

**IN THE COURT OF MS. VANDANA,
ADDITIONAL SESSIONS JUDGE-02, NORTH DISTRICT,
ROHINI COURTS, DELHI**

In the matter of:

CA No. 17/2026

**Daya Ram Sharma
S/o Sh. Hari Ram Sharma,
R/o A-13, Gali No. 36,
Mahendra Park,
Delhi-110033**

....Appellant

Versus

**Ram Niwas
S/o late Sh. Karan Singh,
R/o H-4/1706, Jahangir Puri,
Delhi-110033**

....Respondent

**Date of Institution : 27.01.2026
Arguments concluded on: 12.05.2026
Date of Order : 18.05.2026**

JUDGMENT

1. Present appeal is under Section 415(3) BNSS for setting aside the impugned order dated / judgment dated 13.11.2025, vide which, the appellant has been convicted for offence punishable under section 138 NI Act and order on sentence dated 24.12.2025, whereby the appellant has been sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 22,50,000/- (i.e. being 1.5 times of the cheque amount) to be paid to the complainant within 30 days. In a default of payment of fine, the convict / appellant is further sentenced to a simple imprisonment of two months.

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(Parties are hereinafter being referred to by their respective status before the Trial Court).

Facts of the case:-

2. Complainant is a tutor by profession and associated with a small school. The accused persons has been stated to be residing nearby the house of the complainant, who is involved in trading business and used to lend money on interest to the local people. It has been further stated that the accused and the complainant were well known to each other. The complainant was owning a house i.e. bearing no. H-4/1713, Jahangir Puri, Delhi-110033 which was sold by the complainant to the accused for valuable consideration and therefore accused was aware of the fact that money is readily available with him. The accused approached the complainant showing urgent requirement of money and he asked the complainant to give him a sum of Rs. 15 lacs, the complainant was assured to return the same in the month of September, 2020. On believing he version of the accused, the complainant gave a sum of Rs.15 lacs as friendly loan to the accused in cash and the accused handed over a post dated cheque bearing no. 114152 dated 14.09.2020 for Rs. 15 lacs to make the repayment of the above said friendly loan . It has been further stated that when the said cheque was present before the bank it was returned unpaid with remarks “funds insufficient”. In these compelling circumstances, the complainant sent a legal demand notice dated on 19.09.2020, which was received by the accused on 21.09.2020, but despite being duly served with the notice accused did not make the payment.

3. Thereafter, cognizance was taken by the Ld. Trial court and accused was summoned, notice under section 251 Cr.P.C. was framed against the accused on 12.12.2022 wherein he denied the case of the complainant and claimed trial.

4. In his defence the accused stated that the complainant was known to him and he being the follower of AAM Aadmi party used to visit his office. He further stated that the complainant has stolen his cheque from the said office. It has been further stated by him that the cheque in question bears only his signatures and rest details were not filled by him. He further stated that he came to know about the cheque only when he received a message from the bank and then moved an application before his bank to stop payment. He further denied the receipt of legal demand notice and also denied any liability qua the cheque in question alleging the same to be misused by the complainant. He also denied taking any loan from the complainant.

Complainant evidence:

5. Thereafter matter was listed for complainant evidence and complainant Ram Niwas examined himself as CW-1

Statement under section 313 Cr.P.C:

6. Statement of accused under section 313 Cr.P.C was recorded on 06.05.2024 wherein he reiterated the defence raised by him at the stage of framing of notice.

Defence Evidence

7. Accused examined four witnesses in total. He got examined himself as DW-1. DW-2 is the registered notary who

notarized the documents Ex. CW-1/D1, DW-3 Ved Prakash and DW-4 Surender Rana are witnesses to compromise.

8. The Ld. Trial court, after considering evidence and material available on record, convicted the accused and sentenced him to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 22,50,000/- (i.e. being 1.5 times of the cheque amount) to be paid to the complainant within 30 days. In a default of payment of fine, the convict / appellant is further sentenced to a simple imprisonment of two months.

9. **The above said conviction order has been challenged through the present appeal on the following grounds:-**

(i) That the impugned judgment is contrary to law and facts on record. The Ld. Trial Court has failed to appreciate that the Appellant is required only to rebut the statutory presumption on the scale of preponderance of probabilities, and not beyond reasonable doubt. The defence raised by the Appellant was not only probable but was fully supported by contemporaneous documentary evidence and independent witnesses.

(ii) That the Ld. Trial Court has committed a grave error in completely discarding the defence evidence led by the Appellant. Once the court permitted the Appellant to lead defence evidence and the same was duly proved, the court was legally bound to assess its effect. The approach of declaring such evidence "irrelevant" amounts to judicial abdication and renders the findings perverse.

(iii) That the accused/appellant filed an application u/s 145(2) of NI Act and the appellant took the defence in

application u/S 145(2) NI Act. It is further submitted that the accused/appellant filed some documents in his defence i.e. settlement deed between the complainant and the accused and the complainant received a sum of Rs. 10,00,000/- from the accused/appellant after filing the case U/S 138 NI Act and other document i.e. missing/lost cheque to the ICICI Bank Manager dated 17.09.2020 which is Ex.DW1/A and same was allowed on 12.12.2022 by the Ld. MM.

(iv) That the finding of the Ld. Trial Court that the settlement between the parties had "no bearing" on the merits of the case is ex facie illegal. The settlement deed and the receipt of ₹10,00,000/- directly go to the root of the matter, namely, the existence of a subsisting legally enforceable debt. The complainant admitted execution of the settlement deed and his signatures on the receipt, and the same stood corroborated by the notary and independent witnesses. Ignoring such evidence has resulted in a miscarriage of justice. It is further submitted that the complainant also admitted signature on the receipt/Ex.CW1/D2 of the amount so received in lieu of the compromise. It is further submitted that two independent witnesses i.e. DW2, Surender and DW3, Ved Prakash Garg S/o Late Sh. Gopi Ram Garg, who independently deposed before the court for receiving the amount of Rs.10 lacs in lieu of compromise/settlement between the complainant and accused/appellant but the complainant become dishonest and due to his dishonesty, the complainant did not withdraw the above said case. It is further submitted that the compromise deed was duly notarized by the notary public/DW2

Sh. Bhuvendra Singh So Late Sh. Rajpal Ch. No.1110, Rohini Court, Delhi and the DW2 admitted this fact the thumb impression and signature of witnesses Ved Prakash Garg Surender both persons complainant, accused and witnesses signed in my presence and I myself made all relevant entries. It was further contended that the complainant denied the presence of witnesses before the notary public. It clearly seems that the complainant has not come with clean hands. It is submitted that the complainant admitted the fact that compromise was executed between appellant and respondent but the complainant denied that he has not received any amount from the complainant. It is further submitted that the complainant adopted his pre-summoning evidence ie Ex.CWI/A on 27.09.2023 and no other additional affidavit of evidence filed by the complainant. Thus, burden squarely shifted back to the complainant, which he failed to discharge or rebutted.

(v) That the Ld. Trial Court failed to appreciate the legal effect of the bank complaint dated 17.09.2020 made by the Appellant reporting loss of the cheque. This document is an independent third-party record and clearly probable the defence that the cheque was not voluntarily issued towards discharge of any liability.

(vi) That the complainant regularly used to visit the office of accused and also demand the Aam Aadmi Party Ticket brother of the accused Sh Pawan Kumar Sharma, who was MLA from Aam Aadmi Party. The complainant firstly denied he wrote a letter to Pawan Sharma with respect to ticket from Aam Aadmi

Party but when the letters were shown, he admitted the letters and signature, which is Ex.CW1/D3. It was further contended that on behalf of his wife, the complainant also wrote a letter/Ex.CW1/D4 to the MLA Pawan Sharma, who is brother of appellant.

(vii) That the Ld. Trial Court erred in not examining the financial capacity of the complainant, despite the defence having raised serious doubt regarding the same. The complainant alleged a cash loan of ₹15,00,000/- without disclosing any source, bank transaction, or income tax record. It is further submitted that no independent witness was produced before the court to establish the existence of huge loan of Rs.15,00,000/-. It is further submitted that the complainant himself took the loan from the appellant/accused in 2019 against the property, the receipt is already exhibited as CW1/D6. Once the mortgage receipt of ₹20,00,000/- was brought on record, the burden squarely shifted back to the complainant, which he failed to discharge. It is submitted that the complainant admitted this fact that the complainant sold the House No.4/1713 to the accused in the year 2020 again said it may be in 2019 and the Ld. MM not appreciated the documentary and oral evidence. It clearly shows that the accused had not need to took the loan from the complainant as accused himself purchased the house of the complainant and he is having sufficient funds.

Arguments on behalf of the appellant:

10. As per the facts of the present case, the appellant not only relied upon circumstances but also led some substantial

documentary evidence which was sufficient to rebut the presumption under section 139 NI Act. It was further contended that appellant and respondent had admittedly entered into a settlement which already proved on record by way of written settlement deed as well as receipt of Rs. 10 lacs, therefore, the impugned judgment of conviction dated 13.11.2025 and order on sentence dated 24.12.2025 are liable to be set aside.

Arguments on behalf of the respondent:

11. Ld. Counsel for the respondent argued that the respondent / complainant has proved all the ingredients of the offence under section 138 NI Act and there is no significant contradiction / inconsistency in the testimony of the complainant / respondent. It has been further contended that the settlement deed, after the commission of offence under section 138 of NI Act has no bearing on the merits of the case as the same is not relevant for the purpose of offence under section 138 of NI Act. Otherwise also, the alleged payment of the settlement amount was never paid to the complainant as the same was supposed to be paid before the court by moving application for compounding which was never done by the accused. It was further argued that Ld. Trial Court rightly passed the impugned order.

12. Detailed arguments heard. Record perused.

Observation and findings

13. In the case in hand, the cheque is of dated 14.09.2020 which was received back with remarks “funds insufficient” on 16.09.2020, the cheque returning memo is Ex.

CW1/2 in this regard. Notice was framed against the accused on 12.12.2022, whereby, he took a defence that the cheque in question was stolen by the accused. It has been categorically stated therein that he got to know about the said cheque upon receiving a message from the bank and he moved an application in his bank to stop the payment of cheque in question. He relied upon one complaint Ex. DW1/A stating that he filed an application apprising his bank regarding lost cheque with the number 114152 but this goes against the appellant as one hand, he has taken the stand that his cheque was stolen by the complainant / respondent herein, on the other hand, he relied upon an application regarding missing of cheque in question.

14. In the given facts, the accused duly admitted his signature on cheque in question while framing of notice under section 251 Cr.P.C, the admission of issuance of cheque. His plea in defence is that the said cheque in question was not issued by him in discharge of his legally enforceable liability and he has not taken any loan from the complainant as complained by the complainant. In general, on the basis of presumption of innocence of accused, burden to prove his case initially on the complainant, however the offence under section 138 NI Act there is reverse onus clause contained in section 118 and 119 of the Act.

15. Section 118(a) of the Act provides that until the contrary is proved, it shall be presumed that "*that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed,*

negotiated or transferred, was accepted, in-dorsed, negotiated or transferred for consideration."

16. Further, Section 139 of the Act lays down that *"it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."*

17. Thus, section 139 of the Act puts the burden on the accused to prove his defence. However, the accused has to prove his defence on the balance of probabilities and not beyond reasonable doubt. Once the pre-sumption is displaced, the accused is liable to be acquitted. The guiding principles have been laid down by the hon'ble Apex Court in the case of *Basalingappa vs Mudibasappa 2019 (5) SCC 418* in this regard which are as follows:

- * Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

- * The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

- * To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance

of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

* That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

18. In the case in hand, the accused denied having availed any loan from the complainant, rather he complained that complainant mortgaged his property in his favour for a loan of Rs. 20 lacs and he relied upon Ex. CW1/D5. It was further contended by the Ld. Counsel for the accused though he had no liability towards the complainant but, to protect his reputation he settled the matter for a sum of Rs. 10 lacs and even the documents were executed in this regard, but despite that the complainant did not withdraw his complaint. The execution of the compromise / settlement deed has not been denied by the respondent / complainant, however, he denied receiving any payment of Rs. 10 Lacs. It is interesting to note here that the alleged settlement Ex. CW1/D1 on which the accused is heavily placing reliance upon itself finds mentioned as under.

19. *“Whereas the first party has given a friendly loan for a sum of Rs. 15,00,000/- to the second party and the second party in discharge of legal liability issued one cheque bearing no. 114152 drawn on HDFC Bank, Adarsh Nagar Branch, Delhi.*

Whereas the first party presented the above said cheque with his banker but the same was returned dishonoured as

“Funds Insufficient”. Thereafter, the first party issued a legal notice to the second party through his counsel”.

20. The above said paragraphs of the compromise / settlement deed itself reflects the false plea of stolen cheque or of missing cheque raised by the appellant / accused at the time of framing of notice against him, rather it has been admitted that cheque in question was issued against a legal liability to pay to the complainant.

20. On further perusal of the same, it is found to be mentioned therein at term no. 1 that, *“the second party/ accused has already paid a sum of Rs. 10 lacs to the first party / complainant respondent herein and the first party has received the said amount and the same was the full and final settlement”.*

21. For the sake of arguments, when the above said term makes it evident that the payment has already been made before the execution of the said settlement, then, question arises as to what was the need of the execution of receipt of 08.03.2022 regarding receiving of the amount, when the amount. It is relevant to note that there is no date of notarization of said settlement deed.

22. DW-2 is the notary namely Bhuvnendra Singh, during his cross-examination, he testified that, “it is correct that no date of attestation has been mentioned in any of the document”.

23. DW-3 and DW-4 are witnesses of the settlement. Both of them, testified that the compromise was made on 04.03.2022 and document was signed on 08.03.2022, on being

cross-examined, DW-3 categorically denied his presence at the time of execution of the document i.e. Ex. CW1/D1. He testified that-

“It is correct that document Ex. CW1/D1 was not prepared in my presence and were already got prepared”. When DW-4 was cross-examined, he testified that, “the document CW1/D1 was not prepared in his presence. He further stated that he signed the document Ex. CW1/D1 on 11th Floor of Rohini Courts, which raises strong suspicion on the testimony of the DWs. 3 & 4.

24. Besides the above, the execution of the settlement deed is not in question, but the only point is whether payment was made to the respondent or not as per settlement deed, in this regard, DW-3 and DW-4 did not depose anything rather, they stated that “in the said settlement deed, Daya Ram Sharma paid Rs. 10 lacs to Ram Niwas at his office”. On being cross-examined, both of them denied their presence at the time of execution of the said document, therefore, they are not the witnesses of the said payment of the settlement. DW-2 who is the notary he also denied the factum of any transaction having taken place in his presence between the parties.

25. Ld. Counsel for the accused /appellant argued that as per Ex. CW1/D1 and CW1/D2 over which the complainant has already admitted his signature, therefore, documentary evidence shall prevail over the testimony of the complainant but the question for consideration is that document on which the accused is relying upon are contradictory as Ex. CW1/D1 finds

mentioned that the alleged settlement amount of Rs. 10 Lacs was already been paid to the respondent even before execution of the document, on the other hand, one receipt was executed on 08.03.2022 regarding receiving of the amount, but in both the documents, it is not clear as to when the above said payment was made to the complainant and in whose presence, it was so made as all the three witness on whom the accused /appellant relied upon has denied any transaction made in their presence. In fact, the accused / applicant has not disclosed as to where it was so paid by him to the respondent. He also could not explain as to why despite alleged payment no application was moved by him for compounding of the offence at any stage, before the Ld. Trial Court. The above defence of handing over the amount of Rs. 10 lacs could not be proved by the appellant. It is also pertinent to note that there is not even a single word regarding the said compromise deed in the plea of defence of accused as well as in his statement under section 313 Cr.P.C, despite the same having been executed prior to recording of both the said statements.

26. Otherwise also, the Ld. Trial court rightly observed that in case of any settlement takes place between the parties and one party denies fulfilling the terms of the settlement, then, it attracts the civil liability, but this fact does not affect the complaint case under NI Act.

26. Further, the plea regarding non receiving of legal notice has been rightly dealt with Ld. Trial court mentioning the observations of Hon'ble Apex court **CC Alavi Haji Vs. Palapetty Muhammed & Another (2007) 6SCC 555**, wherein it was held

that when the drawer of cheque raises an objection that he never received legal notice U/s 138 NI Act, he can, within 15 days from receipt of summon from the court, make payment of the cheque amount. In case he does not do so, he cannot complain that there was no proper service of legal notice. In view of the said judgment, it is sufficiently clear that the defence of inadequate service of legal notice cannot be taken at this stage. The court finds merit in the submission of Ld. counsel for complainant that presumption of valid service of legal demand notice arises against the accused, if not by legal notice sent through post, by ser-vice of summons issued by the court.”

27. Therefore, all the pleas raised in defence could not be proved by the accused. In view of the above discussion, I am of the considered opinion that the Ld. Trial Court has given a reason and detailed judgment in accordance with the provisions of law and has rightly convicted the accused and there appears to be no illegality or infirmity in the impugned judgment, and the same is **upheld**.

28. Put up for appearance of the accused / appellant / arguments on point of the sentence on 25.05.2026.

**Pronounced in open
Court on 18.05.2026**

**(VANDANA)
ADDITIONAL SESSIONS JUDGE-02,
NORTH DISTRICT,
ROHINI COURTS, DELHI**