

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

Criminal Appeal No. 137/25
CNR No.DLND01-002857-2025

IN THE MATTER OF:

Sohan Lal

S/o Sh. Ramu Paswan

Working in:-

Microbiology Division, IARI, Pusa,
New Delhi.

Residential Address:-

I-300, Janak Vihar, Pusa,
New Delhi- 110012.

.....Appellant / accused.

Versus

1. **Smt. Neelam Devi**
W/o Sh. Jitender Prasad Chaudhary
R/o WZ-241, F/2, Inderpuri,
New Delhi- 110012.

2. **The State**

.....Respondent/complainant.

Instituted on : 29.04.2025
Reserved on : 19.01.2026
Pronounced on : 16.03.2026

:-JUDGMENT:-

1. The present appeal has been preferred by the appellant (accused

before Ld. Trial Court) against the impugned judgment dated 18.01.2025 and order on sentence dated 10.02.2025 of Ld. JMFC(NI Act)-04, 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.3,70,000/- @ 9% per annum, 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 and accused were known to each other and therefore, the complainant gave friendly loan of Rs.2,50,000/- on demand made by accused, after arranging the said amount from her near and dear ones. The said loan was extended on 01.11.2018, to be returned by 31.01.2019. The accused gave cheque in question for payment of the said loan amount. The complainant presented cheque bearing no. 023429 dated 18.12.2019 for Rs.2,50,000/-, issued and signed by the accused, which cheque was dishonored for the reason '*Funds Insufficient*' vide memo dated 30.12.2019. Thereafter, legal notice was issued to the accused dated 16.01.2020. 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 31.03.2021. Notice u/s 251 Cr.P.C was given to accused on 22.12.2021, in which he pleaded not guilty and stated that the cheque in question was given as blank signed cheque for security

and that he had already payment to the complainant. Permission to cross-examine complainant was granted vide order dated 22.12.2021. Complainant was cross-examined and discharged on 23.09.2022 and complainant evidence was closed. Statement of accused u/s 313 Cr.P.C was recorded initially on 15.10.2022, in which he stated that he wants to lead defence evidence. Accused examined himself and one public witness Hemant Kumar as DW1 and DW2 respectively. Accused deposed that he had only taken a loan of Rs. 50,000/- in 2012 from the complainant, which he had returned in two installments of Rs. 38,000/- and 12,000/-. He deposed that he had paid total amount of Rs. 1,10,000/- including interest to the complainant. When he asked for return of his cheque in question, then complainant told him that the same is not traceable but she has misused the same subsequently. He further stated that the loan transaction and return of the loan amount were both witnessed by DW2. DW2 has essentially corroborated the evidence of accused. Thereafter, they both were cross-examined and discharged on 07.08.2023. Defence evidence was also closed. Thereafter, final arguments were addressed and judgment dated 01.11.2023 was pronounced convicting the accused and order on sentence was passed on 03.11.2023. Against the said judgment, appeal was preferred by accused, which was allowed by the Ld. Appellate Court vide judgment dated 30.09.2024 and matter was remanded back for recording statement of accused u/s 313 Cr.P.C. and defence evidence afresh. Subsequently, fresh statement u/s 313 Cr.P.C. was recorded on 04.11.2024 and the accused adopted the defence evidence already recorded on 07.08.2023. In the said statement u/s 313 Cr.P.C., he took the same defence of taking loan of only Rs. 50,000/- and already making the repayment. He admitted his signatures on cheque in question but denied receiving legal notice. 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 already repaid the entire amount to complainant in installments alongwith interest and that the loan amount was only Rs. 50,000/-.

b) that the Ld. Trial court failed to appreciate that the complainant has failed to establish giving friendly loan of Rs.2,50,000/- on 01.11.2018 as she has not produced any evidence to establish her capacity or the mode and manner in which the said loan had been advanced.

c) that the Ld. Trial court failed to appreciate that there is no written loan agreement or receipt or that the cheque in question was given in blank signed condition as security.

d) that the Ld. Trial court failed to appreciate that the loan and its repayment was witnessed by DW2 who has deposed about the same in his testimony, which has not been disproved by complainant.

e) that the Ld. Trial Court failed to appreciate that there are only minor discrepancies in the testimony of defence witnesses and the entire testimony cannot be discredited for such discrepancies.

f) that the Ld. Trial Court failed to appreciate that accused never received legal notice of the complainant.

5. The accused has reiterated the above said averments in his appeal at the time of advancing oral arguments in the present appeal. The accused also relied upon the following case laws in support of his arguments:

(i) ***Devendra Kumar V. Khem Chand 223 (2015) DLT 419.***

(ii) Sanjay Mishra V. Kanishka Kapoor 2009 SCC OnLine Bom 290.

(iii) Rangappa V. Shri Mohan (2010) 11 SCC 441

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 complainant has examined herself as complainant witness during trial. She relied upon the following documents to establish all the necessary ingredients for offence punishable us/ 138 NI Act:

S.NO.	DOCUMENTS	EXHIBITS
1.	Evidence by way of affidavit	Ex.CW1/1
2.	The cheque No. 023429 dated 18.12.2019 issued by accused to her banker PNB, Branch at Inderpuri, New Delhi	Ex.CW1/A
3.	Copy of the bank return memo is	Ex.CW1/B
4.	Copy of legal notice dated 17.01.2020 is	Ex. CW1/C
5.	Copy of postal receipt is	Ex. CW1/D & Ex.CW1/D2
6.	Copy of Track report is	Ex.CW1/E & Ex.CW1/E2

11. Accused examined himself and his one friend as witnesses during trial. The defence taken earlier during framing of notice u/s 251 Cr.P.C. and recording of statement u/s 313 Cr.P.C. was reiterated, albeit with a few inconsistencies. Thereafter, they were both cross-examined and discharged on 07.08.2023 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 claim of accused that he had taken a loan of only Rs. 50,000/- and not Rs. 2,50,000/-, has not been substantiated by the accused in his evidence. There is no explanation as to why he never sought production of the written loan agreement, as claimed to have been executed in his evidence as well as in

evidence of DW2. Lack of any steps seeking production of this material document establishes that no such document actually exists, or even if it exists then the document is contrary to the defence taken by the accused. There is no explanation of part of accused as to his unreasonable conduct after repayment of the said loan amount allegedly and refusal by the complainant to return the cheque in question, by not issuing any legal notice of demand for return of the cheque in question to the complainant or issuing stop payment instructions to his bank for the cheque in question or lodging any complaint regarding deliberate refusal to return the cheque in question by the complainant. The accused is admittedly a government servant working as a peon and class 12th pass. Thus, he ought to be conversant with financial transactions and precautions associated with the same. Not even issuing stop payment instructions, for a cheque qua which the accused claims to have no liability, as having already paid the loan amount alongwith interest to the complainant, is not conduct of a reasonable prudent person. Furthermore, no actual evidence of any payment has been produced by the accused. Accused and DW2 have contradicted each other regarding the amount of money paid in installments to the complainant. Furthermore, DW2 is admittedly friend and co-worker with the accused. Therefore, he is an interested witness, being well-known to the accused and thus, without any corroborating documents being produced in evidence, and in light of above discrepancies in the testimonies of accused and DW2, the presence of DW2 at the time of loan transaction or its repayment allegedly, is circumspect.

13. It has been argued during appeal that the complainant has not disputed the presence of DW2 during loan transaction and repayment and only on the basis of minor discrepancy regarding amount of the two installments for

repayment, the entire testimony of DW1 and DW2 cannot be thrown out. However, perusal of the testimony of DW2 does not inspire confidence as the said witness has failed to disclose even the date of return of money to complainant. He has claimed that the money was returned by accused once at the time of ring ceremony of his daughter and second time at the time of marriage of his daughter. The accused himself has not deposed anything about marriage of his daughter at the time of return of the money, rather he has stated that it was returned in 2014. DW2 could not even provide the year of the return of money or the year in which the daughter of accused was married. Thus, even without any specific suggestion being put to DW2 regarding his presence at the time of alleged return of money, his testimony does not appear credible at all regarding the alleged return.

14. It is also pertinent to note that accused has conducted a very perfunctory cross-examination of complainant during trial. The grounds raised in appeal to claim that legally enforceable liability has not been established, have not even been put in the form of suggestions to the complainant during cross-examination. The accused has raised the ground of complainant not having sufficient means to give loan of huge amount of Rs. 2,50,000/-. However, no cross-examination on the financial capacity of the complainant has been conducted at all by the accused. He has further argued during appeal that complainant had nowhere stated that she had disclosed the loan amount in her ITR. However, no such question regarding disclosure in ITR has been put by the accused to the complainant. Furthermore, advancement of loan amount in cash is not a bar to proceedings u/s 138 NI Act, and may only be relevant for the purpose of contravention of tax laws. Reliance is placed upon judgment of the Hon'ble Supreme Court of India in

Sanjabij Tari vs. Kishore S. Borcar in CrI. Appeal No. 1755/2010 decided on 25.09.2025

15. The accused has also challenged the impugned judgment and order on sentence on the ground that legal notice issued by complainant was never received him. Perusal of Ld. Trial Court shows that he has admitted receipt of legal notice in notice given u/s 251 Cr.P.C., but denied receiving the same in his statement u/s 313 Cr.P.C., although he admitted in the said statement that the address in the legal notice is his correct address. The said argument is a strange argument when the accused himself has not disputed the address mentioned on the legal notice during trial. Furthermore, this court is in agreement with the reasons propounded by the Ld. Trial court alongwith case laws relied upon the case of ***Alavi Haji Vs. Palapetty Mohammed (2007) 6SCC 555*** in respect of receipt of legal notice u/s 138 NI Act and **no interference in this regard is called for in the impugned judgment.**

16. Furthermore, the Hon'ble Supreme Court of India in ***Sanjabij Tari (supra) has held:***

"29. Furthermore, the fact that the accused has failed to reply to the statutory notice under Section 138 of the NI Act leads to an inference that there is merit in the Appellant-Complainant's version. This Court in Tedhi Singh vs. Narayan Dass Mahant, (2022) 6 SCC 735 has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced hereinbelow:-

"10. ... The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the

accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.” (emphasis supplied)

30. This Court in *MMTC Ltd. and Another vs. Medchl Chemicals & Pharma (P) Ltd. and Another*, (2002) 1 SCC 234 has specifically held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability.

31. Also, after receipt of the legal notice, wherein the Appellant-Complainant alleged that the Respondent No.1-Accused's cheque had bounced, no complaint or legal proceeding was initiated by the Respondent No.1-Accused alleging that the cheque was not to be encashed. Consequently, the defence of financial "

17. 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 complainant in her cross-examination. The accused has admitted his signatures on the cheque in question and therefore, it is immaterial whether the other particulars on the cheque in question have been filled by some other person. It is well-established that giving a blank signed cheque is impliedly consenting to use of the cheque by filling the remaining particulars. Thus, the grounds taken in appeal are unsustainable in view of the above discussion.

18. 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.

19. Thus, in view of the above discussion, it is clear that the complainant has established her case against the accused and the present appeal against judgment dated 18.01.2025 and order on sentence dated 10.02.2025 is devoid of any merits. **Accordingly, the present appeal is dismissed.**

20. 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 16th March, 2026*

(Deepti Devesh)
ASJ/Spl.FTC/PHC/16.03.2026