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

CRIMINAL APPEAL NO. 596/2025

CNR NO. DLST01-0184412025

IN THE MATTER OF

M/s Nextgen Enterprises
through its Proprietor Sh. Sumit Batra
Shop no.2, Central Market, DDA Flats
Kalkaji, New Delhi-110019
Mobile No.9911111562
Email: nextgenenterprises5001@gmail.com

….Appellant

Versus

Jahangir
S/o Sh. Wazir Ahmed
R/o D-175, Navjeevan Camp,
Govindpuri, New Delhi-110019
Mobile:9650609729/9716224870
Email: edrishijahangir945@gmail.com

…..... Respondent

DATE OF INSTITUTION	: 12.11.2025
DATE OF ARGUMENTS	: 06.02.2026
DATE OF PRONOUNCEMENT	: 20.03.2026
DECISION	: Allowed

JUDGMENT

1. The present appeal is directed against the judgment dated 10.07.2024 passed by the learned Judicial Magistrate First Class-08 (NI Act), South District (hereinafter referred to as "the learned Trial Court"), whereby the respondent/accused, Jahangir, 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, M/s Nextgen Enterprises.

2. The facts, in brief, are that the present complaint was instituted by the complainant through its sole proprietor, Sumit Batra, who is stated to be carrying on business under the name and style of M/s Nextgen Enterprises. It is the case of the complainant that on 07.06.2023, it sold to the accused one used ImageRunner Advance 8105 Canon digital photocopy machine for a total consideration of Rs.2,75,000/-. Out of the said amount, a sum of Rs.25,000/- was allegedly paid by the accused in cash, and for the remaining amount of Rs.2,50,000/-, the accused issued the cheque in question dated 07.06.2023 in favour of the complainant.

3. 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. However, despite service of the said notice, the accused allegedly failed to make the

payment within the stipulated time. Consequently, the complainant instituted the present complaint under Section 138 of the Negotiable Instruments Act, 1881 before the learned Trial Court.

4. The learned Trial Court took cognizance of the offence on 21.07.2023 and summoned the accused, Jahangir. Thereafter, on 23.08.2023, 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. He admitted that the cheque in question bears his signatures; however, he stated that the remaining particulars on the cheque were not filled by him. He further stated that he had taken a loan of Rs.30,000/- from the complainant for a period of 12 months and that the cheque in question had been handed over at the time of advancement of the said loan. According to him, there was no outstanding liability towards the complainant, though some late payment charges might have remained payable.

5. In order to prove its case, the complainant examined its sole proprietor, Mr. Sumit Batra, as CW-1. After the conclusion of the complainant's evidence, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. In his statement, the accused reiterated that he had taken a loan of Rs.30,000/- from the complainant and denied having purchased any photocopy machine, stating that he was not engaged in the business of photocopying but was working in an electronics shop. He further stated that he had repaid the

entire loan amount and that nothing remained due and payable to the complainant.

6. The accused further stated that the cheque in question had been handed over to the complainant in November, 2022, along with five other cheques and copies of his identity documents, at the time of obtaining the loan. He claimed that he had signed certain blank papers at that time. With regard to the delivery challan (Ex. CW1/2), the accused initially denied having signed the same; however, he ultimately admitted that the said document bears his signatures. He further stated that the loan amount was advanced to him through the account of one Rajan Kumar on the introduction of one Himanshu Singh, and that the loan instalments were paid into the account of Mazruddin so that the same could be indirectly remitted to the complainant.

7. In defence, the accused examined himself as DW-1 and also examined one Himanshu Singh as DW-2 in support of his case. During the course of admission and denial under Section 294 of the Code of Criminal Procedure, the accused admitted the cheque in question as well as the return memo reflecting the reason for dishonour as "Funds Insufficient."

8. After hearing the arguments advanced on behalf of both sides and upon appreciation of the material available on record, the learned Trial Court proceeded to pass the impugned judgment, whereby the accused was acquitted of the offence alleged against him.

9. The said judgment of acquittal is now under challenge in the present appeal.

10. 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.

11. 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.

12. 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.

13. 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.

14. Turning now to the judgment under challenge, the learned Trial Court observed that the issuance of the cheque, its presentation, and its dishonour were not in dispute, inasmuch as the same stood duly proved on the basis of cogent evidence on record. The signatures on the cheque in question were admittedly those of the accused. The cheque in question was returned unpaid vide return memo (Ex. CW1/4) with the remarks "Funds Insufficient."

15. The learned Trial Court further noted that the statutory legal demand notice (Ex. CW1/5) was dispatched to the accused through postal receipt (Ex. CW1/7), and the internet-generated tracking report (Ex. CW1/8), reflecting the status as "delivered," was placed on record as proof of service. It was also observed that the legal demand notice had been sent to the accused through WhatsApp.

16. In view of the aforesaid material, the learned Trial Court rejected the plea of the accused regarding non-receipt of the legal demand notice as being inconsequential.

17. The learned Trial Court further held that, in light of the admitted

signatures on the cheque, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881 stood attracted, thereby raising a presumption that the cheque in question had been issued in discharge of a legally enforceable debt or liability.

18. The learned Trial Court further observed that the burden to disprove the existence of a legally enforceable debt or liability lay upon the accused. It was noted that such burden could be discharged either by eliciting material inconsistencies in the case of the complainant or by leading positive evidence in defence.

19. In this regard, the learned Trial Court took note of the fact that the accused examined himself as DW-1 and one Himanshu Singh as DW-2. The accused (DW-1) deposed that he had taken a loan of approximately Rs.30,000/-, which, according to him, was arranged through one Rajan Kumar and repaid to one Mazruddin. It was his defence that Rajan Kumar and Mazruddin were acting in collusion with the complainant, and that the repayment made to Mazruddin was, in effect, repayment to the complainant. He further stated that the loan instalments were paid through Himanshu Singh, with whom he was employed.

20. The accused also relied upon a WhatsApp chat (Ex. DW1/2) between Himanshu Singh and the complainant, Sumit Batra. The learned Trial Court observed that the said chat reflected certain financial transactions and discussions regarding cheque presentation; however,

significantly, there was no reference therein to any transaction relating to the sale or purchase of a photocopy machine, as alleged by the complainant.

21. The learned Trial Court further noted that, although the complainant denied the existence of any loan transaction, the contents of the WhatsApp chat prima facie suggested otherwise.

22. The testimony of DW-2, Himanshu Singh, was also considered by the learned Trial Court. He deposed that a loan of Rs.30,000/- had been advanced by the complainant to the accused, which he had facilitated, and that the same had been repaid. He further stated that, at the time of availing the loan, the accused had handed over six cheques along with certain blank signed documents to the complainant. According to him, the loan amount was routed through the account of Rajan Kumar, though the transaction pertained to the complainant. He also identified the mobile number reflected in the WhatsApp chat as that of the complainant and stated that he himself had also obtained loans from the complainant, who, according to him, was engaged in money-lending activities.

23. DW-2 further stated that the accused was working under him and had never purchased any photocopy machine from the complainant. On the basis of the aforesaid depositions, the learned Trial Court concluded that the defence set up by the accused—that the transaction between the parties was one of a loan, which had already been repaid—was a

probable defence.

24. The learned Trial Court did not find merit in the version of the complainant that the photocopy machine had been sold to the accused. It was noted that DW-2 had deposed that, at the time of advancement of the alleged loan, blank signed documents had been obtained from the accused. The accused took the stand that he had never executed the delivery challan (Ex. CW1/2) and that the same had subsequently been prepared on the blank signed papers obtained from him.

25. The learned Trial Court further observed that the said delivery challan (Ex. CW1/2) did not bear essential particulars such as an invoice number, ledger account details, GST number, or even the date of dispatch. It was also noted that the complainant, who examined himself as CW-1, did not produce any independent documentary evidence to substantiate the alleged sale of the photocopy machine to the accused.

26. In view of the aforesaid deficiencies, the learned Trial Court held that the accused, by way of effective cross-examination of the complainant and by leading defence evidence, had been able to create a reasonable doubt regarding the genuineness of the transaction set up by the complainant.

27. Accordingly, the learned Trial Court concluded that the accused had successfully rebutted the statutory presumptions under Sections 118

and 139 of the Negotiable Instruments Act, 1881, and extended the benefit of doubt to him, resulting in his acquittal.

28. Now coming to the merits of the appeal, insofar as the finding of the learned Trial Court that the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act, 1881 stood attracted is concerned, I find the said view to be correct and in consonance with the settled position of law.

29. It is well-settled that once the execution of the cheque is admitted, a presumption arises in favour of the holder that the cheque was issued in discharge of a legally enforceable debt or liability. Section 118(a) raises a presumption as to consideration, while Section 139 mandates a presumption in favour of the holder of the cheque. These presumptions are statutory in nature and operate unless rebutted by the accused.

30. The nature of the said presumptions has been consistently explained by the Hon'ble Supreme Court to be rebuttable but mandatory. The burden cast upon the accused is not as onerous as that upon the prosecution; however, the accused is required to raise a probable defence on the standard of preponderance of probabilities. Such rebuttal may be by leading defence evidence or by demonstrating inherent improbabilities in the case of the complainant.

31. At the same time, it is equally well settled that a mere denial of

liability or a bald assertion that the cheque was issued for some other purpose would not suffice. The accused must bring on record such material which would render the existence of the legally enforceable debt doubtful or improbable.

32. In the present case, the accused has unequivocally admitted his signatures on the cheque in question. Once such admission is made, the statutory presumptions under Sections 118(a) and 139 of the Act immediately come into operation. The burden, therefore, shifted upon the accused to rebut the said presumptions.

33. The complainant, on the other hand, has not merely relied upon the statutory presumption but has also led positive evidence in support of his case. The complainant (CW-1) has categorically deposed that the cheque in question was issued by the accused towards the discharge of the liability arising out of the sale of the photocopy machine. He has further deposed that the cheque was signed and filled in his presence.

34. The case of the complainant is also supported by the delivery challan (Ex. CW1/2), which bears the signatures of the accused. The said document contains details of the photocopy machine allegedly sold to the accused. The admission of signatures on the said document by the accused lends further corroboration to the version of the complainant.

35. In such circumstances, the transaction between the parties is not

founded solely upon the cheque in question but is further supported by documentary evidence in the form of the delivery challan and the oral testimony of the complainant. The combined effect of these pieces of evidence reinforces the presumption arising under the statute.

36. I am of the considered view that the complainant has been able to establish, at least prima facie, the existence of a legally enforceable debt or liability. The statutory presumptions, therefore, stand duly activated and continue to operate in favour of the complainant.

37. Consequently, the onus squarely shifted upon the accused to rebut the said presumptions by raising a credible and probable defence. Whether such burden has been discharged by the accused shall be examined in the subsequent paragraphs.

38. It is now to be examined whether the accused has been able to rebut the statutory presumptions arising under Sections 118(a) and 139 of the Negotiable Instruments Act, 1881. Upon a careful appraisal of the evidence on record, I am of the considered view that the accused has failed to discharge the said burden.

39. The defence taken by the accused is found to be inconsistent, contradictory, and lacking in credibility. In his plea under Section 251 CrPC and in his statement under Section 313 CrPC, the accused stated that he had taken a loan of Rs.30,000/- from the complainant for a period

of 12 months. However, in his examination-in-chief as DW-1, he altered his stand by stating that he had taken a loan of Rs.23,900/- on 02.11.2022. During cross-examination, he further stated that the duration of repayment was 14 months. Thus, both the loan amount as well as the period of repayment stand contradicted by the accused himself at different stages of the proceedings.

40. The inconsistencies do not end there. In his cross-examination, the accused stated that the EMI was Rs4,800/- per month. However, DW-2, Himanshu Singh, deposed that the loan amount was Rs.30,000/- repayable in 12 instalments of Rs. 4,800/- each. This version is inherently improbable, as a loan of Rs.30,000/- could not, in the ordinary course, entail repayment of Rs.57,600/- (Rs.4,800 × 12) without any clear or cogent explanation regarding the rate of interest or the terms of such repayment. No documentary evidence or convincing explanation has been furnished in this regard.

41. Further, the accused has failed to establish, by any reliable evidence, the very existence of the alleged loan transaction. In his deposition, he stated that the loan amount was received from one Rajan Kumar and that no payment was made directly to the complainant. This stand itself weakens his defence, as it disconnects the complainant from the alleged transaction.

42. As regards the WhatsApp chats relied upon by the accused (Mark-

DW1/2), there is no cogent evidence to establish that the said chats pertain to the transaction in question or that the mobile number reflected therein belongs to the complainant. Significantly, these chats were not put to the complainant during his cross-examination for the purpose of eliciting any admission. On the contrary, a suggestion was put to DW-1 that the number reflected in the chats did not belong to the complainant but to Rajan Kumar. In the absence of any positive evidence linking the said number to the complainant, the evidentiary value of these chats remains doubtful.

43. In view of the above, it is evident that the defence set up by the accused is riddled with material contradictions and does not inspire confidence. The accused has failed to raise a probable defence so as to rebut the statutory presumptions. Mere assertions and inconsistent explanations cannot displace the presumptions which operate in favour of the complainant.

44. On the contrary, the complainant has proved his case not only on the strength of the statutory presumptions but also through cogent oral and documentary evidence, including the cheque in question and the delivery challan bearing the admitted signatures of the accused. The case of the complainant, therefore, stands proved on the standard of proof required in criminal jurisprudence, i.e., beyond reasonable doubt, duly fortified by the statutory presumptions.

45. Before parting, I deem it appropriate to observe that there is a tendency of conducting unnecessarily lengthy and unfocused cross-examinations. In the present case, the cross-examination of DW-2 runs into several pages (16 pages), much of which is not germane to the core issues involved. As is evident from the present adjudication, a substantial portion of such cross-examination has not aided either the Trial Court or this Court in arriving at the decision. Such practices only serve to delay proceedings and burden the already overstrained judicial system, and ought to be eschewed.

46. In view of the foregoing discussion, I am of the considered opinion that the judgment dated 10.07.2024 passed by the learned Trial Court suffers from mis-appreciation of evidence, resulting in an unjustified acquittal of the accused.

47. Accordingly, the impugned judgment of acquittal is hereby set aside. The respondent/accused, Jahangir, is held guilty and is hereby convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

48. Let the convict be heard on the point of sentence.

Announced in the open court on 20.03.2026

Samar vishal

Digitally signed by Samar vishal
Date: 2026.03.20 15:00:02 +0530

(Samar Vishal)
ASJ-02/ South District
Saket Courts, Delhi/20.03.2026