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

<u>CRIMINAL APPEAL NO. 436/2025</u>

CNR NO. DLST01-0155752025
IN THE MATTER OF

Smt Meenu Rana
W/o Sh. Lokender Singh
R/o A2/176, Phase V
Aya Nagar, New Delhi-110017

….Appellant

Versus

1. State
2. Rajesh Jain
S/o Sh. D K Jain
R/o J-229, Saket
New Delhi

…..... Respondents

DATE OF INSTITUTION	: 24.09.2025
DATE OF ARGUMENTS	: 16.03.2026
DATE OF PRONOUNCEMENT	: 21.04.2026
DECISION	: Dismissed

<u>JUDGMENT</u>

1. The present appeal is directed against the judgment dated 14.01.2019 passed by the learned Metropolitan Magistrate-01 (NI Act), South District (hereinafter referred to as "the learned Trial Court"), whereby the respondent/accused, Rakesh Jain, 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, Meenu Rana.

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 in the month of February 2015, the accused approached the complainant seeking financial assistance of Rs.10,00,000/- for a period of six months. Owing to cordial relations between the parties, the complainant advanced a loan of Rs.10,00,000/- to the accused on 10.02.2015, out of which Rs. 4,00,000/- was paid through cheque and Rs. 6,00,000/- was paid in cash.

3. It is further the case of the complainant that despite repeated requests, the accused failed to repay the loan amount. Eventually, in March 2017, in purported discharge of part of his legally enforceable liability, the accused issued two cheques in favour of the complainant, each for an amount of Rs. 2,00,000/-, both dated 16.03.2017.

4. The complainant presented the aforesaid cheques for encashment in his bank. However, upon presentation, the said cheques were 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, compelling the complainant 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 30.05.2017 and summoned the accused, Rakesh Jain. Thereafter, on 03.01.2018, notice under Section 251 of the Code of Criminal Procedure was served upon the accused. In response thereto, the accused pleaded not guilty and claimed trial.

6. In his defence, the accused stated that he had never issued the cheques in question to the complainant. According to him, he had certain financial dealings with the husband of the complainant, namely Lokender Singh. He stated that approximately four years prior, Lokender Singh had advanced a loan of Rs.4,00,000/- to him from the account of the complainant, at an interest rate of 5% per month. The accused further claimed that the said loan, along with interest, had already been repaid by him to Lokender Singh through various cash instalments, though no receipts were obtained in this regard.

7. It was further stated that the cheques in question had been handed over as security to Lokender Singh at the time of taking the aforesaid loan of Rs.4,00,000/-, and despite repeated requests, the said cheques were not returned. The accused also claimed that he had initiated legal proceedings against Lokender Singh in this regard, but the same were unsuccessful. He denied having received the legal demand notice.

However, he admitted that the cheques bear his signatures, while stating that the remaining particulars on the cheques were not filled in by him.

8. In order to prove her case, the complainant examined herself as CW-1. On the other hand, the accused examined four witnesses in his defence. Three of the said witnesses were formal in nature, being police officials, and one witness, namely an Ahlmad from the court of the learned Additional Chief Metropolitan Magistrate, South, Saket, was examined to prove the record of a complaint case allegedly filed by the accused.

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 stated that he did not know the complainant and had seen her for the first time during the trial of the present case. He denied having taken any loan of Rs.10,00,000/- from the complainant and reiterated his defence that he had taken a loan of Rs.4,00,000/- from the husband of the complainant, which he had already repaid in cash.

10. He further denied his signatures on the receipt Ex. CW1/A. However, with respect to the cheques in question, the accused admitted his signatures but stated that the same were handed over to the husband of the complainant as security at the time of taking the said loan.

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, while acquitting the accused, noted at the outset that the issuance of the cheques in question and the signatures thereon were not disputed by the accused. Accordingly, a statutory presumption under Section 118 read with Section 139 of the Negotiable Instruments Act, 1881 arose in favour of the complainant to the effect that the cheques were issued for consideration and in discharge of a legally enforceable debt or liability. The dishonour of the cheques was also not disputed by the accused.

17. One of the defences raised by the accused was that he had not received the statutory legal demand notice. However, upon appreciation of the material on record, the learned Trial Court held that the legal notice (Ex. CW1/E) stood duly served upon the accused.

18. The principal defence of the accused, as noted by the learned Trial Court, was that he had taken a loan of Rs.4,00,000/- from the husband of the complainant, namely Lokender Singh, in the year 2014, which was

advanced through a cheque drawn from the account of the complainant, and that the said loan had already been repaid.

19. The learned Trial Court further examined the testimony of the complainant (CW-1) and found material inconsistencies therein. During her cross-examination, the complainant stated that the sum of Rs. 10,00,000/- allegedly advanced to the accused had been received by her from her sister, Shila, in cash. She further deposed that out of the said amount, Rs.4,00,000/- was deposited in her bank account and the remaining Rs. 6,00,000/- was retained by her in cash.

20. However, as per the bank statement of the complainant (Ex. CW1/B), an amount of Rs. 5,00,000/- was deposited in her account on 03.02.2015 through cheque bearing No. 834052. The learned Trial Court noted that not only was there a discrepancy in the amount allegedly deposited, but the very version of the complainant regarding receipt of Rs. 10,00,000/- in cash stood contradicted by documentary evidence, which reflected deposit through a cheque and not in cash. The Court, therefore, held that the complainant had failed to explain the source of funds satisfactorily and had not approached the Court with clean hands.

21. The learned Trial Court also observed that the alleged loan was advanced in February 2015, whereas the cheques in question were issued in March 2017. No explanation was forthcoming from the complainant as

to why no steps were taken for recovery of the loan amount during this intervening period. Further, while the alleged loan amount was Rs. 10,00,000/-, the aggregate value of the cheques in question was only Rs. 4,00,000/-. The Court found no justification for the complainant accepting cheques for an amount less than half of the alleged loan, that too after a lapse of nearly two years.

22. It was further noted that the accused had placed on record police complaints dated 30.03.2015 and 29.04.2015 (Ex. DW3/6 and Ex. DW3/3), lodged against various persons including the husband of the complainant, alleging harassment and threats by money lenders despite repayment of loans. From these documents, the learned Trial Court inferred that the relations between the parties had become strained, making it improbable that the accused would voluntarily issue cheques to the complainant in the year 2017.

23. In the aforesaid circumstances, the learned Trial Court found the defence of the accused to be probable and observed that it was likely that the cheques in question were already in the custody of the complainant or her husband and were subsequently misused after deterioration of relations between the parties.

24. The learned Trial Court also considered the receipt (Ex. CW1/A), purportedly executed by the accused acknowledging a loan of Rs.

10,00,000/-. The accused denied his signatures on the said document. The Court held that the burden was upon the complainant to prove the due execution of the receipt. However, during cross-examination, the complainant admitted that the document might have been prepared by her husband and that she had no knowledge regarding its execution. In these circumstances, it was incumbent upon the complainant to examine her husband as a witness to prove the document. Since no such evidence was led, the learned Trial Court held that Ex. CW1/A had not been proved in accordance with law.

25. On the basis of the aforesaid findings, the learned Trial Court concluded that the complainant had failed to establish the ingredients of the offence under Section 138 of the Negotiable Instruments Act by leading cogent and reliable evidence, and that the accused had successfully rebutted the statutory presumption arising against him. Consequently, the accused was acquitted.

26. The primary grounds of appeal, as urged on behalf of the appellant/complainant, are that the learned Trial Court failed to properly appreciate the material and evidence available on record. It is contended that the accused has himself admitted having financial transactions with the husband of the complainant and has also admitted having taken a loan of Rs.4,00,000/-. In these circumstances, it is argued that the finding of acquittal is unjustified and contrary to the evidence on record.

27. It is further contended that the complainant had specifically pleaded in the complaint that the cheques in question were issued towards part discharge of the liability. Therefore, it is submitted that even if the entire loan amount is not reflected in the cheques, the same would not absolve the accused of liability under Section 138 of the Negotiable Instruments Act, 1881. On these grounds, it is urged that the impugned judgment of acquittal is liable to be set aside.

28. I have undertaken an independent re-appreciation of the entire evidence on record in light of the grounds urged in the appeal and finds myself in agreement with the reasoning and conclusions arrived at by the learned Trial Court. The acquittal is founded on multiple grounds, each of which stands supported by the material on record and does not warrant interference.

29. At the outset, though the statutory presumption under Sections 118(a) and 139 of the Negotiable Instruments Act stood attracted on account of the admitted signatures of the accused on the cheques, the learned Trial Court rightly examined whether the said presumption stood rebutted by the accused on a preponderance of probabilities. The defence taken by the accused was consistent, namely, that he had taken a loan of Rs.4,00,000/- from the husband of the complainant and that the cheques in question were issued as security in that transaction. The existence of

prior financial dealings between the accused and the husband of the complainant has, in fact, been admitted, thereby lending credibility to the defence version.

30. The learned Trial Court has rightly placed reliance on the material contradictions in the testimony of the complainant regarding the source of funds. The complainant asserted that she had advanced Rs. 10,00,000/- to the accused after receiving the said amount in cash from her sister. However, no explanation whatsoever was furnished as to why such a substantial amount was received from her sister, nor was the said sister examined as a witness. Further, the version of receipt of the entire amount in cash stood falsified by the complainant's own bank statement (Ex. CW1/B), which reflected a deposit of Rs. 5,00,000/- through cheque. This contradiction goes to the root of the complainant's case and raises serious doubt about the very availability of funds with her to advance the alleged loan.

31. The learned Trial Court has also correctly taken note of the incongruity between the alleged loan amount and the value of the cheques in question. While the complainant claimed to have advanced a loan of Rs. 10,00,000/-, the cheques in question are only for an aggregate sum of Rs. 4,00,000/-. No plausible explanation has been offered as to why the complainant would accept cheques for less than half of the alleged loan amount, particularly after a delay of nearly two years from

the date of advancement of the loan. This circumstance renders the version of the complainant inherently doubtful.

32. Another significant circumstance considered by the learned Trial Court is the unexplained delay in seeking recovery. The alleged loan was advanced in February 2015, whereas the cheques are stated to have been issued in March 2017. The complainant has failed to explain why no steps were taken during this intervening period for recovery of the alleged loan amount. Such inaction, in the ordinary course of human conduct, is inconsistent with the conduct of a prudent person who has advanced a substantial sum of money.

33. The learned Trial Court has further relied upon the police complaints dated 30.03.2015 and 29.04.2015 (Ex. DW3/6 and Ex. DW3/3) placed on record by the accused, which indicate that disputes had already arisen between the accused and the husband of the complainant shortly after the alleged loan transaction. These complaints lend support to the defence version that the relations between the parties had become strained and, therefore, it appears improbable that the accused would voluntarily issue cheques to the complainant in the year 2017.

34. The finding of the learned Trial Court regarding the receipt Ex. CW1/A also does not suffer from any infirmity. The accused denied his

signatures on the said document. The complainant, in her cross-examination, admitted that the receipt might have been prepared by her husband and that she had no personal knowledge regarding its execution. Despite this, the complainant failed to examine her husband, who was a material witness for proving the document. In the absence of proof of execution, the learned Trial Court rightly held that the said receipt could not be relied upon.

35. The cumulative effect of the aforesaid circumstances, as rightly appreciated by the learned Trial Court, probabilises the defence of the accused and sufficiently rebuts the statutory presumptions operating in favour of the complainant. It is well settled that once the accused raises a probable defence, the burden shifts back upon the complainant to prove the existence of a legally enforceable debt beyond reasonable doubt. In the present case, the complainant has failed to discharge this burden.

36. Accordingly, the view taken by the learned Trial Court is a plausible and reasonable view based on the evidence on record. It cannot be said that the findings are perverse, arbitrary or contrary to law. Merely because another view may be possible, the same would not justify interference in an appeal against acquittal.

37. In view of the above 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 do not create any dent in the well-reasoned findings of the learned Trial Court and are accordingly rejected.

38. Consequently, the present appeal is devoid of merit and is hereby dismissed. The judgment of acquittal dated 14.01.2019 passed by the learned Trial Court, which is under challenge in the present appeal, is affirmed. Ordered accordingly.

Samar vishal

Digitally signed by Samar vishal
Date: 2026.04.21 16:56:56 +0530

Announced in the open court
on 21.04.2026

(Samar Vishal)
ASJ-02/ South District
Saket Courts, Delhi/21.04.2026