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

CRIMINAL APPEAL NO. 468/2025

CNR NO. DLST01-016212-2025
IN THE MATTER OF

Radhacharan Pal
S/o Sh. Pyare Lal Pal
R/o B-537, Pushpa Bhawan
Sangam Vihar, New Delhi-110062

….Appellant

Versus

Bhim Singh
S/o Sh. Bhanu Pratap Singh
R/o Shiva Auto Gallery
D-1/12, Mangal Bazar Road
Sangam Vihar, New Delhi-110062

…..... Respondent

DATE OF INSTITUTION	: 06.10.2025
DATE OF ARGUMENTS	: 22.05.2026
DATE OF PRONOUNCEMENT	: 13.07.2026
DECISION	: Dismissed

JUDGMENT

1. The present criminal appeal has been preferred by the appellant/complainant against the judgment dated 31.07.2025 passed by the learned Judicial Magistrate First Class, NI Act, Digital Court-03,

South District, Saket Courts, New Delhi, in CC NI Act No. 1559/2022, titled ***Radhacharan Pal v. Bhim Singh***, whereby the respondent/accused was acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. By way of the present appeal, the appellant seeks reversal of the judgment of acquittal principally on the ground that the learned Trial Court did not give proper effect to the statutory presumptions arising under Sections 118(a) and 139 of the Negotiable Instruments Act despite the respondent having admitted his signatures on both the cheques in question. It is contended that the respondent failed to establish any probable defence and that the learned Trial Court wrongly treated a bald and unsubstantiated plea of theft of cheques as sufficient to rebut the statutory presumptions.

3. The respondent has opposed the appeal and supported the impugned judgment. It is submitted on his behalf that the learned Trial Court carefully appreciated the evidence and rightly concluded that the appellant had failed to establish the alleged cash loan, his financial capacity to advance the amount, the source of funds and the existence of a legally enforceable liability corresponding to the amounts mentioned in the cheques.

4. The case of the appellant/complainant before the learned Trial Court was that he was the proprietor of Pal Dairies at Sangam Vihar, Delhi, whereas the respondent/accused was the proprietor of Shiva Autogalary and was engaged in the business of sale and purchase of motor vehicles.

5. According to the appellant, the parties had been known to each other since the year 2015 and shared cordial relations. In July 2017, the respondent allegedly approached the appellant seeking a friendly loan of Rs.5,00,000 on the ground that he was facing financial difficulties. The appellant claimed that, considering the cordial relationship between the parties, he advanced a sum of Rs. 5,00,000 in cash to the respondent in August 2017.

6. It was further alleged that the respondent failed to repay the entire loan despite repeated demands. The appellant stated that the respondent repaid Rs. 50,000 in the year 2018 and another sum of Rs. 50,000 in the year 2019, thereby leaving an outstanding balance of Rs. 4,00,000.

7. The appellant alleged that, towards discharge of the said outstanding liability, the respondent issued two post-dated cheques. The first cheque bearing No. 255427 dated 24.12.2021 for Rs. 2,00,000 was drawn on the erstwhile Oriental Bank of Commerce. The second cheque

bearing No. 644879 dated 13.01.2022 for Rs. 2,00,000 was drawn on State Bank of India.

8. The first cheque was presented for encashment but was returned unpaid vide return memo dated 27.12.2021 with the remark “Other Reasons”. The appellant claimed that, after being informed of its dishonour, the respondent requested him to present the second cheque for Rs. 2,00,000 and assured that the remaining amount would be paid subsequently.

9. The second cheque was thereafter presented and was dishonoured vide return memo dated 14.01.2022 with the remark “Funds Insufficient”. The appellant consequently issued a statutory demand notice dated 24.01.2022 calling upon the respondent to pay the cheque amount. According to the appellant, the notice was duly served, but the respondent neither sent any reply nor made payment within the prescribed period. The complaint under Section 138 of the Negotiable Instruments Act was thereafter instituted.

10. Upon appearance before the learned Trial Court, notice under Section 251 Cr.P.C. was framed against the respondent. The respondent pleaded not guilty and claimed trial.

11. The respondent admitted that the cheques in question bore his signatures. He also admitted that the address mentioned in the legal demand notice was his correct address, though he denied having received the notice.

12. His defence was that he had never taken any loan from the appellant and had no financial transaction with him. He stated that he did not know the appellant prior to the institution of the complaint. According to the respondent, one Rajesh Singh, who was known to the appellant and with whom the respondent had disputes, had stolen certain signed cheque leaves from his office and the same had thereafter been misused.

13. The respondent further stated that ten signed cheques, including five cheques of Punjab National Bank and five cheques of State Bank of India, had been stolen from his office. He claimed that a complaint regarding theft had been lodged. With regard to the cheque drawn on Oriental Bank of Commerce, he stated that some leaves of his old cheque book had also been stolen, although no separate complaint had been lodged regarding those cheque leaves.

14. In his statement under Section 294 Cr.P.C., the respondent did not dispute the genuineness of the cheques and the cheque-return memos. He,

however, denied the remaining documents and reserved his right to raise all other defences during trial.

15. In order to prove his case, the appellant examined himself as CW-1 and tendered his evidence by way of affidavit Ex. CW1/A. He reiterated the averments contained in the complaint and relied upon the original cheques as Ex. CW1/1 and Ex. CW1/2, the corresponding return memos as Ex. CW1/3 and Ex. CW1/4, the statutory demand notice as Ex. CW1/5, the postal receipt as Ex. CW1/6 and the tracking report as Ex. CW1/7.

16. During cross-examination, the appellant stated that he was carrying on a dairy business under the name Pal Dairies and earned approximately Rs. 2,000 to Rs. 2,500 per day. He admitted that he did not maintain any bank account in the name of Pal Dairies and did not file income-tax returns.

17. The appellant further admitted that he could not show the availability of Rs. 5,00,000 in his bank account during July or August 2017, when the alleged loan was stated to have been advanced. He did not produce any books of account, cashbook, ledger, sale register or other business record showing accumulation or availability of the said amount.

18. The appellant maintained that the respondent had repaid Rs. 1,00,000 in two instalments of Rs. 50,000 each. However, he could not state the precise dates or even the months in which the said payments were allegedly made. No receipt, acknowledgment, entry in any account or other document relating to these alleged repayments was produced.

19. The appellant stated that he did not know the names of the wife or children of the respondent and had never visited the respondent's residence. He, however, claimed that the respondent had visited his house on four or five occasions.

20. The appellant admitted that Rajesh Singh was his neighbour and lived opposite his house. He also admitted that Rajesh Singh was present outside the courtroom on the date of his deposition. He denied the suggestion that the two cheques had been handed over to him by Rajesh Singh or that the complaint had been instituted at Rajesh Singh's instance.

21. With regard to service of the demand notice, the appellant admitted that he had not personally verified whether the notice was actually delivered to the respondent. He denied the suggestion that the notice had been returned on account of an insufficient address or that it had been collected by some person at the sender's address.

22. The appellant also examined Sh. Himanshu Ranjan, Deputy Manager, Punjab National Bank, as CW-2. The witness produced the record relating to Cheque No. 255427 and its return memo. He stated that Oriental Bank of Commerce had merged with Punjab National Bank with effect from 01.04.2020 and that cheque books of the erstwhile Oriental Bank of Commerce had been discontinued.

23. During cross-examination, CW-2 admitted that he had not brought any authorisation letter from Punjab National Bank permitting him to depose before the Court. He also admitted that he had not produced any documentary record relating to the merger of Oriental Bank of Commerce with Punjab National Bank or discontinuation of the old cheque leaves. He, however, produced a record showing that the cheque in question was not part of the Positive Pay System data, which was exhibited as Ex. CW2/1.

24. In his statement under Section 313 Cr.P.C., the respondent denied having taken a friendly loan of Rs. 5,00,000 from the appellant. He reiterated that there had never been any monetary transaction between them and that Rajesh Singh had stolen the cheques from his shop.

25. The respondent denied having made the alleged repayments of Rs. 50,000 in 2018 and Rs. 50,000 in 2019. He admitted that the cheques bore his signatures but stated that the remaining particulars had not been

filled by him. He stated that he came to know the appellant only after the complaint was filed and chose not to lead defence evidence.

26. The learned Trial Court held that the cheques were drawn on accounts maintained by the respondent and that the respondent had admitted his signatures thereon. It also held that the cheques had been presented within their period of validity and had been returned unpaid.

27. The learned Trial Court rejected the contention that dishonour of the cheque of the erstwhile Oriental Bank of Commerce would fall outside Section 138 merely because the said bank had merged with Punjab National Bank and the old cheque leaves had become invalid.

28. The learned Trial Court further held that the statutory requirements relating to issuance of demand notice and failure to make payment stood satisfied. Thus, the dispute before the Trial Court was confined substantially to the question whether the cheques had been issued in discharge of a legally enforceable debt or liability.

29. The learned Trial Court acknowledged that, upon admission of signatures on the cheques, the presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act arose in favour of the appellant. It, however, held that the presumptions were rebuttable and that the respondent could rebut them on the standard of preponderance of

probabilities, including by relying upon the material elicited during cross-examination of the appellant.

30. The learned Trial Court found that the complaint and affidavit did not disclose the exact period for which the alleged loan was advanced, its repayment terms or any specific date by which repayment was to be made. It also found that the alleged part-payments of Rs. 50,000 each in 2018 and 2019 were not supported by any particulars or documentary material.

31. The learned Trial Court further found that the appellant had failed to establish his financial capacity or the source of funds. It noted that the appellant did not file income-tax returns, did not maintain a bank account in the name of Pal Dairies and could not show that Rs. 5,00,000 was available with him in July or August 2017.

32. The learned Trial Court also took note of the nature of the asserted relationship between the parties. It observed that although the appellant claimed cordial relations with the respondent, he did not know the names of the respondent's wife or children and had never visited his house.

33. On a cumulative assessment of these circumstances, the learned Trial Court held that the respondent had succeeded in raising a probable defence and in rebutting the statutory presumptions. It consequently held

that the appellant had failed to prove the existence of a legally enforceable debt or liability beyond reasonable doubt and acquitted the respondent.

34. The appellant has argued that the learned Trial Court failed to properly apply the statutory presumptions. It is submitted that once the respondent admitted his signatures on the cheques, the burden was upon him to establish a probable defence and a mere denial of the transaction could not discharge that burden.

35. It is contended that the respondent's plea of theft was unsupported by any police complaint, FIR, stop-payment instruction, bank communication or testimony of any witness. The appellant submits that such a bald plea could not have been accepted as a probable defence.

36. It is further argued that the respondent failed to explain how the signed cheques came into the possession of the appellant. It is submitted that non-reply to the statutory notice and failure to raise the plea of theft at the earliest available opportunity rendered the defence an afterthought.

37. The appellant has also challenged the finding relating to financial capacity. It is submitted that his admitted daily income of Rs. 2,000 to Rs. 2,500 established sufficient financial means to advance the loan and

that non-filing of income-tax returns or non-production of a bank statement could not, by itself, defeat the statutory presumption.

38. It is also argued that the learned Trial Court wrongly inferred absence of acquaintance merely because the appellant did not know the names of the respondent's family members.

39. Before examining the evidence, it is necessary to bear in mind the settled principles governing an appeal against acquittal. An appellate court is competent to reassess the entire evidence and arrive at its own conclusion. However, an acquittal strengthens the presumption of innocence already available to an accused.

40. Where the view adopted by the Trial Court is a reasonably possible view arising from the evidence, the appellate court ought not to reverse the acquittal merely because another view may also be possible. Interference is warranted where the findings are perverse, manifestly illegal, based on a material misreading of evidence or where relevant and admissible evidence has been ignored. (***Chandrappa and Others vs State of Karnataka (2007) 4 SCC 415)***

41. The question before this Court is therefore not merely whether a different view could have been taken, but whether the view taken by the

learned Trial Court is so unreasonable or contrary to the record that it warrants reversal.

42. It is undisputed that the cheques bear the signatures of the respondent. The presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act therefore arose in favour of the appellant that the cheques had been issued for consideration and in discharge of a debt or liability.

43. However, the said presumptions are rebuttable. The respondent was not required to disprove the appellant's case beyond reasonable doubt. His burden was to raise a probable defence on the standard of preponderance of probabilities.

44. The respondent could discharge such burden either by leading independent evidence or by relying upon the circumstances appearing from the appellant's own evidence and cross-examination. There is no absolute rule requiring an accused in proceedings under Section 138 of the Negotiable Instruments Act to enter the witness box or lead affirmative defence evidence. (***Basaligappa. Vs Mudibapassa AIR 2019 SC 1983)***

45. Once the accused brings on record circumstances rendering the alleged debt doubtful or improbable, the evidential burden shifts back to

the complainant to establish the transaction and the subsisting liability through reliable evidence.

46. The appellant's case was that a sum of Rs. 5,00,000 was advanced in cash in August 2017. No loan agreement, receipt, promissory note, acknowledgment or other contemporaneous document was executed.

47. It is true that absence of a written instrument is not by itself fatal. Friendly loans may be advanced orally and in cash. Nevertheless, where the alleged loan is of a substantial amount, the absence of documentation assumes significance when accompanied by other doubtful circumstances.

48. The complaint and affidavit do not disclose any definite repayment period. They do not specify whether the amount was repayable on demand or by a particular date. There is no reference to any agreed schedule of repayment, interest or other terms.

49. The cheques were presented more than four years after the alleged advancement of the loan. The only explanation for the intervening period is that the respondent allegedly paid Rs. 50,000 in 2018 and another Rs. 50,000 in 2019 and thereafter made no payment during the pandemic.

50. The two alleged part-payments were important facts because they formed the basis for reducing the original loan of Rs. 5,00,000 to the alleged outstanding liability of Rs. 4,00,000, corresponding to the aggregate value of the two cheques.

51. However, the appellant was unable to state the date or month of either repayment. He did not produce any receipt, written acknowledgment, account entry or other document relating to the alleged repayments.

52. The absence of precise particulars regarding such material payments cannot be treated as a minor discrepancy. It affects the very computation and existence of the alleged liability represented by the two cheques.

53. The appellant stated that he earned approximately Rs. 2,000 to Rs. 2,500 per day from his dairy business. It has been argued that this would translate into a monthly income of around Rs. 60,000 to Rs. 75,000 and demonstrate sufficient financial capacity.

54. Such calculation cannot, however, be made in isolation. Gross daily receipts from a business cannot automatically be equated with net disposable income or savings. The cost of running the business, purchase

of stock, household expenses and other liabilities would necessarily have a bearing on the amount actually available for lending.

55. The appellant admittedly did not file income-tax returns. He did not maintain a bank account in the name of Pal Dairies. He also expressly admitted that he could not show the availability of Rs. 5,00,000 in his bank account during the relevant period.

56. No books of account, cashbook, ledger, sales record or other business document was produced to demonstrate either the income claimed by the appellant or the accumulation of Rs. 5,00,000 in cash.

57. The learned Trial Court did not hold that non-filing of income-tax returns alone defeated the complaint. It considered this circumstance cumulatively with the absence of bank records, non-production of business accounts, absence of any explanation regarding the source of funds and the entirely cash nature of the alleged transaction.

58. Once the respondent specifically questioned the financial capacity of the appellant during cross-examination, it was open to the appellant to explain the source of funds or produce material within his possession. No satisfactory evidence was produced in this regard.

59. In these circumstances, the learned Trial Court was justified in considering the financial capacity and source of funds as relevant factors while determining whether the respondent had rebutted the statutory presumptions.

60. The learned Trial Court also took into account that, despite claiming cordial relations since 2015, the appellant did not know the names of the respondent's wife or children and had never visited his house. Lack of knowledge of the names of family members does not necessarily establish that two persons are strangers. This circumstance, considered independently, would not be sufficient to disbelieve the appellant's case.

61. However, the Trial Court did not rest the acquittal solely upon this fact. It considered the asserted relationship while examining the probability of a substantial interest-free cash loan being advanced without documentation, security or definite terms. The said circumstance could therefore be taken into account as one factor in the cumulative appreciation of evidence, though it could not independently determine the case.

62. The appellant has rightly pointed out that the respondent did not prove the alleged theft of the cheques by producing the police complaint, examining any police official or proving any stop-payment instructions.

The respondent also did not examine Rajesh Singh or produce any independent material establishing that the cheques were stolen from his office. The specific plea of theft was therefore not affirmatively proved.

63. However, failure of the respondent to conclusively prove the theft does not automatically establish the existence of the loan alleged by the appellant. The prosecution under Section 138 remains dependent upon the existence of a legally enforceable debt or liability. Even where one particular explanation of the accused is not proved, he may still rebut the statutory presumption by demonstrating through the complainant's own evidence that the alleged transaction is doubtful or improbable.

64. The learned Trial Court did not record a positive finding that the theft had been proved. Its conclusion was that the deficiencies in the appellant's own evidence were sufficient to raise a probable defence and rebut the statutory presumptions. The appellant's case cannot therefore succeed solely on the ground that the respondent failed to prove theft, if the foundational transaction itself remained doubtful after cross-examination.

65. The respondent admitted that the address mentioned in the statutory demand notice was correct. The statutory requirement relating to demand notice was accordingly held to be satisfied. The fact that the respondent did not send a reply alleging theft of the cheques is a relevant

circumstance and weakens his specific defence. However, non-reply to a legal notice does not amount to a conclusive admission of liability. An accused is not prohibited from rebutting the statutory presumption during trial merely because no reply was sent to the notice. The absence of a reply cannot substitute proof of the loan or cure substantial deficiencies relating to financial capacity, source of funds and the alleged part-payments.

66. The respondent admitted his signatures but stated that the remaining particulars had not been filled by him. The mere fact that particulars were filled by another person does not invalidate a cheque that was voluntarily signed and delivered towards a liability. The decisive issue is not who filled the cheque, but whether the signed cheque had been voluntarily delivered in discharge of a legally enforceable debt.

67. The learned Trial Court did not acquit the respondent merely because he denied filling the particulars. The acquittal rested upon the finding that the alleged underlying loan and the subsisting liability were not proved after the presumptions stood rebutted. Each circumstance in the case cannot be considered in isolation. The evidence has to be assessed cumulatively.

68. The appellant alleged advancement of Rs. 5,00,000 entirely in cash. No document evidencing the loan was executed. No books of

account or bank record showing availability of the amount were produced. The appellant could not identify the source from which the funds were arranged.

69. The repayment terms and duration of the loan were not clearly stated. The alleged part-payments of Rs. 1,00,000, which were essential to arrive at the claimed outstanding liability of Rs. 4,00,000, were unsupported by dates, receipts, acknowledgments or account entries.

70. The cheques were presented after more than four years of the alleged advancement. The evidence concerning the closeness of the parties was not of such a nature as to satisfactorily explain why a substantial amount would be advanced in cash without any documentation or security. These circumstances, taken together, constituted sufficient material for the respondent to raise a probable defence on the standard of preponderance of probabilities.

71. Once the statutory presumptions stood rebutted, the burden shifted back to the appellant to establish the alleged loan and the existing liability by reliable evidence. The appellant's oral assertion, in the absence of any contemporaneous supporting material and in view of the deficiencies emerging during cross-examination, was insufficient to prove the transaction beyond reasonable doubt. The learned Trial Court expressly recognised the statutory presumptions and thereafter examined

whether they had been rebutted. It cannot therefore be said that the learned Trial Court ignored or failed to apply Sections 118(a) and 139 of the Negotiable Instruments Act.

72. The finding of rebuttal was not based on the mere denial of the respondent. It was based primarily upon admissions and weaknesses emerging from the appellant’s own evidence. The fact that some circumstances, such as non-reply to the legal notice and failure to prove theft, may favour the appellant does not render the acquittal perverse. The evidence as a whole was capable of supporting the view taken by the learned Trial Court.

73. In an appeal against acquittal, the appellate court cannot substitute its own view merely because another interpretation of the evidence may be possible. Unless the view taken by the Trial Court is shown to be wholly unreasonable, contrary to the record or legally unsustainable, the acquittal ought not to be disturbed. Upon independent reappreciation of the evidence, I find that the view adopted by the learned Trial Court is a reasonably possible and plausible view. The findings are supported by the material on record and do not suffer from perversity, patent illegality or material misreading of evidence.

74. The signatures on the cheques were admittedly those of the respondent and the statutory presumptions initially arose in favour of the

appellant. However, the cumulative circumstances emerging from the appellant's cross-examination were sufficient to rebut those presumptions on the standard of preponderance of probabilities.

75. The appellant failed to satisfactorily establish the source and availability of Rs. 5,00,000, the precise terms of the alleged loan, or the particulars and proof of the alleged repayments by which the liability was claimed to have been reduced to Rs. 4,00,000.

76. The respondent's failure to conclusively establish the plea of theft did not relieve the appellant of the burden that reverted to him after rebuttal of the presumptions. The appellant failed to prove the subsisting legally enforceable debt beyond reasonable doubt.

77. The judgment of acquittal dated 31.07.2025 does not suffer from any perversity, illegality or material irregularity warranting interference in appellate jurisdiction.

ORDER

78. In view of the foregoing discussion, the present appeal is dismissed. The judgment dated 31.07.2025 passed by the learned Judicial Magistrate First Class, NI Act, Digital Court-03, South District, Saket Courts, New Delhi, in CC NI Act No. 1559/2022, titled *Radhacharan Pal*

v. Bhim Singh, whereby the respondent Bhim Singh was acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, is hereby affirmed.

Samar vishal

Digitally signed by Samar vishal
Date: 2026.07.13 16:41:16 +0530

Announced in the open court

on 13.07.2026

(Samar Vishal)
ASJ-02/ South District
Saket Courts, New Delhi/13.07.2026