IN THE COURT OF SH. SAMAR VISHAL,
ADDITIONAL SESSIONS JUDGE-02, SOUTH DISTRICT, SAKET COURTS, NEW DELHI

CRIMINAL APPEAL NO. 644/2025

CNR NO. DLST01-0189432025
IN THE MATTER OF

Ajay Prakash
S/o Late Sh. Murari Lal Gupta
R/o H. No. K 156/19A
Sangam Vihar, New Delhi

….Appellant

Versus

Sanjay Gupta
R/o H. No. K 541/5, Gali no.19
Ratia Marg, Hamdard Nagar
Sangam Vihar, New Delhi-110080

…..... Respondent

DATE OF INSTITUTION	: 24.11.2025
DATE OF ARGUMENTS	: 08.04.2026
DATE OF PRONOUNCEMENT	: 22.04.2026
DECISION	: Dismissed

JUDGMENT

1. The present appeal is directed against the judgment dated 20.09.2025 passed by the learned Judicial Magistrate First Class-03 (NI Act), South District (hereinafter referred to as "the learned Trial Court"), whereby the respondent/accused, Sanjay Gupta, was acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act,

1881, in a complaint instituted by the appellant/complainant, Ajay Prakash.

2. The complaint, out of which the present appeal arises, was filed by the complainant alleging commission of an offence under Section 138 of the Negotiable Instruments Act, 1881. The case set up by the complainant is that the accused, along with his wife, approached the complainant in January 2013 seeking a friendly loan of Rs.2,00,000 for personal needs. It is alleged that the complainant advanced the said amount in cash on 20.01.2013, upon the assurance of the accused that the same would be repaid within one year.

3. Thereafter, in December 2013, when the complainant approached the accused for repayment, the accused allegedly avoided payment on one pretext or another despite repeated requests. It is further the case of the complainant that on 16.02.2018, the accused paid a sum of Rs. 20,000 in cash and issued a cheque (the cheque in question) for an amount of Rs. 1,25,000, assuring that the remaining sum of Rs. 55,000 would be paid shortly in cash. The accused is stated to have requested the complainant to present the cheque only upon his instructions.

4. It is further alleged that even thereafter, upon being approached by the complainant, the accused continued to evade payment. On 28.03.2023, the accused and his wife allegedly paid a further sum of Rs. 48,000 in cash and requested return of the cheque; however, the complainant refused to do so until full payment was made. Finally, as per

the assurances of the accused, the complainant presented the cheque for encashment.

5. The complainant presented the aforesaid cheque for encashment in his bank; however, upon presentation, the same was dishonoured with the remarks “Funds Insufficient.” Thereafter, the complainant issued a statutory legal demand notice to the accused, calling upon him to make payment of the cheque amount within the prescribed period. Despite service of the said notice, the accused allegedly failed to make the payment, thereby constraining the complainant to institute the present complaint under Section 138 of the Negotiable Instruments Act, 1881 before the learned Trial Court.

6. The learned Trial Court took cognizance of the offence on 31.05.2024 and summoned the accused, Sanjay Gupta. Thereafter, on 24.08.2024, notice under Section 251 of the Code of Criminal Procedure was served upon the accused, to which he pleaded not guilty and claimed trial.

7. In his defence, the accused denied the existence of any legally enforceable liability towards the complainant. He stated that in January 2013, he had taken a loan of Rs.1,00,000 from the complainant for a period of one year and had handed over a blank signed cheque (the cheque in question) as security at the time of availing the loan. According to him, he repaid the entire loan amount within the year 2013 itself. However, when he demanded return of the said cheque, the complainant

failed to do so on the pretext that the same was not traceable. The accused further contended that the cheque has been misused by the complainant, which is evident from the fact that while his signatures on the cheque are in Hindi, the remaining particulars have been filled in English. He also stated that he is illiterate and is unable to read or write in English.

8. In order to prove his case, the complainant examined himself as CW-1. On the other hand, the accused did not lead any evidence in his defence.

9. After the conclusion of the complainant's evidence, the incriminating circumstances appearing against the accused were put to him in his statement recorded under Section 313 of the Code of Criminal Procedure. In his said statement, the accused reiterated the defence already taken by him, denying any legally enforceable liability and alleging misuse of the cheque in question.

10. After hearing the arguments advanced by both sides and upon appreciation of the material placed on record, the learned Trial Court proceeded to pass the impugned judgment, whereby the accused was acquitted of the offence alleged against him. The said judgment of acquittal is now under challenge in the present appeal.

11. Coming now to the appeal. It is settled principle of law that if the trial Court, on due appreciation of evidence came to the conclusion about

the findings of acquittal, then normally, if the findings is not perverse, then it should not be interfered with by the appellate Court. In this regard, reliance may be placed on the decision of the Hon'ble Supreme Court rendered in the case of ***Chandrappa and Others vs State of Karnataka (2007) 4 SCC 415***, wherein the Supreme Court has laid down legal principles for entertaining appeal against acquittal, which read as under:-

(A) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;
(B) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;
(C) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.
(D) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to

be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(E) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

12. Now, keeping in view the aforesaid legal parameters governing interference with an order of acquittal, I proceed to appreciate the law, facts and evidence on record.

13. Section 139 of the Negotiable Instruments Act 1881 raises a presumption in favour of the holder regarding the existence of a legally enforceable debt or liability in discharge of which the cheque is stated to have been issued. The Hon'ble Supreme Court in B*asaligappa. Vs Mudibapassa AIR 2019 SC 1983,* summarised the legal position governing the presumptions under Sections 118(a) and 139 of the Act as under-:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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,

(v) It is not necessary for the accused to come in the witness box to support his defence.

14. On the touchstone of the aforesaid settled principles of law and guided by the judicial precedents governing the scope and ambit of Sections 118(a) and 139 of the Negotiable Instruments Act 1881, I now proceed to re-appreciate the facts and the evidence led in the case and examine the correctness, legality and propriety of the impugned judgment in the light of the material available on record. An appellate court, while dealing with an appeal against conviction, is duty bound to independently scrutinise the evidence and determine whether the findings recorded by the trial court are sustainable in law and borne out from the record. It is in this backdrop that the entire case has been revisited.

15. Turning now to the judgment under challenge, the learned Trial Court, while acquitting the accused, has primarily rested its decision on the issue of limitation, without entering into a detailed examination of the merits of the case. The Trial Court held that the alleged loan had become time-barred and, therefore, could not be treated as a legally enforceable debt or liability.

16. While considering the question as to whether the cheque in question had been issued in discharge, in whole or in part, of any legally enforceable debt or liability, the learned Trial Court noted that the accused had admitted his signatures on the cheque (Ex. CW-1/A). Accordingly, by virtue of Sections 118(a) and 139 of the Negotiable Instruments Act, 1881, a presumption arose in favour of the complainant that the cheque had been issued towards discharge of a legally enforceable liability. In this regard, reliance was placed on the judgment of the Hon'ble Supreme Court in ***M/s Kalamani Tex & Anr. v. P. Balasubramanian (2021) 1 SCR 668***, as well as ***Basalingappa v. Mudibasappa (supra)***, wherein it has been held that once issuance and signature on the cheque are admitted, a presumption arises that the cheque was issued in discharge of a legally enforceable debt.

17. The learned Trial Court further observed that such presumption is rebuttable and that the accused can discharge the burden on the standard of preponderance of probabilities, either by leading defence evidence or

by relying upon the material elicited in the cross-examination of the complainant. Reliance was also placed on ***Rangappa v. Sri Mohan (2010) 11 SCC 441*** to reiterate that once signatures are admitted, the onus shifts upon the accused to raise a probable defence.

18. Applying the aforesaid principles, the learned Trial Court noted that, as per the case of the complainant himself, the alleged friendly loan was advanced in January 2013 for a period of one year, and the cheque in question was issued only on 16.02.2018. It was contended on behalf of the accused that, on the date of issuance of the cheque, there existed no legally enforceable debt, as the claim had already become time-barred. In support of this contention, reliance was placed on judgments of the Hon'ble Delhi High Court in ***M/s Jage Ram Karan Singh & Anr. v. State & Anr (2019) 265 DLT 374,*** and ***M/s Vijay Polymers Pvt. Ltd. v. M/s Vinnay Aggarwal 2009 (110)DRJ 592***.

19. The Trial Court also considered the provisions of Section 18 of the Limitation Act, 1963, which provides that an acknowledgment of liability must be made in writing and before expiry of the limitation period in order to extend the limitation. It was observed that in the present case, no such acknowledgment in writing was made within the prescribed period. The alleged cash payment of Rs.20,000/- on 16.02.2018 was held to be of no consequence, as it was made after expiry of the limitation period and, therefore, did not extend the limitation.

20. The learned Trial Court further held that mere issuance of a cheque, without anything more, would not revive a time-barred debt, as a cheque must be issued in discharge of a legally enforceable liability. Reliance in this regard was placed on ***Vijay Polymers Pvt. Ltd. v. M/s Vinnay Aggarwal (supra)***, which in turn relied upon the judgment of the Hon'ble Supreme Court in ***Sasseriyil Joseph v. Devassia 2001 SCC OnLine SC 1513***, to hold that a cheque issued for a time-barred debt does not fall within the ambit of Section 138 of the Negotiable Instruments Act.

21. On a consideration of the record, the learned Trial Court concluded that the cause of action to enforce the alleged loan, which arose in January 2014, subsisted only till January 2017. Since both the alleged part payment in 2018 and the issuance of the cheque were subsequent to the expiry of the limitation period, the liability had already become time-barred. Accordingly, it was held that the cheque in question was not issued in discharge of a legally enforceable debt or liability, thereby failing to satisfy an essential ingredient of Section 138 of the Negotiable Instruments Act.

22. On this reasoning, the learned Trial Court acquitted the accused.

23. I have undertaken an independent re-appreciation of the entire evidence on record in light of the grounds urged in the present appeal and

find myself in agreement with the reasoning and conclusions arrived at by the learned Trial Court. The order of acquittal is founded on cogent grounds, each of which is duly supported by the material on record, and does not call for interference by this Court.

24. At the outset, it is noted that the statutory presumption under Sections 118(a) and 139 of the Negotiable Instruments Act stood attracted in favour of the complainant on account of the admitted signatures of the accused on the cheque in question. However, as rightly appreciated by the learned Trial Court, the said presumption is rebuttable in nature, and the accused is only required to discharge the burden on the touchstone of preponderance of probabilities. The learned Trial Court has correctly examined whether such burden stood discharged in the facts of the present case.

25. Without any doubt, in the present case, as per the own case of the complainant, the loan was advanced in January 2013. The said loan was to be repaid within a period of one year and, therefore, the period of limitation for recovery would commence from January 2014 and extend for three years, i.e., till January 2017. The cheque in question is dated 20.02.2024, which is admittedly issued more than ten years after the loan became due for repayment. Thus, by the time the cheque was issued, the underlying debt had already become time-barred under the law of limitation.

26. It is a settled requirement of Section 138 of the Negotiable Instruments Act, 1881 that the cheque in question must have been issued for the discharge, in whole or in part, of a legally enforceable debt or liability. The Explanation appended to the said Section clarifies that "debt or other liability" means a legally enforceable debt or liability.

27. In this regard, reliance may be placed on the judgments of the Hon'ble High Courts in ***Girdhari Lal Rathi v. P.T.V. Ramanujachari, 1997 (2) Crimes 658 (AP), Narendra V. Kanekar v. Bardez Taluka Co-op. Housing Mortgage Finance Society Ltd., 2006 Cri LJ 3111 (Bom), Sasseriyil Joseph v. Devassia, 2001 Cri LJ 24 (Ker), as well as M/s Jage Ram Karan Singh & Anr. v. State & Anr., (2019) 265 DLT 374***, and the judgment of the Hon'ble Supreme Court in ***Sasseriyil Joseph v. Devassia, 2001 SCC OnLine SC 1513***, wherein it has been consistently held that a cheque issued in respect of a time-barred debt would not constitute a legally enforceable liability and, therefore, its dishonour would not attract the penal provisions of Section 138 of the Negotiable Instruments Act.

28. The reliance placed by the appellant on the judgment of the Hon'ble Supreme Court in ***K. Hymavathi v. State of Andhra Pradesh (SLP (Crl.) No. 2743/2023)*** does not advance the case of the appellant, inasmuch as, in the present case, there is no acknowledgment of liability within the prescribed period of limitation so as to extend the same under Section 18 of the Limitation Act, 1963 nor the present case is based on

the promissory note. Even if the version of the complainant is accepted that the cheque was handed over on 16.02.2018, the same would still be beyond the period of limitation and would not revive the time-barred debt.

29. Accordingly, the view taken by the learned Trial Court is a legally sustainable view. It cannot be said that the findings recorded are perverse, arbitrary, or contrary to the settled principles of law.

30. In view of the aforesaid discussion, I find myself in complete agreement with the reasons assigned by the learned Trial Court for acquitting the accused, and the same are hereby affirmed. The grounds urged in the appeal fail to dislodge the findings of the learned Trial Court and are accordingly rejected.

31. Consequently, the present appeal, being devoid of merit, is hereby dismissed. The judgment of acquittal dated 20.09.2025 passed by the learned Trial Court, which is under challenge in the present appeal, stands affirmed. Ordered accordingly.

Samar vishal

Digitally signed by Samar vishal
Date: 2026.04.22 17:04:29 +0530

Announced in the open court
on 22.04.2026

(Samar Vishal)
ASJ-02/ South District
Saket Courts, Delhi/22.04.2026