

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

CRIMINAL APPEAL NO. 384/2025

CNR NO. DLST01-0147542025

IN THE MATTER OF

Arun Malhotra
S/o Late Sh. K L Malhotra
R/o A-153, Anupam Garden
Sainik Farms, New Delhi-110062

....Appellant

Versus

Kuldeep Singh
S/o Sh. Jaswant Singh
R/o H. No. A-34, South Extension-I
New Delhi

..... Respondent

DATE OF INSTITUTION	: 12.09.2025
DATE OF ARGUMENTS	: 20.01.2026
DATE OF PRONOUNCEMENT	: 24.02.2026
DECISION	: Allowed

JUDGMENT

1. The present appeal is directed against the judgment dated 27.08.2024 passed by the learned Judicial Magistrate First Class (NI Act-08), South District(herein after referred to as the trial court), whereby the respondent/accused Kuldeep Singh was acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, in the complaint instituted by the appellant/complainant Arun Malhotra.

2. The case of the complainant, as set out in the complaint, is that the complainant and the accused were known to each other for several years. On 08.05.2015, the accused/respondent, for the purpose of urgent business requirement took a loan of Rs.92 lacs from the complainant/appellant and agreed to repay the same within two weeks.

3. When the respondent/accused did not pay the money back, the complainant/appellant issued a demand notice dated 27.04.2016 demanding complete payment of Rs.92 lacs along with interest of 24% per annum.

4. On receiving the notice, accused approached the complainant for amicable settlement and to repay the loan in instalments. The accused in order to pay the first instalment of Rs.10 lacs, issued the cheque in question dated 05.07.2016 which was dishonoured and returned unpaid by the bank with the remarks 'funds insufficient', leading to initiation of

present proceedings under Section 138 of the Negotiable Instruments Act.

5. Ld. Trial Court took cognizance of the offence under section 138 of the NI Act on 27.08.2016 and summoned the accused. Notice under Section 251 CrPC was framed on 23.11.2016, to which the accused pleaded not guilty and claimed trial. In his defence, the accused stated that he had borrowed Rs.25 lacs from the complainant in cash in January 2014 @ 30% interest per day for a period of 05 days. The complainant had taken 05 cheques for Rs.10 lacs, Rs.25 lacs, Rs.30 lacs etc from him, totalling to Rs.1 crores on the same day with different dates. The cheque in question is one of the cheques given to the complainant. He further stated that he has only signed the cheque in question and filled the amount in words and figures. The remaining contents of the cheque in question were not filled up by him. He further stated in his defence that he had repaid the entire loan amount with interest in two instalments of Rs.15 lacs and Rs.4 lacs respectively and payment of Rs.6 lacs was made earlier in cash. He admitted having received the legal notice of demand.

6. In order to prove his case the complainant examined himself as CW-1. After the complainant's evidence, accused was examined under section 313 Cr.P.C. He admitted his signatures on the cheque stating that the other particulars were not filled by him. He had cleared all his dues. He admitted having received the legal notice but stated that the complainant, told to him that it was mistakenly sent. After notice, he had

not made any payment as he had cleared all his dues prior to the notice. It is alleged by him that he had already made all the payments to the complainant and it is so recorded in the civil suit of recovery. The accused has examined two witnesses in his support to show the repayment of loan in presence of these witnesses which was allegedly taken by him.

7. The learned Trial Court, upon appreciation of evidence, recorded an order of acquittal. Regarding the presumption under section 139 and section 118 of the Negotiable Instruments Act, the Ld. Trial Court noted that in this case, presentation and dishonour of cheque in question are not in dispute, in as much as the same have been duly proved on the basis of cogent evidence as well as admitted by the accused. The signature on the cheque in question Ex.CW1/2 is admitted by the accused. The aforesaid cheque in question was returned vide return memo bearing Ex.CW1/3. The legal notice bearing Ex.CW1/4 was sent to the accused vide postal receipt Ex.CW1/5. The tracking receipt Ex.CW1/6 indicates '*item booked*'. The address mentioned on the legal demand notice and the address mentioned on the bail bond furnished by the accused is the same address. Thus, the presumption under Section 27 of General Clauses Act can be raised that the legal notice was received by the accused in view of the law laid down in *C.C. Alavi Haji Vs. Palapetty Muhammed and Anr.* The trial court rejected the plea of the accused regarding the non receipt of the legal notice as being inconsequential. It is further noted by Ld. Trial Court on the basis on the basis of presumptions under sections 139

and 118 NI Act that the cheque in question was for a legally recoverable debt/liability stand activated. It seems that there was no need for the observation by the trial court regarding the service of notice, because the service was admitted by the accused in the present case during the framing of notice under section 251 CrPC as well as in his statement under section 313 CrPC.

8. Regarding the discharge of onus by the accused, Ld. Trial Court noted that the burden to disprove the existence of legal liability is upon the accused. This may be done by poking holes in the case of the complainant or by leading positive evidence in defence. As far as the defence evidence is concerned, the accused had examined two witness DW-1 Mohit Suri and DW-2 Rohit Gudwani. DW1 stated that that he was present, when the accused had made payment of Rs.6 lacs to the complainant for a prior financial transaction between them. DW2 has stated that a cash payment of Rs.4 lacs was made to the complainant by the accused in his presence. Although, there is some discrepancy in the version of DW-2 but he is sure about the repayment made by accused in cash at the office of complainant.

9. It is further noted that the testimony of DW-1 and DW-2 suggests that accused had made payment to the complainant for an earlier financial transaction between them. Although, the witnesses are not conversant with the earlier financial transaction that took place between them, but it is clear from their testimonies that accused had paid his debt

which the complainant had never accepted. It is for the complainant to dent the testimonies of the defence witnesses, in which he was not successful.

10. The Ld. Trial Court further noted that it is further noted that it is the case of the complainant that he had lend an amount of Rs.92 lacs to the accused. No written agreement was executed between the parties, the said amount was not shown in the ITR by the complainant and no witnesses were present when the amount was received by the accused. It is stated by the complainant as CW1 that he borrowed the said amount from his family members, however, no witnesses had appeared on behalf of the complainant to testify the same. It is quite impossible for any reasonable man to advance such huge amount to anyone without any agreement, security and in absence of witnesses. Thus, by way of cross examination of complainant and leading his defence, accused has been able to dilute the credibility of complainant's testimony and has been able to raise probable doubts over the averments of complainant.

11. On the basis of the aforesaid discussion, the learned Trial Court held that the accused had been able to raise a probable defence and rebut the statutory presumption under Section 139 of the Negotiable Instruments Act and accordingly acquitted the accused.

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 facts and evidence on record.

14. While exercising appellate jurisdiction against an order of acquittal, I am conscious of the settled position that the appellate court possesses full power to re-appreciate the entire evidence on record; however, such power is to be exercised with circumspection, particularly where the trial court has taken a plausible view based on the evidence available. The role of the appellate court is not to substitute its own view merely because another view is possible, but to ascertain whether the view taken by the trial court suffers from perversity, misapplication of law, or patent misreading of material evidence.

15. In the conspectus of the entire evidence and the legal position governing prosecutions under Section 138 of the Negotiable Instruments Act 1881, I find that the complainant's case rests predominantly upon statutory presumptions without adequate substantive foundation. There are number of shortcomings in the case of the complainant, the first and

foremost among them relates to the complainant's failure to establish his financial capacity to advance a friendly loan of Rs. 92,00,000/- in cash. Though the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act 1881 stood activated upon admission of the cheque and its dishonour, the respondent specifically challenged the appellant's financial wherewithal. In cross-examination, the complainant admitted that he maintained books of account for cash transactions and payments through cheque and RTGS, yet no such books were produced. No income tax returns, bank statements, or financial records were placed on record to demonstrate source and availability of such a substantial sum. When financial capacity is specifically questioned, the complainant is expected to furnish at least some credible material to substantiate the source of funds. The absence of such proof legitimately weakens the prosecution's case.

16. The second ground concerns the inherently doubtful nature of the alleged cash transaction of Rs.92 lakhs. It is not a small or routine friendly loan but a substantial amount, allegedly disbursed without any written agreement, promissory note, receipt, acknowledgment, or independent witness. While the law does not mandate written documentation in every transaction under Section 138 proceedings, prudence and probability assume importance where the amount involved is enormous. The absence of even minimal safeguards that could have been adopted by the complainant, but has not so done, renders the

complainant's version less credible, particularly when the defence has raised a plausible challenge.

17. The third ground pertains to the dismissal of the civil suit filed by the complainant for recovery of the same amount. The complainant admitted that the civil court dismissed the recovery proceedings observing that the transaction involved unaccounted money and that courts cannot facilitate enforcement of illegal or black money transactions. Although findings in civil proceedings are not binding in criminal prosecution, however, they constitute a relevant circumstance in assessing the probability and legitimacy of the underlying debt. After all, the civil case is decided on the basis of preponderance of probabilities and it is clear that the complainant was not even able to prove his case on that standard before the civil court.

18. The fourth shortcoming relates to the non-production of the alleged "*kachi parchi*" or informal records admittedly maintained by the complainant. Having conceded that such records were kept, the complainant's failure to produce it invites an adverse inference. When documentary evidence is within the special knowledge of a party and is withheld without explanation, it diminishes the evidentiary value of that party's oral assertions.

19. The fifth shortcoming arises from the conspicuous silence regarding the remaining Rs.82,00,000/- and the agreed interest at 24% per annum. The cheque in question pertains only to Rs.10,00,000/- out of

the alleged Rs.92 lakhs. The complaint and evidence do not clarify what steps were taken to recover the remaining principal or interest, nor whether the complainant abandoned such claim. This unexplained gap erodes the coherence and consistency of the complainant's narrative.

20. The sixth shortcoming concerns the defence version of repayment and alternate purpose of the cheque. The accused has consistently maintained that he had borrowed Rs.25 lakhs and repaid the same in cash, and that the cheque in question may have been issued in connection with prior dealings or as security. Through cross-examination and defence witnesses, he has raised a probable defence as the accused is required only to rebut the presumption on the standard of preponderance of probabilities. Once such probability is established, the burden shifts back to the complainant to prove the debt beyond reasonable doubt, which has not been satisfactorily done in the present case.

21. In this case the learned Trial Court has taken a view that is reasonable and supported by evidence. As enunciated in *Chandrappa vs State of Karnataka (supra)*, an appellate court should not interfere with an acquittal merely because another view is possible. The double presumption of innocence operates in favour of the accused, and unless the findings are perverse or manifestly illegal, interference is unwarranted.

22. A criminal prosecution under Section 138 cannot become a mechanism to enforce doubtful, undocumented, or irregular cash

transactions of substantial magnitude. Courts have to be cautious that the penal provisions of the Negotiable Instruments Act are not used to sanctify transactions that are opaque, unaccounted, or lacking in basic evidentiary support. Equity does not favour a party who seeks criminal sanction without demonstrating transparency and credibility in his own dealings.

23. In view of this discussion, the acquittal recorded by the learned Trial Court stands fortified both in law and in equity. The reasoning is cogent, the appreciation of evidence is plausible, and no perversity or illegality is discernible. Consequently, the appeal merits dismissal and the impugned judgment of acquittal deserves affirmation.

24. The appeal is accordingly allowed and the judgement of acquittal dated 27.08.2024 under challenge in this appeal, is affirmed.

25. Order accordingly.

**Announced in the open court
on 24.02.2026**

**(Samar Vishal)
ASJ-02/ South District
Saket Courts, Delhi/24.02.2026**