IN THE COURT OF SH. VISHAL SINGH, ADDITIONAL SESSIONS JUDGE – 05: SOUTH EAST DISTRICT, SAKET COURTS, NEW DELHI

CNR NO. DLSE01-002869-2026
CRL. APPEAL No. 111/2026
U/S. 415(3) R/W SEC. 427(b) BNSS
PS: DEFENCE COLONY

IN THE MATTER OF:

AMRISH GUPTA
S/O. LATE SH. R. K. GUPTA,
R/O. KHASRA NO. 638,
BANDH ROAD, GADAIPUR,
NEW DELHI.

....APPELLANT

VERSUS

1. **SURINDER KUMAR WADHWA**
S/O. LATE SHRI D. C.,
R/O. W-26, GREATER KAILASH-II,
SOUTH DISTRICT, DELHI-110 048.

2. **STATE OF NCT OF DELHI.**

….RESPONDENTS

OTHER DETAILS :

DATE OF INSTITUTION	**: 12.03.2026**
DATE OF RESERVING ORDER	**: 04.05.2026**
DATE OF ORDER	**: 04.05.2026**

APPEAL U/S. 415 (3) BNSS R/W SECTION 427 (b) BNSS, 2023 FOR SETTING ASIDE THE IMPUGNED JUDGMENT DATED 06.01.2026 & ORDERS ON SENTENCE DATED 10.02.2026 & 18.02.2026 PASSED BY LD. JMFC (NI ACT)-03, SOUTH-EAST DISTRICT, SAKET COURTS, NEW DELHI, IN CC NO. 6446/2017, TITLED AS "SURINDER KUMAR WADHWA VS. AMRISH GUPTA".

JUDGMENT

1. Appellant Amrish Gupta is aggrieved by the impugned judgment dated 06.01.2026 of Ld. JMFC, (N. I Act)-03, South East, Saket Courts, New Delhi, vide which he was convicted for offence U/s. 138 of Negotiable Instruments Act. Through order on sentence dated 10.02.2026, he was sentenced to undergo Simple Imprisonment of 06 months alongwith fine by way of interest @ 6% per annum on Rs. 6,75,60,000/-, from the date of filing of complaint to till the date of judgment, to be paid to complainant as compensation within 60 days. In default of payment of fine amount, appellant was ordered to undergo further sentence of Simple Imprisonment of 06 months. Through subsequent order dated 18/02/2026, Ld. Trial Court modified the sentence and ordered that convict shall undergo Simple Imprisonment of 06 months alongwith fine of Rs. 6,75,60,000/- with interest @ 6%, from the date of filing of complaint to till the date of judgment.

2. The complainant's case, in brief, was that accused Amrish Gupta (appellant herein) and complainant Surinder Kumar Wadhwa (respondent herein) had friendly and financial relations for long. The accused used to take personal loans from the complainant and paid interest as per their mutual agreement. On 23.12.2016, accused Amrish Gupta reconciled his loan account with the complainant and issued a signed confirmation certificate in respect of interest amount and the outstanding loan amount of Rs.6,52,95,000/- which was recoverable from him. Upon request of complainant, accused agreed to clear the entire outstanding dues/loan amount after calculating interest from January, 2017 to 31.03.2017 with previous reconciled amount of Rs.6,52,95,000/-

which was total amounting to Rs.6,75,60,000/-. In consideration, accused issued two cheques in question – (i) cheque of Rs.5,00,00,000/- bearing no. 350445 dated 07.04.2017, drawn on Axis Bank, Nehru Place Branch, New Delhi-110019. & (ii) cheque of Rs.1,75,60,000/- bearing no. 612410 dated 07.04.2017, drawn on Citi Bank, Delhi, to complainant towards discharge of his liability to pay. However, when presented to the Bank, the said cheques were returned dishonored with remarks 'Payment Stopped by Drawer' vide cheque Returning Memos dated 10.04.2017. After dishonour of the cheques, accused sent a letter dated 17.04.2017 to the complainant. The Legal Demand Notice dated 01.05.2017 sent by respondent/complainant remained unheeded by the appellant. Consequently, the complainant filed complaint U/s. 138 N. I. Act against the appellant.

3. The Trial Court record reflects that complainant Surinder Kumar Wadhawa led pre-summoning evidence through affidavit Ex. CW1/A and relied on the following documents:-

(i) **Ex. CW1/1** : Account statement of accused maintained by the complainant (Colly.);

(ii) **Ex. CW1/2** : Photocopy Confirmation Certificate dated 23.12.2016 signed by accused;

(iii) **Ex. CW1/3** : Original cheque bearing No. 350445 dated 07.04.2017 of Rs.5,00,00,000/-;

(iv) **Ex. CW1/4** : Original cheque bearing No. 612410 dated 07.04.2017 of Rs. 1,75,60,000/-;

(v) **Ex. CW1/5 &**
Ex. CW1/6 : Cheques Return Memos dated 10.04.2017;

(vi) **Ex. CW1/7** : Photocopy of letter dated 17.04.2017 sent by accused to complainant;

(vii) **Ex. CW1/8** : Copy of Legal Demand Notice dated 01.05.2017 sent by complainant to accused;

(viii) **Ex. CW1/9** : Copy of Postal receipt; &

(ix) **Ex. CW1/10**: Tracking Report of speed post.

4. On completion of pre-summoning evidence and on appearance of the accused on summons, Ld. Trial Court served Notice U/s. 251 Cr.PC upon accused/appellant Amrish Gupta for offence U/s. 138 N. I. Act, to which he pleaded not guilty and claimed trial.

5. On completion of complainant's evidence, statement of the appellant/accused was recorded U/s. 313 Cr.PC on 21.11.2022. The appellant/accused examined himself as DW1. He also examined DW2 Rahul, DW3 Farooq Abdulla and DW4 Yashika Chaudhary, all employees of Axis Bank, in his defence.

6. On completion of trial, Ld. Trial Court convicted the appellant/accused Surinder Kumar Wadhwa through judgment dated 06.01.2026 and sentenced him vide order on sentence dated 10.02.2026 and modified order dated 18/02/2026, to challenge which appellant has preferred the present appeal.

7. I have perused Ld. Trial Court record and heard final arguments from both sides.

8. It was not disputed by appellant that he issued two cheques in question (i) cheque of Rs.5,00,00,000/- bearing no. 350445 dated 07.04.2017 drawn on Axis Bank, Nehru Place Branch, New Delhi-110019 & (ii) cheque of Rs. 1,75,60,000/- bearing no. 612410 dated 07.04.2017, drawn on Citi Bank, Delhi, and he signed the said cheques. The cheques were returned dishonored

on account of 'Payment Stopped by Drawer' as per Return Memos dated 10.04.2017, Ex. CW1/5 & Ex. CW1/6. Appellant did not dispute that he had received the legal demand notice dated 01.05.2017 Ex.CW1/7 from the respondent. Accordingly, Ld. Trial Court rightly raised presumption U/s. 118 (a) and 139 N.I. Act, that the cheques were drawn for consideration and were issued by the accused (appellant herein) towards discharge of debt or other liability [***Ref: Hiten P. Dalal Vs. Bratindranath Banerjee (2001) 6 SCC 16***].

> In ***Kumar Exports Vs. Sharma Carpets***, ***(2009) 2 SCC 513*** it has been held at para 20:- "*The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances upon consideration of which, the court may either believe that the consideration and*

debt did not exist or their non existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist....................".

It has been held that it is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal revisions of Section 138 N.I. Act would be attracted [***Ref.: Bir Singh Vs. Mukesh Kumar (2019) 4 SCC 197***].

9. On presumption being raised against the appellant, it needs to be seen whether the appellant successfully rebutted the statutory presumption drawn against him and raised probable defence to the case against him.

Defence Raised :

10. In reply to notice framed U/s. 251 CrPC, the appellant replied that he had continuous financial transactions with the complainant since year 2006. He stated that in year 2012 he took a loan from complainant and issued cheques in question to complainant as security against outstanding loan in the year 2015. Later on, he cleared his entire liability towards the complainant by paying the amount in account of son and wife of the complainant. He stated, in fact, he had to take money from the complainant. When he asked the complainant to return the aforesaid security cheques, complainant told him that he had lost the cheques. Therefore, he gave instructions to his banker to stop payment against the said cheques. Similar was the reply of appellant in statement recorded U/s. 313 CrPC in answer to incriminating evidence recorded against him.

While deposing as DW1, appellant Amrish Gupta deposed that he took loan of Rs.9 crore from complainant in year 2013 and gave some security cheques against the loan. He deposed that he has returned more than the cheque amount to complainant that included Rs.8.64 crore wife and son of complainant by way of cheques. He deposed that the security cheques were to be returned back to him after he submitted the title deed documents of his company i.e. M/s Blue Ice Farms Pvt. Ltd. in Village Gadaipur, New Delhi, to the complainant in year 2013.

<u>Credibility of Defence</u> :

11. DW1 Amrish Gupta replied in cross-examination that he did not remember the date, month and year when he gave Rs.8.64 Crore to wife and son of the complainant. He admitted that he used to pay interest on loan obtained from the complainant. He replied that he needed to check if he maintained any ledger qua the loan and interest paid thereon, implying thereby that he did not maintain any such record.

<u>Evasive Replies</u> :

12.(i) In cross-examination, DW1 Amrish Gupta was asked the following specific question to which he gave an evasive reply –

Q. Was Rs.8,64,00,000/- as allegedly paid by you to the wife and son of the complainant, part of the loan of Rs.9 crores payable by you to the complainant as a set off / repayment?

Ans. All my transactions were with the complainant and whatever money was transferred to his account or his wife / son's account were on his direct directions. The amount were treated in totality between me and his family.

12.(ii) DW1 was cross-examined in respect of his income tax return (ITR) for assessment year 2016-2017 Ex. CW1/DY and he was asked that he had shown Rs.7.55 crore as unsecured loan in the said ITR. DW1 only gave an evasive reply that he did not know; he will check and revert. He did not revert during the trial. Thus, the conclusion is inevitable that income tax return record (AY 2016-2017) of the appellant also supported the complainant's case that appellant was indebted to complainant for an amount of Rs.7.55 crore.

12.(iii) DW1 was cross-examined and suggested that in certificate dated 02/05/2016 Ex. CW1/DX he had certified that a sum of Rs.1,10,82,854/- had been paid to the complainant qua the interest during financial year 2015-2016 and a sum of Rs.7,55,00,000/- was payable to complainant as on 31/03/2016. DW1 only gave an evasive reply that he will check and revert. He did not revert during the trial.

12.(iv) DW1 was cross-examined and suggested that in certificate dated 04/05/2014 Ex. CW1/DX he had certified that a sum of Rs.49,48,174/- had been paid to the complainant qua the interest during financial year 2013-2014 and a sum of Rs.6,85,48,174/- was payable to complainant as on 31/03/2014. DW1 only gave an evasive reply that he will check and revert. He did not revert during the trial.

13. DW1 replied that he had filed a civil suit before Hon'ble High Court of Delhi against wife and son of the complainant for recovery of Rs.8,64,00,000/- .

In this regard, Ld. Counsel for respondent/complainant argued that if the accused (appellant herein) had paid

Rs.8,64,00,000/- towards repayment of loan of Rs.9 crore taken from the complainant, why would he possibly file a civil suit for recovery against wife and son of the complainant? The answer to this question lies in cross-examination of CW1 Surinder Kumar Wadhwa, who replied that his son and wife had sale agreements with Amrish Gupta in respect of properties situated at Panchkula & Gurugram, Haryana, and the payments were made in purchase of property by the appellant. The accused (appellant herein) did not further cross-examine CW1 Surinder Kumar Wadhwa to dispute the nature of payments made to wife and son of CW1.

It is observed that the appellant had failed to show that he made payment of Rs.8.64 crore to wife and son of complainant at the behest of complainant or to pay off the loan obtained from complainant.

Separate Transactions of Appellant with Wife & Son of the Complainant :

14.(i) Smt. Neena Wadhwa, wife of complainant, was examined as a Court Witness i.e. COW1 and was cross-examined by the accused. In cross-examination, COW1 admitted that she had agreed to sell a property at M3M, Gurgaon, Haryana, to accused Amrish Gupta for total sale consideration amount of Rs.12 crore and had received Rs.4.69 crores from the accused as advance sale consideration amount. She admitted the defence suggestion that a written agreement (to sell property) was executed between the parties.

14.(ii) Mr. Siddharth Wadhwa, son of complainant, was examined as a Court Witness i.e. COW2 and was cross-examined by the accused. In cross-examination, COW1 admitted that he had agreed to sell a property at DLF, Panchkula, Haryana, to accused Amrish Gupta for total sale consideration amount of Rs.4 crore and had received Rs.3.45 crores from the accused as advance sale consideration amount.

It is apparent from cross-examination of COW1 and COW2 conducted by the accused that he had separate land deals with wife and son of complainant in the year 2015 and paid part sale consideration amount to them. There was dispute between accused and complainant's wife and son because of which the accused filed recovery suit against them.

14.(iii) The appellant could not be permitted to take contradictory stands – on one hand it is argued in present case that the amount paid by appellant to wife and son of the complainant was at the behest of complainant towards repayment of loan taken from the complainant, on the other hand, appellant filed suit for recovery against complainant as well as his wife and son on the ground that money paid to wife and son of complainant was extension of loan to them that they failed to repay. By filing the recovery suit against wife and son of the complainant, appellant himself nullified / falsified his defence in present case.

Accuracy of Accounts :

15. Ld. Counsel for appellant argued that as per complainant's own ledger account Ex. CW1/1, accused/appellant paid Rs.15 lakh by RTGS to complainant on 27/06/2016. The accused/appellant again paid Rs.1.95 crore by RTGS to complainant on 01/10/2016. Thereby, accused appellant/accused had repaid part loan amount of Rs.2.10 crore to the complainant. Prior to receiving the said

payments, complainant was charging interest @ 12% per annum i.e. Rs.7,55,000/- per month on outstanding loan amount of Rs.7.55 crore. After payment of Rs.2.10 crore, the principal loan amount got proportionality reduced as on 01/10/2016, however, the complainant kept charging the same interest i.e. Rs.7,55,000/- per month upto 01/03/2017, which shows that the ledger account Ex. CW1/1 was incorrect and unworthy of reliance.

In this regard, Ld. Counsel for respondent argued that percentage of interest charged on outstanding loan was not fixed. In fact, the ledger account Ex. CW1/1 showed that complainant charged interest @ 16% per annum on the outstanding loan from 14/10/2013 to 31/03/2016. Thereafter, the complainant charged interest @ 12% per annum with the stipulation that the quantum of interest charged i.e. Rs.7,55,000/- per month shall remain unchanged. Ld. Counsel for respondent pointed out from the ledger that accused was very irregular and erratic in payment of monthly interest because of which it was decided that outstanding interest shall not be added to balance loan amount for purpose of charging of future interest as it would lead to even higher chargeable interest amount in subsequent months. Instead, it was decided that the quantum of monthly interest shall remain unchanged even on repayment of part loan amount.

It is observed that there was no fault in accounting method of charging of monthly interest on outstanding loan in ledger account Ex. CW1/1.

<u>Whether cheques in question were security cheques, issued in year 2013 & 2015 respectively?</u> :

16. Ld. Counsel for appellant argued that the cheque book

from which the cheque in question i.e. 350445 was taken, was issued to the appellant by Axis Bank on 11/06/2013, as deposed by DW2 Rahul, an employee of Axis Bank Limited.

Similarly, DW3 Farooque Abdulla, another employee of Axis Bank Limited deposed that the cheque book from which another cheque in question i.e. 612410 was taken, was issued to the appellant by Axis Bank on 08/07/2015.

Ld. Counsel for appellant argued that the appellant had already exhausted all cheques of aforesaid cheque books in year 2013 and 2015 respectively and started using fresh cheque books; he could not have issued the said cheques in favour of the complainant in January-2017, as claimed by complainant.

17. Ld. Counsel for respondent referred to testimony of DW3 Farooque Abdulla, who deposed that there is no banking rule which provides that account holder is required to exhaust a particular cheque book before using any other cheque book of his bank account.

It is observed that there is no substance in argument that in year 2017 the appellant could not have issued the cheques from cheque books obtained in year 2013 and 2015. It cannot be gainsaid that an account holder may start issuing cheques from a new cheque book, although, a few cheque leaves were still left in older cheque books. At his option, the account holder may issue cheques from older and newer cheque books simultaneously. The defence raised in this regard has no merits. There is no evidence to support the defence that the cheques in question were security cheques and were issued in year 2013 & 2015 respectively.

18. Ld. Counsel for appellant pointed out that on one date of cross-examination (22/03/2021), CW1 replied that the cheques in question were issued by the appellant in month of April-2017, whereas, on another date of cross-examination (08/03/2022), CW1 replied that the cheques were issued in month of January-2017 and were post-dated cheques for month of April-2017. Thus, there was contradiction in the testimony of CW1 on two different dates.

In this regard, it is observed that the complaint case pertained to year 2017, whereas, testimony of CW1 was recorded five years thereafter, in year 2022. The minor contradiction pointed out by Ld. Counsel for appellant does not go to the root of the case. Anyhow, the said minor contradiction does not remotely support the defence of appellant that the cheques were issued in year 2013 & 2015 respectively.

19. In view of foregoing observation and analysis, the impugned judgment is found to be well reasoned and in keeping with the spirit of the Act. The impugned judgment is based on correct appreciation of evidence. The appeal is vacuous and devoid of merits, and is, therefore, dismissed.

The impugned modified order on sentence dated 18/02/2026 was passed by Ld. Trial Court in the absence and without hearing the convict. Therefore, the said order is set aside.

The impugned judgment dated 06/01/2026 and order on sentence dated 10/02/2026 are upheld with modified order that in addition to sentence of Simple Imprisonment of 06 months, the appellant shall pay fine of Rs.6,75,60,000/- alongwith simple interest @ 6% per annum from date of filing of complaint case till date of payment. The fine amount shall be paid as

compensation to the complainant. In default of payment of fine amount, the appellant shall undergo further sentence of Simple Imprisonment of 01 month.

Announced in open Court
Dated: 04.05.2026

Vishal Singh
Digitally signed by Vishal Singh
Date: 2026.05.04 16:13:58 +0530

(Vishal Singh)
Addl. Sessions Judge-05 (South-East)
Saket Courts, New Delhi