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

CRIMINAL APPEAL NO. 340/2025

CNR NO. DLST01-0139142025
IN THE MATTER OF

Devi
W/o Sh. Balbir Singh
R/o H. No. C-314, Dakshinpuri
Dr. Ambedkar Nagar
New Delhi-110062

….Appellant

Versus

Kiran Devi
W/o Sh. Aanand Swaroop Arora
R/o G-1/87-88
Madangir, New Delhi-110062

…..... Respondent

DATE OF INSTITUTION	: 27.08.2025
DATE OF ARGUMENTS	: 04.02.2026
DATE OF PRONOUNCEMENT	: 13.03.2026
DECISION	: Dismissed

JUDGMENT

1. The present appeal is directed against the judgment dated 18.12.2024 passed by the learned Judicial Magistrate First Class–07 (NI Act), South District (hereinafter referred to as "the learned Trial Court"), whereby the respondent/accused Kiran Devi was acquitted of the offence

punishable under Section 138 of the Negotiable Instrument Act 1889, in a complaint instituted by the appellant/complainant Devi. The appellant, being aggrieved by the said judgment of acquittal, has preferred the present appeal assailing the findings recorded by the learned Trial Court.

2. The complaint out of which the present appeal arises was instituted by the complainant alleging the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The case set up by the complainant, in substance, is that the complainant and the accused were known to each other and shared cordial relations. It is alleged that the accused was engaged in business activities in the name and style of ABTOZ Trading (OPC) Pvt. Ltd. According to the complainant, sometime after the demonetisation policy implemented in November 2016, the business affairs of the accused allegedly suffered financial strain. It is stated that owing to such financial constraints, the accused approached the complainant in the month of October 2017 and requested financial assistance for the purposes of her business.

3. It is the case of the complainant that the accused sought a sum of Rs.7,00,000/- as a friendly loan, assuring the complainant that the said amount would be returned within a period of one to two months. The complainant asserts that, relying upon the assurance extended by the accused and considering the friendly relations subsisting between them, she advanced a sum of Rs.7,00,000/- to the accused as a friendly loan in October 2017. It is further alleged that after the lapse of approximately

three months, in January 2018, when the complainant approached the accused and demanded repayment of the said amount, the accused expressed her inability to repay the amount immediately and sought an additional period of three months to clear the liability.

4. The complainant further alleges that in April 2018, when she again approached the accused for repayment of the loan amount, the accused, in discharge of her alleged liability, issued the cheque in question in favour of the complainant for a sum of Rs.6,85,500/-, stating that the said cheque represented full and final settlement of the outstanding liability towards the complainant.

5. Upon presentation, the said cheque was returned unpaid by the banker of the accused with the endorsement ***“Funds Insufficient.”*** Following the dishonour of the cheque, the complainant caused to be issued a statutory demand notice calling upon the accused to make payment of the cheque amount within the period prescribed under Negotiable Instrument Act 1889. According to the complainant, despite service of the said notice, the accused failed to comply with the demand made therein and did not remit the cheque amount within the stipulated period. Consequently, the complainant instituted the present complaint under Section 138 of the Negotiable Instruments Act, 1881 before the learned Trial Court seeking prosecution of the accused.

6. The learned Trial Court, upon perusal of the complaint and the material accompanying it, took cognizance of the alleged offence on 18.10.2018 and issued summons to the accused Kiran Devi. Upon her appearance before the court, notice under Code of Criminal Procedure 1973, Section 251 Cr.P.C. came to be served upon the accused on 13.05.2019. In response thereto, the accused admitted that the cheque in question bore her signatures; however, she disputed the liability alleged by the complainant. The accused stated that the cheque had been issued merely as a security cheque and not towards discharge of any legally enforceable debt or liability. In the course of her response, the accused also stated that the complainant used to purchase goods from her ration business and that the cheque had been issued in that context. Though the explanation furnished by the accused was somewhat ambiguous in expression, it essentially conveyed the defence that the cheque had been handed over as a security instrument rather than as a negotiable instrument issued in discharge of a debt.

7. During the course of admission and denial of documents under Section 294 Cr.P.C., the accused admitted her signatures on the cheque in question as well as on the bank return memo evidencing dishonour of the cheque. However, she denied having received the statutory legal demand notice allegedly issued by the complainant.

8. In order to substantiate the allegations made in the complaint, the complainant examined herself as CW-1 and reiterated the contents of the

complaint in her testimony. After the conclusion of the complainant's evidence, the incriminating circumstances appearing against the accused were put to her in her statement recorded under Section 313 Cr.P.C. In her statement, the accused admitted that the cheque in question bore her signatures, but she stated that the other particulars on the cheque were not filled in by her. According to the accused, the cheque had been handed over to the complainant as a blank signed security cheque.

9. The accused further stated that she had been running a business in the name and style of Abtoz Trading (OPC) Pvt. Ltd., dealing in electronic goods, ration items, motorcycles and other merchandise, and that the complainant used to purchase goods from her establishment. She further asserted that the complainant had been assisting her in procuring clients for her business and had requested the issuance of a security cheque in that regard. It was in this context, according to the accused, that the cheque in question had been handed over to the complainant in the year 2017. The accused further stated that her company had subsequently been shut down in the same year and categorically denied having taken any loan whatsoever from the complainant.

10. Despite raising the aforesaid defence, the accused did not lead any evidence in her defence. Upon completion of the trial and after hearing the arguments advanced on behalf of both sides, the learned Trial Court proceeded to appreciate the evidence available on record. Upon such

consideration, the learned Trial Court passed the impugned judgment whereby the accused was acquitted of the offence alleged against her under Section 138 of the Negotiable Instruments Act, 1881. Being dissatisfied with the findings recorded by the learned Trial Court and the consequent acquittal of the accused, the complainant has preferred the present appeal assailing the correctness and legality of the said judgment.

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, it is evident that the learned Trial Court proceeded to acquit the accused upon an appreciation of the defence set up by her and the inconsistencies emerging from the evidence of the complainant. The principal defence raised by the accused was that the cheque in question had not been issued in discharge of any legally enforceable debt or liability but had been handed over merely as a security cheque in connection with certain financial dealings between the parties. In this regard, the learned Trial Court noted that during her cross-examination the complainant admitted that the accused was running an NGO and that she had made certain investments in the said organisation while working with it. The complainant further admitted that her sisters, husband and other persons associated with the organisation had also invested certain amounts in the said NGO. These admissions, as rightly observed by the learned Trial Court, clearly indicate that there existed prior monetary transactions and financial dealings between the parties,

thereby lending some degree of plausibility to the defence set up by the accused.

16. The learned Trial Court also took note of certain material inconsistencies which surfaced during the cross-examination of the complainant. At one stage of her testimony, the complainant deposed that the alleged friendly loan had been advanced in the presence of Lalita and Laxmi. However, in her subsequent cross-examination, she stated that the said loan had been given in the presence of Laxmi and her husband, and that no other person was present at the time of the transaction. Such variations in the version of the complainant with regard to the presence of witnesses at the time of the alleged loan transaction were considered by the learned Trial Court as casting a shadow of doubt on the veracity of the complainant’s account.

17. The learned Trial Court further observed that the complainant had also not remained consistent regarding the circumstances in which the cheque in question was issued. During her earlier cross-examination, the complainant stated that the cheque for an amount of Rs.6,85,000/- had been issued on the assurance of the accused that the remaining amount would be paid later. However, during her further cross-examination, the complainant voluntarily stated that the cheque amount was reduced to Rs.6,85,000/- because the accused had already paid Rs.15,000/- in cash. The learned Trial Court considered these variations in the testimony of

the complainant as reflecting a lack of consistency in the narrative put forward by her.

18. Another circumstance which weighed with the learned Trial Court was the assertion made by the complainant during cross-examination that a promissory note had been executed at the time when the alleged friendly loan was advanced to the accused. Despite such assertion, the complainant failed to produce the said promissory note before the Court. The learned Trial Court observed that the alleged promissory note constituted a material piece of documentary evidence which could have lent support to the complainant's version regarding the existence of a loan transaction. The failure of the complainant to place the said document on record was therefore considered to be a circumstance creating doubt regarding the genuineness of the alleged loan transaction.

19. The learned Trial Court also took into account the financial capacity of the complainant to advance a loan of such magnitude. During her cross-examination, the complainant admitted that out of the total amount of Rs.7,00,000/-, a sum of Rs.1,50,000/- had been arranged by her and the remaining amount had been borrowed by her from her sisters. The learned Trial Court observed that the complainant had not produced her sisters as witnesses to corroborate her version that they had advanced money to her for the purpose of lending the same to the accused. The absence of such supporting evidence, coupled with the admission that the

complainant herself did not possess the entire amount, was considered by the learned Trial Court as raising doubts regarding the financial capacity of the complainant to advance the alleged loan.

20. While examining the case in the light of the statutory framework governing offences under Section 138 of the Negotiable Instruments Act, the learned Trial Court noted that Section 139 of the Act raises a presumption in favour of the holder of the cheque that the same was issued for the discharge of a legally enforceable debt or liability. However, the learned Trial Court correctly observed that such presumption is rebuttable in nature, and the accused is only required to rebut the same on the standard of preponderance of probabilities. In other words, if the accused is able to raise a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the statutory presumption may stand rebutted.

21. In the present case, the learned Trial Court found that although the accused did not lead any defence evidence, the inconsistencies and contradictions emerging from the testimony of the complainant herself were sufficient to create a reasonable doubt regarding the existence of a legally enforceable liability. The learned Trial Court therefore held that the defence raised by the accused had successfully created a probable doubt regarding the transaction alleged by the complainant, thereby rebutting the presumption under Section 139 of the Act on the scale of

preponderance of probabilities.

22. Consequently, the learned Trial Court came to the conclusion that the complainant had failed to establish her case beyond reasonable doubt and that the benefit of such doubt must necessarily enure to the accused. On these grounds, the learned Trial Court proceeded to record a finding of acquittal in favour of the accused.

23. It is well settled, as expounded by the Hon'ble Supreme Court in ***Basalingappa v. Mudibasappa (supra)***, that the accused is required to rebut the statutory presumption under Section 139 of the Negotiable Instruments Act only on the touchstone of preponderance of probabilities. The burden cast upon the accused is evidentiary and not persuasive. In the present case, through the cross-examination of the complainant, the surrounding circumstances, and the documentary material brought on record, the accused has succeeded in raising a probable defence sufficient to rebut the statutory presumption.

24. I am also mindful of the parameters governing appellate interference with an order of acquittal as enunciated by the Hon'ble Supreme Court in ***Chandrappa v. State of Karnataka (supra)***. An appellate court ought not to disturb an order of acquittal merely because another view is possible. The double presumption of innocence—firstly, the fundamental presumption of innocence, and secondly, the reinforced

presumption arising from the order of acquittal—operates in favour of the accused. Unless the findings of the trial court are shown to be perverse, manifestly illegal, or wholly unsupported by evidence, interference by the appellate court would be unwarranted.

25. In the present case, upon a careful re-appreciation of the evidence on record, I find myself in complete agreement with the reasoning adopted by the learned Trial Court while arriving at the conclusion to acquit the accused. The impugned judgment demonstrates that the learned Trial Court has carefully examined the material available on record and has assigned cogent reasons for disbelieving the version put forth by the complainant.

26. The case of the complainant primarily rests upon the statutory presumptions available in her favour under Sections 118(a) and 139 of the Negotiable Instrument Act 1889. Beyond the invocation of these presumptions, the complainant has not been able to place any independent or corroborative material on record to firmly establish the existence of a legally enforceable debt or liability. On the contrary, as rightly observed by the learned Trial Court, the cross-examination of the complainant has revealed several infirmities and inconsistencies which substantially undermine the credibility of the narrative presented by her. The contradictions elicited during cross-examination have created serious doubts regarding the manner in which the alleged loan transaction was

said to have taken place.

27. One of the significant circumstances which weakens the complainant's case is her assertion that a promissory note had been executed at the time when the alleged loan transaction was entered into. Despite such categorical assertion, the complainant failed to produce the said promissory note before the Court. The non-production of such a material document, which could have served as direct corroboration of the alleged transaction, assumes considerable significance and lends support to the doubts entertained by the learned Trial Court regarding the genuineness of the complainant's version.

28. Further, the testimony of the complainant also suffers from material contradictions with regard to the circumstances surrounding the issuance of the cheque in question. At one stage of her deposition, the complainant stated that the cheque for a sum of Rs.6,85,000/- was issued because the accused was not financially capable of issuing a cheque for the entire loan amount. However, at another stage of her cross-examination, she stated that the cheque amount was fixed at Rs. 6,85,000/- because the accused had already paid Rs.15,000/- in cash. Such contradictory explanations regarding the determination of the cheque amount create serious doubts about the veracity and consistency of the complainant's account.

29. The learned Trial Court has also rightly expressed doubt regarding the financial capacity of the complainant to advance the alleged loan amount of Rs.7,00,000/-. The complainant herself admitted during cross-examination that she had arranged only a part of the amount and had borrowed the remaining sum from her sisters. However, none of the said persons were examined as witnesses to corroborate the complainant's assertion that they had provided funds for the purpose of advancing the loan. The absence of such corroborative evidence further weakens the case of the complainant and raises legitimate doubts regarding the existence of the alleged transaction.

30. It is also noteworthy that the defence raised by the accused, though not supported by independent defence evidence, has been sufficiently probabilised through the circumstances emerging from the complainant's own testimony. As repeatedly emphasised by the Hon'ble Supreme Court in ***Basalingappa v. Mudibasappa (supra)***, the accused is not required to prove his defence beyond reasonable doubt and may rebut the statutory presumption merely by raising a probable defence on the standard of preponderance of probabilities. In the present case, the inconsistencies and gaps in the complainant's evidence themselves provide sufficient material to create a reasonable doubt regarding the existence of a legally enforceable debt or liability.

31. In these circumstances, I do not find any infirmity in the

conclusion arrived at by the learned Trial Court. The reasoning adopted by the learned Trial Court appears cogent and well founded, and the appreciation of evidence does not suffer from any perversity or manifest illegality. The accused has succeeded in rebutting the statutory presumptions arising under Sections 118(a) and 139 of the Negotiable Instrument Act 1889 by raising a probable defence, whereas the complainant has failed to establish her case with the degree of certainty required in a prosecution under Section 138 of the said Act.

32. In view of the foregoing discussion, the acquittal recorded by the learned Trial Court stands fortified both on facts and in law. The judgment under challenge does not call for any interference by this Court in exercise of its appellate jurisdiction.

33. Consequently, the present appeal is found to be devoid of merit and is hereby dismissed. The judgment of acquittal dated 10.06.2025 passed by the learned Trial Court, which is under challenge in the present appeal, is hereby affirmed. Ordered accordingly.

Announced in the open court
on 13.03.2026

(Samar Vishal)
ASJ-02/ South District
Saket Courts, Delhi/13.03.2026