

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

In the matter of:

CA No. 178/2024

Deepak Bharara

S/o Late Sh. Darshan Lal Bharara
R/o 10768, Second Floor, Gali No.14,
Pratap Nagar, Delhi – 110007.

....Appellant

Versus

Hitender Singh Gulati

S/o Sh. K.L. Gulati
R/o Block H-3, Plot No.100,
SF, Sector 15, Rohini,
Delhi – 110089.

...Respondents

Date of Institution : 13.09.2024

Arguments concluded on: 16.05.2026

Date of Order : 16.05.2026

JUDGMENT

1. Present appeal is under Section 415 of BNSS, 2023 against the judgment dated 24.07.2024 & Order on sentence dated 14.08.2024 (hereinafter referred to as impugned order) passed by Ld. JMFC- N.I. Digital Court-01, North, filed by the appellant whereby appellant has been convicted for offence under Section 138 NI Act and sentenced to pay Rs.9,10,000/- as compensation to the respondent within 30 days from passing of order on sentence and in default of payment of compensation within time, SI for a period of 03 months. For easy

understanding, the parties are referred to their original status.....

2. Brief facts of the case, which are relevant as under:-

2.1 The appellant met the respondent through his common friend Sh Sanjeev Wasson and soon became good friends. It was alleged that in the month of August 2019, appellant Deepak Bharara called Sh. Sanjeev Wason regarding the financial problems being faced by both of them and then met complainant/ respondent. It was further alleged that appellant requested respondent/ complainant for a loan of amount of Rs. 2,00,000/- for a period of one year in the presence of Sh. Sanjeev Wason which the complainant/ respondent advanced as friendly loan through his wife's account.

2.2 It has been further stated that he took loan on several occasions on one or the other pretexts including loan of amount of Rs. 95,000/- for urgent needs, friendly loan amount of Rs.1,50,000/-, in order to take her daughter to Mumbai for auditions, a sum of Rs1,50,000/- and a loan of around Rs 1,00,000/- for medical expenses during COVID. It has been further stated that despite several calls and repeated requests made through Whatsapp as well through Sanjeev Wasson for return of the money, appellant didn't pay the amount. It was further alleged that only out of fear of a police case, appellant Deepak Bharara issued a cheque bearing no. 003396 dated 09.09.2020 of amount of Rs. 7,00,000/- (Rupees Seven Lakhs) with the assurance that the said cheque will be good on presentation but the same was returned unpaid on 21.09.2020 for

reasons "Account Closed". The respondent/ complainant sent a statutory legal notice dated 17.10.2020 to the appellant but despite receipt of said legal notice the appellant did not repay the aforementioned cheque amount.

2.3 Upon appreciation of presuming evidence, appellant Deepak Bharara was summoned and on 12.03.2021, notice under Section 251 Cr.P.C. for the offence u/s 138 Negotiable Instrument Act was served upon him to which he pleaded not guilty and claimed trial. At that stage, the appellant admitted his signatures on the cheque and admitted that he has received the legal notice and had filed the reply to the same. He also stated that he did not issue the cheque to the respondent/ complainant and had issued the cheque to Sanjeev Wason.

3. The complainant got himself examined as CW-1. Thereafter, statement of accused was recorded u/s 313 Cr.P.C. r/w Section 281Cr.P.C on 07.11.2022. The accused got himself examined as DW1.

4. Thereafter, on the basis of evidence, the Ld. Trial Court passed the impugned order of conviction, which has been challenged on the following grounds:-

GROUND OF APPEAL

A. That the impugned judgment and consequently, the order on sentence, suffers from material irregularity and is replete with legal infirmity as much as it has been passed by overlooking and ignoring the cardinal principles of law, with regard to nature of evidence and infirmity in the complainant's evidence required for rebutting the

presumptions, so raised u/s 139 of the act. The Ld. Trial Court became oblivious that the presumption is interim in nature and does not absolve the complainant of its obligations to discharge legal burden thereof, rather hooks it on hold till the time the presumption of rates.

B. Ld. Trial Court has failed to appreciate the basics and cardinal principles of law mentioned by the Hon'ble Supreme Court in the Judgment of Rangappa vs Sri Mohan (2010) 11SCC 441, wherein it was held that in the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. It is a settled position that when an appellant has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the appellant is able to raise a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail.

C. The Ld. Trial Court has failed to appreciate the and cardinal principles of law mentioned by the Hon'ble Supreme Court in the Judgment of Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578 that a post-dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been a material change in the

circumstance such that the sum in the cheque does not represent a legally enforceable debt at the time of maturity or encashment, then the offence under Section 138 is not made out. Admittedly, as per the complainant's own version in the present case, the liability shown by the complainant on calculation comes out to be that of Rs.4,95,000/-, while the cheque that was made for encashment is of Rs.7,00,000/-. Thus it cannot be inferred that the cheque in question was towards legally enforceable debt as mentioned in section 138 of the N.I. Act. It is submitted that the Ld. Trial Court has failed to take the consideration of the said fact and had put the burden of proof of the said fact on the shoulders of the appellant by simply saying that the said defence was only valid if the appellant/Appellant would have taken in 145(2) NI Act, which is nothing but a perverse finding.

D. It has been further stated that in this case of complainant that the cheque in question, was issued by the appellant pursuant to a friendly loan given on numerous occasions by the complainant/ respondent in front of one Mr. Sanjeev Wasson, whose name has already been given in the list of witnesses filed by the complainant/respondent and subsequently the same was dropped by the complainant/respondent himself when, the appellant apprised the court that the said cheque in question was stolen by Mr. Sanjeev Wasson in his statement being recorded during the framing of notice u/s 251 of CRPC.

- E. Because the Ld. Trial Court has failed to take into consideration about the presumption as to the court has to take in considering the existence of Section 114 of the evidence act, which specifically emphasizes on the presumption that the court shall take while considering the facts and circumstances of the case. While the appellant in his Section 251 Cr.P.C. statement had categorically stated the said cheques were stolen by one Mr. Sanjeev Wasson an furtherance when he was dropped from calling to the court as a prime witness, there only the complaint of the complainant failed.
- F. Because the Ld. Trial Court, while passing the impugned judgment, omitted to appreciate that the cheque amount was more than the amount claimed or mentioned in the complaint and also omitted to appreciate that no evidence, of whatsoever nature, was led by the complainant/respondent to meet its legal burden, pursuant to rebuttal of presumption.
- G. Because the Ld. Trial Court failed to consider the fact that the Legal notice placed on record has been manipulated by the complainant as the notice sent to the appellant was different from the notice so placed on record by the complainant. The appellant has placed the copy of the notice dated 17/10/2020 received by him on judicial record and exhibited the same as, EX-DW-1/2. The complainant has ailed to cross examine the appellant on the said aspect and has not denied the issuance of the said

notice. Thus the said notice placed on record by the appellant stands admitted and complainant himself is guilty of perjury.

H. Because the Ld. Trial court has failed to consider the settled principal of law as has been held by the Hon'ble Supreme Court of India "that the standard of proof so as to prove a defence on the part of an appellant is preponderance of probabilities, whereas the prosecution must prove the guilt of an appellant beyond all reasonable doubts.

Arguments on behalf of the Accused / appellant:-

5. It was contended that the cheque in question have been filed for more than the alleged that amount, it was further argued that cheques were misused by Sh. Sanjeev Wasson who was deliberately not examined by the complainant despite citing him a witness in the array of witnesses. He further argued that accused/ appellant never issued said cheques to the respondent.

Arguments on behalf of the complainant / respondent:

6. Ld. counsel for the complainant argued that the Ld. Trial court has rightly passed the impugned judgment. It was further argued that the accused / appellant remained fail to raise any probable defence in order to disprove case of the complainant/ respondent.

7. I have heard both the sides and carefully perused the record.

Observation and findings

8. Coming to the admitted facts which are as under:-

- a) The accused has admitted his signatures upon the cheques in question in the notice served upon him under section 251 Cr.P.C.
- b) The accused has also admitted the delivery of legal notice.
- c) The factum of dishonor of cheque is also remained undisputed.

Here Section 139 of NI Act comes into picture, the Court presumes that the cheque was issued in discharge, in whole or in part, of any debt or liability. The effect of the presumption has been explained in a catena of judgments, including the judgments of the Hon'ble Supreme Court in, *Hiten P. Dalal v. Bratindranath Banerjee* (2001) 6 SCC 16, *Rangappa vs. Sri Mohan* (2010) 11 SCC 441, it has been held that the said presumption is a rebuttable one and its only effect is to shift the initial burden of proof on the accused. When the presumption is raised in favor of the complainant, the burden shifts upon the accused to disprove the case of the complainant by rebutting the presumption raised in favour of the complainant. It is well settled that in order to rebut the presumption and shift back the burden of proof on the complainant, the accused is only required to raise a probable defence and he cannot be expected to discharge an unduly high standard of proof. Therefore, the standard of proof for rebutting the presumption under Section 139 NI Act is "preponderance of probabilities."

9. Therefore, it is settled law that the above said presumption is rebuttal one and its only effect is to shift the

initial burden of proof on the accused for which accused is only required to raise a probable defence. The appellant has raised following four pleas in his defence which are as under:-

- a) The cheque is more than the debt amount.
- b) Misuse of cheque by Sh. Sanjeev Wasson.
- c) Filing of complaint against Sh. Sanjeev Wasson.
- d) The respondent deliberately did not examine Sh. Sanjeev Wasson.

a) The cheque is more than the debt amount.

10. The burden to prove this fact lies upon the accused / applicant, but it is interesting to note that the trial court reveals that complainant was not cross-examined and his testimony remained unchallenged and unrebutted. Mere submission of appellant, in the absence of any evidence oral or documentary does not discharge the presumption under section 139 of NI Act in favour of the complainant /respondent about regarding existence of legally recoverable debt for the amount complained in the complaint.

b) Misuse of cheque by Sh. Sanjeev Wasson.

11. It was contended by the counsel for the appellant that the cheque in question in the present case was given as blank signed cheque to Sh. Sanjeev Wasson and the appellant did not fill the particulars on the cheque. Here, Section 20 of NI act comes into picture which lays down *where person signs and delivers to another a Negotiable Instrument Act either wholly blank or having written therein incomplete Negotiable Instrument, he thereby gives, "prima facie authority to the holder*

thereof to make or complete, as the case may be, upon it a Negotiable Instrument”. The Ld. Trial court rightly observed that once accused had admitted his signature on the cheque he can not escape his liability on the ground that particulars have not been filed by him and or the signature on the cheque and the contents are filled in different writing and ink. When such as a cheque containing blank and signed and handed over, it means that person signing it, as given implied authority to holder of the cheque to fill up the blank which he has left.

c) Filing of complaint against Sh. Sanjeev Wasson

12. According to the case of the respondent, he gave signed blank cheque to Sh. Sanjeev Wasson for business purpose and the same was misused by him as he gave it to the complainant. He made a complaint to the SHO in this regard Ex. DW1/1. It is relevant to note here that EX. DW1/1 is of 18.02.2022, and it was filed once right of the accused / appellant to move an application under section 145 of the NI Act to cross-examine the complainant was closed on 14.01.2022, therefore, the possibility of complaint Ex. DW1/1 being an after thought can not be denied. Further the Ld. Trail court rightly observed that mere filing of complaint does not mean proving of allegations mentioned therein. Filing a complaint and proving the allegations made therein are two different facts altogether. Therefore, the Ex. DW1/1 is only a document containing allegations. Thereafter all the plea raised in defence falls flat.

d) The respondent deliberately did not examine Sh. Sanjeev Wasson.

13. The Ld. Trial court rightly observed that it is prerogative of the complainant to examine the witness of his choice to prove his case. No presumption or adverse inference can be not drawn against the complainant merely non examination of witness which the accused deems a material witness. It is pertinent to mention here that as stated above the complainant was not cross-examined and his testimony remained unchallenged and unrebutted, this could be only reason for non examination of Sh. Sanjeev Wasson , otherwise also, even for the accused, there was no bar to summons Sh. Sanjeev Wasson as his defence witness, but no such application was filed in this regard before the Ld. Trial court.

14. 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 reasoned 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**.

15. Put up for appearance of the accused / appellant / arguments on point of the sentence on 26.05.2026.

**Pronounced in open
Court on 16.05.2026**

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