of accused, he produced the following documents.

S.No.	DOCUMENTS	EXHIBITS
1.	Original of cheque bearing no. 091690 dated 23.06.2020 and the bank return memo is	Ex.DW1/X1 (OSR) and Ex.DW1/X2 (OSR)
2.	Record of copy of the legal demand notice dated 22.07.2020	Mark Z
3.	Reliance upon certain invoices	Ex.DW1/X4 (colly) (OSR)

Thereafter, they were both cross-examined and discharged on 02.08.2024 and 05.09.2024 and trial was concluded.

12. All grounds raised in the appeal by the accused are already quite well-dealt with in the impugned judgment by Ld. Trial Court. The accused has taken only bald defences during trial, without substantiating any of his defence. He has claimed that the complainant company owed him money for some different transaction, which was supposed to be set off against the cheque in question. However, nowhere he has disclosed any details about the said transaction or produce any document in support of such transaction, in order to actually establish existence of such transaction. Furthermore, the accused has produced one cheque allegedly issued by the complainant in his favour for discharging their liability Ex.DW-1/X1, but there is not explanation anywhere on the record as to why the accused never filed any complaint or recovery suit for the cheque Ex.DW-1/X1. In fact, perusal of the said cheque Ex.DW-1/X1 establishes that the said cheque was not issued by the complainant company and was issued by some other company, which

may or may not be a sister concern of the complainant company. Thus, when the cheque does not belong to the complainant company itself, then on what basis accused has taken the defence of set off against another transaction, is beyond comprehension. The defence appears to be merely a sham defence, taken only to deprive the complainant of its legitimate dues.

13. It is also pertinent to note that accused has conducted a very perfunctory cross-examination of complainant during trial, which does not rebutt the presumptions raised in favour of complainant. The complainant has also produced the underlying document, which is a registered document, to establish existence of legally enforceable liability. The ground raised in appeal to claim that AR of complainant was never a part of the negotiations conducted for concluding the document transfer deed dtd. 06.12.2019, was denied by the AR during cross-examination as he has specifically stated that he “*was also the part and parcel of the decision of total sale consideration*”. No material to the contrary has been produced by the accused. Therefore, the same clearly establishes that the AR had personal knowledge of the transaction in question and was therefore competent to depose before the Court. Furthermore, during cross examination of AR of complainant, not even a suggestion has been given by accused regarding his defence that the amount in the cheque in question was to be set off against any other liability of the complainant company towards him.

14. The accused has also argued in appeal that the cheque in question was given as security only to the complainant. However, not even a suggestion of the cheque in question being a security cheque has been given to the AR of complainant in his cross-examination. Even if it is assumed to be correct that

the cheque in question was issued as security cheque, even then the case of the accused is not advanced by this argument in light of observations made by the Hon'ble Supreme Court in para no. 16 in the judgment of *Sripati Singh Vs. State of Jharkhand* 2021 SCC Online SC 1002.

15. The accused has admitted his signatures on the cheque in question as well as having filled all the contents of the cheque in question in his statement u/s. 313 Cr.P.C. In the light of this admission, the presumptions in favor of complainant gets fortified that if a cheque is being given by accused to the complainant company after dully filling all particulars and signing the same, then it has been issued against some legally enforceable liability or debt. Thus, the grounds taken in appeal are unsustainable in view of the above discussion.

16. With respect to presumptions in favor of complainant for offence punishable u/s 138 NI Act and the manner in which the presumption can be rebutted by accused and how onus shifts like a pendulum in the trial u/s 138 NI Act has been discussed at length in the judgment of *N. Vijaykumar Vs. Vishwanath Rao N. in Crl. Appeal No. 5305/2024 decided on 22.04.2025 by Hon'ble Supreme Court of India*. In the instant case, there has been no occasion during trial, as reflected by record that the onus shifted upon the complainant at any point of time to prove its case against the accused and thus the presumptions, always remained in favor of the complainant.

17. Thus, in view of the above discussion, it is clear that the complainant company has established its case against the accused and the present appeal against judgment dated 20.02.2025 and order on sentence dated 10.02.2025

is devoid of any merits. **Accordingly, the present appeal is dismissed.**

18. Copy of judgment be sent back to Trial Court for information and compliance.

*Typed directly upon dictation on court
computer and announced in Open Court,
On 14th March, 2026*

(Deepti Devesh)
ASJ/Spl.FTC/PHC/14.03.2026