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

CRIMINAL APPEAL NO. 379/2025

CNR NO. DLST01-014571-2025
IN THE MATTER OF

Murari Lal Mittal
S/o Sh. Shivji Lal
R/o H. No. 705-L/6A, Ward no.6
Mehrauli, New Delhi-110030

….Appellant

Versus

1. State
2. Satish Kumar

S/o Sh. Ram Narain
R/o H. No. 43/9, Kishangarh,
Vasant Kunj, New Delhi-110070

…..... Respondents

DATE OF INSTITUTION	: 12.09.2025
DATE OF ARGUMENTS	: 03.02.2026
DATE OF PRONOUNCEMENT	: 10.03.2026
DECISION	: Dismissed

JUDGMENT

1. The present appeal is directed against the judgment dated 10.06.2025 passed by the learned Judicial Magistrate First Class-01 (NI Act), South District (hereinafter referred to as "the learned Trial Court"), whereby the respondent/accused Satish Kumar came to be acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, in a complaint instituted by the appellant/complainant Murari Lal Mittal.

2. The complaint out of which the present appeal arises was instituted 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/respondent represented himself to be the owner of Plot No. A-27, Shanti Kunj, Vasant Kunj, New Delhi, and agreed to sell the said property to the complainant for a total sale consideration of Rs. 60,00,000/- (Rupees Sixty Lakhs only). It is alleged that acting upon such representation and agreement, the complainant paid the entire sale consideration of Rs. 60 lakhs to the accused/respondent in the following manner:–

S.No.	Date	Amount	To Whom
1.	23.09.2016	12,00,000/-	Raj Kumar Tomar
2.	30.09.2016	10,00,000/-	Naresh Kumar

3.	05.10.2016	9,00,000/-	Accused
4.	07.10.2016	5,00,000/-	Accused
5.	14.10.2016	2,00,000/-	Accused
6.		22,00,000/-	Cash to the accused

3. These payments are stated to have been duly acknowledged by the accused by way of an affidavit exhibited as Ex. CW1/1. It is, however, pertinent to note that the said exhibit does not bear the signatures of the learned Trial Court Judge. Be that as it may, according to the complainant, the accused thereafter expressed his inability to execute the formal sale deed in respect of the aforesaid plot on the ground that the property stood in the name of his mother. In these circumstances, the accused is alleged to have agreed to refund the entire sum of Rs. 60,00,000/- received from the complainant, which understanding was recorded in the aforesaid affidavit.

4. It is further the case of the complainant that in order to discharge the aforesaid liability, the accused issued the cheque in question for a sum of Rs. 60,00,000/- in favour of the complainant. Upon presentation, the said cheque was dishonoured by the bank 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. As the accused allegedly failed to comply with the demand made in the said notice, the complainant was constrained to institute the present complaint under Section 138 of the Negotiable Instruments Act, 1881 before the learned Trial Court.

5. The learned Trial Court took cognizance of the offence on 03.12.2021 and summoned the accused Satish Kumar. Thereafter, on 13.10.2022, notice under Section 251 of the Code of Criminal Procedure was served upon the accused. In response thereto, the accused admitted that the cheque in question bears his signatures, though he stated that the remaining particulars on the cheque were not filled in his handwriting.

6. The accused further stated that he had taken a loan of Rs. 16,00,000/- from the complainant through electronic modes approximately five to six years prior to the institution of the complaint for his personal requirements, allegedly on interest at the rate of 1% per month. According to him, he had proposed to repay the said amount along with interest at the rate of 0.5% per month, though no formal agreement was executed between the parties in this regard. He also stated that, till date, he has not repaid any amount to the complainant.

7. The accused further stated that the complainant had transferred Rs. 10,00,000/- into the bank account of one Mr. Raj Kumar and Rs. 12,00,000/- into the bank account of Mr. Naresh Kumar, both of whom were known to him. According to the accused, these transfers were made

at the request of the complainant as the complainant allegedly required the said amounts in cash. It was further stated that the bank details of the said persons had been provided by him to the complainant, that the amounts were withdrawn from their respective accounts, and that the cash so withdrawn was handed over to the complainant, purportedly for certain personal transactions of the complainant, the details of which were not disclosed to him.

8. During the course of admission and denial of documents under Section 294 Cr.P.C., the accused admitted his signatures on the cheque in question as well as on the bank return memo.

9. In order to substantiate his case, the complainant examined himself as CW-1. 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 statement, the accused stated that he had agreed to sell Plot No. A-27, Shanti Kunj, Vasant Kunj, New Delhi to the complainant for a sale consideration of Rs. 60,00,000/-. According to him, he had received only Rs. 50,00,000/- from the complainant and had assured the complainant that he would repay Rs. 60,00,000/-. The accused, however, asserted that there was in fact no finalised transaction of sale of the aforesaid plot between the parties.

10. The accused further denied the execution of the affidavit Ex. CW1/1. He stated that he had handed over the cheque in question to the

complainant as a blank signed cheque sometime in the year 2020–2021. While admitting that the return memo Ex. CW1/4 correctly reflects the dishonour of the cheque, the accused stated that the complainant had not informed him prior to presenting the cheque for encashment. The accused further admitted that he had received the legal demand notice Ex. CW1/6, to which he had sent a reply. He also stated that the complainant had filed a complaint against him and that in the said proceedings he had maintained that the complainant was harassing him and that he had received only Rs. 50,00,000/- from the complainant. The accused further stated that he had already repaid Rs. 22,00,000/- to the complainant and expressed his willingness to pay the remaining amount.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. Turning now to the judgment under challenge, the learned Trial Court referred to the decision of the Hon'ble Supreme Court of India in ***Kusum Ingots & Alloys Ltd. and Others vs. Pennar Peterson Securities Ltd. and Others, (2000) 2 SCC 745***, wherein the essential ingredients

required to constitute an offence under Section 138 of the Negotiable Instruments Act, 1881 were enumerated. The learned Trial Court first delineated the statutory requirements which must be satisfied for attracting penal liability under the said provision.

17. The learned Trial Court noted that, in the present case, the issuance of the cheque in question by the accused was not in dispute. The accused had admitted his signatures on the cheque. In such circumstances, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act, 1881 come into operation. Section 118(a) of the Act raises a presumption that every negotiable instrument was made or drawn for consideration. Section 139 of the Act further mandates a presumption that the holder of the cheque received the same for the discharge, in whole or in part, of a legally enforceable debt or liability.

18. The learned Trial Court observed that the presumption under Section 139 of the Negotiable Instruments Act is a rebuttable presumption and that the burden lies upon the accused to raise a probable defence to rebut the same. It was noted that the combined effect of Sections 118(a) and 139 of the Act is that once the execution of the cheque is admitted, a mandatory presumption arises that the cheque was drawn for consideration and issued in discharge of a legally enforceable debt or liability, both provisions employing the expression "shall". The Court further held that the accused is not required to rebut this

presumption beyond reasonable doubt, but only on the standard of preponderance of probabilities, which may be established either through evidence led by the accused or from the material and surrounding circumstances appearing in the complainant’s case. Applying these principles, the learned Trial Court held that although the statutory presumptions stood attracted upon the admission of the accused’s signatures on the cheque, the accused had ultimately succeeded in rebutting the said presumptions by raising a probable defence on the basis of the evidence available on record.

19. The learned Trial Court proceeded to acquit the accused, inter alia, on the ground that in the complaint the complainant had stated that he had paid a sum of Rs. 60,00,000/- to the accused through the various payments tabulated earlier. However, during his cross-examination, the complainant stated that he had in fact paid only Rs. 50,00,000/- to the accused and that the accused had assured him that he would repay Rs. 60,00,000/-. According to the learned Trial Court, if the complainant had actually paid only Rs. 50,00,000/-, the basis of the calculation reflected in the payment details showing Rs. 60,00,000/- becomes doubtful, thereby casting a shadow upon the veracity of the complainant’s version.

20. The learned Trial Court further noted certain inconsistencies in the complainant’s version regarding the time of the transaction. It was observed that the money was allegedly advanced in the year 2016,

whereas during cross-examination the complainant made statements suggesting that the transaction had taken place around the year 2021. The learned Trial Court also observed that the complainant had not produced any independent material on record to substantiate the alleged property transaction.

21. The learned Trial Court also took note of the affidavit Ex. CW1/1, and observed that the said document does not make any reference to an agreement for the sale of the plot. On the contrary, the document appears to describe the amount of Rs. 60,00,000/- as a loan allegedly received by the accused. On the basis of these circumstances, the learned Trial Court formed the view that the defence raised by the accused was sufficiently probable to rebut the statutory presumptions under the Act.

22. 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.

23. 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.

24. In the present case, so far as the complainant is concerned, it becomes evident that the foundation of the alleged legal liability is not clearly established. The complainant has asserted that he paid a sum of Rs.60,00,000/- to the accused towards the purchase of a plot. However, the payment table relied upon by the complainant itself indicates that the entire consideration did not flow directly from the complainant to the accused. In fact, Rs.12,00,000/- is shown to have been paid to Raj Kumar Tomar, and Rs.10,00,000/- to Naresh Kumar. The identity and role of these persons in the alleged transaction remain unexplained. Neither of them has been examined as witnesses to substantiate that the amounts paid to them were connected with the transaction pleaded by the complainant.

25. Secondly, the complainant himself has taken inconsistent stands.

In the complaint, he asserted that he had paid Rs.60,00,000/- to the accused as sale consideration. However, in his evidence he stated that he had paid only Rs.50,00,000/- to the accused. During cross-examination, he further stated that he had paid Rs.50,00,000/- and that the accused had issued a cheque of Rs.60,00,000/- after a settlement allegedly arrived at in June 2021. These shifting versions render the complainant's case uncertain and cast doubt upon the very basis of the alleged liability.

26. Thirdly, the payments are stated to have been made in the year 2016, whereas in his cross-examination the complainant admitted that the deal relating to the sale of the plot took place in 2021. The considerable time gap between the alleged payments and the purported transaction further introduces uncertainty into the complainant's version.

27. It is also noteworthy that the accused himself has not maintained a consistent stand. At the stage of framing of notice under Section 251 Cr.P.C., the accused stated that he had taken a loan of Rs.16,00,000/- from the complainant and had not repaid the same. However, in his statement under Section 313 Cr.P.C., he stated that he had taken Rs.50,00,000/- from the complainant and had promised to repay Rs.60,00,000/-. These contradictions indicate that neither side has placed a wholly consistent narrative before the Court. Nevertheless, since the burden of proving the legally enforceable liability lies upon the complainant, the inherent inconsistencies and lacunae in his case assume

greater significance. In such circumstances, it becomes difficult to repose complete confidence in the complainant's version.

28. In view of the foregoing discussion, the acquittal recorded by the learned Trial Court stands fortified both on facts and in law. The reasoning adopted by the learned Trial Court appears cogent, the appreciation of evidence is judicious, and no perversity, illegality, or miscarriage of justice is discernible. The accused has succeeded in rebutting the statutory presumptions by raising a probable defence, whereas the complainant has failed to establish the existence of a legally enforceable debt with the degree of certainty required in a prosecution under Section 138 of the Negotiable Instruments Act.

29. Consequently, the present appeal is 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 affirmed. Ordered accordingly.

Samar vishal

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Date: 2026.03.10 16:22:10 +0530

Announced in the open court
on 10.03.2026

(Samar Vishal)
ASJ-02/ South District
Saket Courts, Delhi/10.03.2026