

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

Criminal Appeal No. 90/25
CNR No. DLND01-001810-2025

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. 22,00,000/-, 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. Alongwith the said agreement, the parties also agreed to carry out some repair/renovation work by the complainant at the instance of accused, for which, accused agreed to make payment of Rs. 15,00,000/- separately. For payment of this amount of Rs. 15,00,000/- accused gave cheque in question. The complainant presented cheque bearing no. 001798 dated 05.12.2019 for Rs. 15,00,000/-, issued and signed by the accused, which cheque was dishonored for the reason '*Funds Insufficient*' vide memo dated 03.03.2020. Thereafter, legal notice was issued to the accused dated 29.05.2020. 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 that there was no agreement of repair/renovation work or for furniture and the cheque in question was given 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 cheque in question bearing no. 001798 for Rs. 15,00,000/- as security, which has also been misused. 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 |
|-------|-----------|----------|
|-------|-----------|----------|

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| | | |
| 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. In the instant case, the cross-examination of AR of complainant is sufficient to raise doubt about knowledge of AR regarding present

transaction, pertaining only qua repair/renovation work and purchase of furnishings in the property in question. He has admitted in his cross-examination that the accused had met with one Mr. Saini for purchasing the property in question and subsequently, he has stated that he was part of the decision of total sale consideration. Admittedly, the cheque in question has not been issued by the accused for payment of any part of sale consideration, and the AR has admitted that he was part of the decision of sale consideration only. He has nowhere claimed in his cross-examination or in his evidence affidavit Ex.CW-1/A, that he was part of the negotiations, negotiations with respect to payments for furnishing/ repair/ renovation. The witness deposing about lack of personal knowledge regarding transaction with accused, qua which the cheque in question has been issued, is sufficient alone in itself for the case of complainant to fail. Reliance is placed upon the judgment of Hon'ble Supreme Court of India in *A.C. Naraynan Vs. State of Maharashtra 2013 (11) SCALE 360* in this regard.

13. Furthermore, the testimony of AR of complainant also sufficiently establishes that the presumption attached to issuance of cheque in question against legally enforceable debt is in doubt. The defense claimed by accused at all stages of trial is that there was no agreement for purchase of furnishings or for payment of repair/renovation work, apart from the transfer deed dt. 06.12.2019 itself. No such document in respect of the cheque in question has been produced by the complainant company also. In fact, in his cross-examination, the AR of complainant has admitted that he did not remember about any bills for such repair/renovations or furnishings and that the accused never demanded any such bills. When it is the defence of accused that there was no such

agreement in existence, why would he demand any bills from the complainant, is not understandable. It is amounting to putting the onus on accused to prove a negative, while the AR of complainant conveniently states that he does not remember about bills. No such bills have been produced by the complainant also during trial, despite the fact that accused has produced bills Ex.DW-1/X4 (colly), which bills are in his name for the property in question, showing the bills raised for furnishings/repair at the property in question. It is interesting to note that the bills produced, all of them do not pertain to a period after execution of transfer deed dt. 06.12.2019, but are of much prior time period also. All the said bills are in the name of accused. The above indicates that the accused has been enjoying possession of the property in question for a period prior to execution of transfer deed dt. 06.12.2019 and has been making payments for the property in qua furnishings/repair. Existence of documents Ex.DW-1/X4 (colly) in the name of accused completely demolishes the claim of complainant regarding any agreement for purchase of furnishings or repair/renovation work.

14. The Ld. Trial Court has reasoned in the impugned judgment that the accused had failed to even put any suggestion to AR of complainant in his cross-examination that the cheque in question was not issued for the purpose of repair/renovation or purchase of furnishings at the property in question. No doubt, such suggestion ought to have been given to the AR of complainant in his cross-examination but merely because of such lacuna in the cross-examination, the remaining material on record cannot be completely ignored, when such material rebuts the presumption in favour of the complainant. As already discussed above, there are other portions of the cross-examination of AR of complainant,

which in itself is sufficient for creating doubt regarding existence of any legally enforceable liability. Further, when coupled with Ex.DW-1/X4 (colly), the doubt gets strengthened. Furthermore, the Ld. Trial Court has also reasoned that the defence of accused is slightly contradictory in his defence evidence and his statement u/s. 313 Cr.P.C. The inconsistent plea is certainly an important factor, but the remaining material on record cannot be ignored completely in respect of rebutting presumptions. Such lack of corroboration of the claim of complainant, as witness has not filed any document to prove any actual repair/renovation work undertaken by complainant company, are sufficient to rebut the statutory presumptions in favor of complainant in this case.

15. Once the statutory presumptions are rebutted, then to claim that the case of complainant is believable only because of inconsistent pleas taken by accused at different stages of trial, is doing injustice to the accused. When the presumptions stand rebutted, then the complainant is duty bound to ensure that its case stands on its own legs, and cannot succeed by merely pointing out inconsistency in the defense of accused. Inconsistency in the defense of accused may have been sufficient for securing conviction, if the statutory presumptions remained in favor of complainant.

16. Thus, in view of the above discussion, it is clear that the presumptions in favor of complainant stand rebutted and complainant has failed to establish existence of transaction in question and consequentially, existence of legally enforceable liability / debt in favor of complainant by the accused. **Hence, the present appeal is allowed and**

the impugned judgment dated 20.01.2025 and order on sentence dated 10.02.2025 are set aside. Accused / appellant is acquitted of the alleged offence punishable u/s 138 of NI Act.

17. Copy of present judgment be sent to Ld. Trial Court alongwith trial court record.

*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