**IN THE COURT OF MR. HARGURVARINDER SINGH JAGGI, ADDL. SESSIONS JUDGE (FTC– 01), SOUTH DISTRICT, SAKET COURTS, NEW DELHI**

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| **CA No.**: 607/2025 | |
| **CNR No.**: DLST01-018747-2025 | |
| **Police Station**: Fatehpur Beri | |
| **u/Section**: 138 NI Act | |

**IN THE MATTER OF:**

**SURENDER TANWAR** **… Appellant**

Through – Mr. Rajesh Sherawat and Mr. Yashpal Singh Khari, Advocates for the Appellant.

***v.***

**SUNNY KUMAR alias SUNNY BASIOYA** **… Respondent**

Through – Mr. Rajesh Bagga, Advocate for the Respondent.

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| **Date of filing of appeal:** | **05.12.2016** |
| **Date of allocation of appeal to this Court:** | **17.11.2025** |
| **Date of reserving judgment:** | **22.07.2026** |
| **Date of pronouncement of judgment:** | **30.07.2026** |

## **JUDGMENT**
**30.07.2026**

1. Surender Tanwar (appellant) has preferred an appeal under the proviso to Section 372 of the Code of Criminal Procedure, 1973 (CrPC, 1973) [now akin to the proviso to Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)] arising out of the judgment of acquittal dated 06.09.2016 (impugned judgment) pronounced by the Court of Ms. Preeti Parewa, Metropolitan Magistrate-02 (NI Act), South District, Saket Court Complex, New Delhi (Trial Court) in a complaint case titled as ***Surender Tanwar v. Sunny Kumar & Anr. – CC No. 468473/2016*** (complaint case).

2. At the outset, it is observed that by order dated 17.09.2025 passed by the Hon'ble High Court of Delhi in ***Surender Tanwar v. Sunny Kumar – Crl. A. No. 99/2020*** (originally filed as Crl. L.P. No. 644/2016), the appeal preferred by Surender Tanwar was transmitted to the Sessions Court. Relying upon the decision of the Supreme Court in *Celestium Financial vs. A. Gnanasekaran*, the Hon'ble High Court held that the complainant qualifies as a "victim" and can maintain an appeal against acquittal before the Sessions Court as a matter of right. The matter was transmitted by the Registry of the Hon'ble High Court of Delhi to the learned Principal District and Sessions Judge, South District, Saket Courts Complex, Delhi for marking to the appropriate Court. It is in the light of the above directions passed by the Hon'ble High Court that the captioned appeal was allocated to this Court *vide* order dated 17.11.2025.

3. The appellant herein was the complainant, whereas the respondent herein was the accused before the Trial Court. For the sake of clarity, convenience and avoidance of confusion, the parties before this Court are interchangeably referred to by their rank and status before the Trial Court.

***Factual matrix***

4. The case for the appellant, Surender Tanwar, as urged before the Trial Court, was that the complainant and the accused were known to each other for the past 8-10 years. In the year 2010, the accused approached the complainant for a friendly loan of ₹12,00,000/- (Rupees Twelve Lakhs Only) to repay his house loan, which the complainant extended in cash on the assurance that the same would be repaid within one and a half years.

5. In discharge of his legal liability, the accused issued cheques, including the cheque in question bearing No. 356139 dated 26.03.2011 for a sum of ₹3,90,000/- drawn on The Karur Vysya Bank Ltd., Sant Nagar, East of Kailash Branch, New Delhi, in favour of the complainant.

6. Upon presentation of the said cheque for encashment, it was returned unpaid by the drawee bank with the remarks "Account Closed" *vide* return memo dated 13.09.2011.

7. A statutory legal demand notice dated 13.10.2011 under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) was issued by the complainant. Despite the service of the legal notice, the respondent

failed to make the payment within the statutory period of 15 days, prompting the filing of the complaint on 24.11.2011.

***Trial Court's holding***

8. The Trial Court by impugned judgment dated 06.09.2016 acquitted Sunny Kumar for the alleged commission of the offence under Section 138, NI Act. The core findings of the Trial Court were that during his cross-examination on 07.08.2015, the complainant admitted that a receipt for the cash loan of ₹12,00,000/- was signed by the accused but claimed it was untraceable. The Trial Court correctly invoked Section 114, Illustration (g) of the Indian Evidence Act, 1872, holding that the non-production of this crucial receipt cast a shadow of doubt on the complainant's version, raising the presumption that such a receipt was never executed.

9. The Trial Court further observed that advancing a sum of ₹12,00,000/- in cash was in clear contravention of Section 269SS of the Income Tax Act. Relying on the decision of the Hon'ble Supreme Court in ***G. Pankajakshmi Amma v. Mathai Mathew (2004) 12 SCC 83***, the Trial Court held that the transaction pertained to unaccounted money, rendering the debt legally unenforceable, and therefore the accused had successfully rebutted the statutory presumption on a preponderance of probabilities.

10. During the pendency of the present appeal, the appellant moved an application (I.A. No. 1/2026) under Section 391 of the CrPC seeking permission to lead additional evidence at the appellate stage. The appellant sought to place on record the purported receipt dated

20.03.2010 for the cash loan of ₹12,00,000/-, claiming that the document, which was "untraceable" during the trial, had recently been found.

11. The said application was extensively heard and was **dismissed** by this Court *vide* a detailed, separate order dated **22.07.2026**. This Court observed that the power under Section 391 CrPC is to be exercised sparingly to secure the ends of justice and cannot be wielded as a tool to fill up lacunae in the complainant's case. A meticulous perusal of the purported receipt dated 20.03.2010 revealed that it allegedly bore the signature of an attesting witness named 'Mangatram (Rohit)'. The name of this purported witness was conspicuously absent from the original complaint and was never mentioned during the complainant's testimony recorded on 07.08.2015.

12. This Court firmly concluded in its order dated 22.07.2026 that the sudden emergence of a document at the appellate stage, introducing a previously undisclosed and unpleaded witness, cast a serious cloud of doubt over the authenticity and credibility of the proposed additional evidence. Permitting such evidence at a highly belated stage would have severely prejudiced the accused by allowing the appellant to introduce an entirely new case. Consequently, the motion to lead additional evidence was rejected, leaving the appellant with no substantive documentary evidence on record to prove the cash loan transaction.

***Grounds of appeal***

13. On being aggrieved by the impugned judgment passed by the Trial Court, Surender Tanwar assailed the same on the following primary grounds:

13.1. The Trial Court ignored the statutory presumption under Section 139 of the NI Act operating in favour of the holder of the cheque and incorrectly shifted the burden of proof entirely onto the complainant.

13.2. The Trial Court erred in relying upon the judgment of ***G. Pankajakshmi Amma v. Mathai Mathew***, as that was a civil suit where the entire onus was on the plaintiff, whereas proceedings under the NI Act are governed by reverse onus clauses.

13.3. The Trial Court failed to appreciate that the accused impliedly admitted the existence of the receipt by not asking the Trial Court to issue directions to the complainant to produce the said receipt during cross-examination.

***Submission by Counsel for parties***

14. Mr. Rajesh Sherawat, learned counsel for the appellant, opened his arguments by challenging the impugned judgment passed by the Trial Court as being contrary to facts and settled propositions of law.

15. The learned counsel for the appellant submitted that the issuance of the cheque and signatures thereupon were never disputed

by the respondent, thereby automatically activating the mandatory presumptions under Sections 118 and 139 of the NI Act.

16. The learned counsel for the appellant further submitted that the accused took vague and contradictory defences. At the time of framing notice under Section 251 CrPC, the accused claimed the cheque was given as security and the loan amount had already been repaid in 2010. However, the accused failed to examine any witness or lead defence evidence to prove the alleged repayment. It was urged that the Trial Court erroneously placed an exceptionally high burden of proof on the complainant, bypassing the statutory presumptions.

17. On the other hand, Mr. Rajesh Bagga, learned counsel for the respondent, strongly contested the submissions advanced by the learned counsel for the appellant. The learned counsel submitted that the impugned judgment passed by the Trial Court merits no interference by the Appellate Court and the impugned judgment may be upheld and affirmed.

18. The learned counsel submitted that the Trial Court pronounced a well-reasoned judgment and rightly dismissed the complaint. He vehemently argued that the complainant lacked the financial capacity to advance a massive loan of ₹12,00,000/- in cash. The counsel highlighted that during cross-examination, the complainant admitted his monthly income was merely ₹50,000/- and he could not even remember the income declared in his income tax returns (ITR).

19. The learned counsel further highlighted the dubious conduct of the appellant, pointing out that at the appellate stage, the appellant attempted to sneak in a fabricated receipt through an application under Section 391 CrPC (dismissed on 22.07.2026), which suspiciously introduced a new witness named 'Mangatram (Rohit)' whose name was never mentioned during the entire trial.

***Legal provision and legal principles***

20. The present appeal emanates from a complaint filed by the appellant/complainant, Surender Tanwar against the respondent/accused, Sunny Kumar under Section 138 of the NI Act, wherein the Trial Court acquitted the respondent/accused. Thus, it is imperative to set out the legal standard by referring to the appropriate legal provisions and legal principles.

21. The Apex Court in ***Rohitbhai Jivanlal Patel v. State of Gujarat & Anr. – 2019 INSC 393 (RJ Patel's case)*** while holding a clear view with regard to the conviction of the accused-appellant for the offence under Section 138 NI Act, the impugned judgment and order dated 08.01.2018 does not call for any interference but, on the facts and in the circumstances of the case, modified the punishment as awarded by the High Court. The Apex court emphasized that, ordinarily, an appellate court will not upset a judgment of acquittal if the view taken by the trial court is one of the possible views of the matter. The appellate court may only interfere if it arrives at a clear finding that the judgment of the trial court is perverse, i.e., not supported by

evidence on record, contrary to what is regarded as normal or reasonable, or wholly unsustainable in law.

22. The relevant extract of paragraph 11 of the ***RJ Patel's case*** is reproduced *verbatim* as below:

> *"11. According to the learned counsel for the accused-appellant, the impugned judgment is contrary to the principles laid down by this Court in the case of Arulvelu (supra) because the High Court has set aside the judgment of the Trial Court without pointing out any perversity therein. The said case of Arulvelu (supra) related to offences under Sections 304-B and 498-A IPC. Therein, on the scope of the powers of Appellate Court in an appeal against acquittal, this Court observed as follows:*
>
> *"36. Carefully scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."*
>
> *11.1 The principles aforesaid are not of much debate. In other words, ordinarily, the Appellate Court will not be upsetting the judgment of acquittal, if the view taken by Trial Court is one of the possible views of matter and unless the Appellate Court arrives at a clear finding that the judgment of the Trial Court is perverse, i.e., not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essentially to remind the Appellate Court that an accused is presumed to be innocent unless proved guilty beyond reasonable doubt and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the Appellate Court and the nature of inquiry therein. The same rule with same rigour cannot be applied*

*in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the Appellate Court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused."*

23. In summary, while appellate courts should be cautious in overturning acquittals, they are empowered to do so where the Trial Court's decision is perverse, unsustainable, or contrary to law, especially in cases involving statutory presumptions like those under the Negotiable Instruments Act, 1881.

24. The Parliament amended the NI Act by insertion of Chapter XVII, *Of Penalties in Case of Dishonour of Certain Cheques for Insufficiency of Funds in the Accounts*, by Act 66 of 1988 w.e.f. 01.04.1989. Section 138 of the NI Act reads as follows:

*"**138. Dishonour of cheque for insufficiency, etc., of funds in the account.**—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:*

> *Provided that nothing contained in this section shall apply unless—*
>
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days]of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
>
> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*
>
> *Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability."*

25. The NI Act enlists three essential conditions, which ought to be fulfilled before Section 138 can be invoked. *Firstly*, the cheque ought to have been presented within the period of its validity. *Secondly*, a demand for payment ought to have been made by the presenter of the cheque to the issuer, and *lastly*, the drawer ought to have failed to pay the amount within a period of 15 days of the receipt of the demand.

26. These principles and pre-requisites stand well established through judgment of the Apex Court in ***Sadanandan Bhadran v. Madhavan Sunil Kumar – (1998) 6 SCC 514***. There is an explicit limitation of 30 days, beginning from the period when the cause of action arose, prescribed by Section 142(b) of the NI Act, to initiate the proceedings under Section 138 of the NI Act.

27. His Lordship Dr. Dhananjay Y. Chandrachud, J., (As His Lordship then was) in ***Gimpex Private Limited vs. Manoj Goel – 2021 INSC 637***, culled out the ingredients forming the basis of the offence under Section 138 of the NI Act in the following structure:

(i) The drawing of a cheque by a person on the account maintained by him with the banker for the payment of any amount of money to another from that account;

(ii) The cheque being drawn for the discharge in whole or in part of any debt or other liability;

(iii) Presentation of the cheque to the bank arranged to be paid from that account;

(iv) The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount;

(v) A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque, and

(vi) The drawer of the cheque failed to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.

28. The Superior Courts have expounded that the issuance of cheque towards a liability, the presentation of the cheque within the prescribed period, its return on account of dishonour, notice to the accused, and failure to pay within 15 days thereof, stand as *sine qua non* for an offence under Section 138 of the NI Act.

29. At this stage, a reference to Section 118 of the NI Act is also relevant as it lays down special rules for evidence to be adduced with the scheme of the NI Act. Section 118 is reproduced *verbatim* as below:

> *"118. **Presumptions as to negotiable instruments.**—Until the contrary is proved, the following presumptions shall be made: —*
>
> *(a) **of consideration:**—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*
>
> *(b) **as to date:**—that every negotiable instrument bearing a date was made or drawn on such date;*
>
> *(c) **as to time of acceptance:**—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*
>
> *(d) **as to time of transfer:**—that every transfer of a negotiable instrument was made before its maturity;*
>
> *(e) **as to order of indorsements:**—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;*
>
> *(f) **as to stamp:**— that a lost promissory note, bill of exchange or cheque was duly stamped;*

> *(g)* ***that holder is a holder in due course:****—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."*

30. The above-quoted legal provision of Section 118 showcases, it raises a rebuttable presumption as against the drawer to the extent that the concerned negotiable instrument was drawn and subsequently accepted, indorsed, negotiated, or transferred for an existing consideration, and the date so designated on such an instrument is the date when the concerned negotiable instrument was drawn. It is also further presumed that the same was transferred before its maturity and that the order in which multiple indorsements appear on such an instrument, that is the deemed order thereon. Lastly, the holder of a negotiable instrument is one in its due course, subject to a situation where the concerned instrument while being obtained from a lawful owner and from his or her lawful custody thereof through undertaking of an offence as contemplated under any statute or through the means of fraud, the burden to prove him or her being a holder in due course, instead, lies upon such a holder – *See* ***Sri Dattatraya v. Sharanappa – 2024 INSC 586****.*

31. Another relevant provision of the NI Act is Section 139, which reads as below:

> ***"139. Presumption in favour of holder.****—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in*

> *section 138 for the discharge, in whole or in part, of any debt or other liability."*

32. Section 139 of the NI Act mandates the presumption, which involves an obligation on the Court conducting the trial for an offence under Section 138 of the NI Act, to presume that the cheque in question was issued by the drawer or accused for the discharge of a particular liability. The use of expression "shall presume" sets out the right of the accused to present evidence for the purpose of rebutting the said presumption. The presumption under Section 139, NI Act is a rebuttable one – *See* ***Rangappa v. Sri Mohan – 2010 INSC 500 (Rangappa's case).*** The effect of the presumption under Section 139 NI Act is that on filing of the complaint along with supporting documents, thereby *prima facie* establishing the case against the drawer (accused), the onus of proof shifts on the drawer or accused to adduce cogent material and evidence for rebutting the said presumption based on preponderance of probabilities – *See* ***Laxmi Dyechem v. State of Gujarat and Others – 2012 INSC 546.***

33. At this juncture, it is relevant to expound upon the landmark judgment of the Apex Court in the ***Rangappa's case.*** The three Judges Bench of Hon'ble Supreme Court examined the liability under Sections 138 and 139 of the NI Act, in a cheque-dishonour case involving stop-payment instructions on a post-dated cheque. The Court clarified that Section 138 applies even when payment is countermanded and that Section 139 raises a rebuttable presumption of a legally enforceable debt once the drawer's signature is admitted. The Apex Court emphasized that the accused must raise a probable

defence on the preponderance of probabilities to rebut the statutory presumption, not an unduly high standard of proof. Applying these principles, the Court upheld the High Court's conviction because the accused failed to present a credible, timely defence and did not contest the existence of the debt convincingly.

34. Hon'ble Supreme Court in the case of ***Basalingappa v. Mudibasappa – 2019 INSC 500 (Basalingappa's case)***, while dealing with a criminal appeal concerning a hand loan of ₹6,00,000/- culled out legal principles after reviewing the evidentiary presumptions under Sections 118(a) and 139 of the Act, assessing whether the accused rebutted the presumption that the cheque discharged a debt and whether the complainant proved lending capacity. The Apex Court held that the defence evidence raised a probable doubt about the complainant's financial capacity and contradictions in his testimony.

35. The legal principles culled out in ***Basalingappa's case*** are reproduced for ready reference as below:

> *"23. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-*
>
> *(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."*

36. A neat question arose before the Hon'ble Supreme Court in the case of ***Rajesh Jain v. Ajay Singh – 2023 INSC 888*** (***Rajesh Jain's case***) that since the execution of the cheque is, admittedly, not under dispute, whether the accused can be said to have discharged his evidential burden, for the Courts below to have concluded that the presumption of law supplied by Section 139, NI Act had been rebutted.

37. His Lordship Aravind Kumar, J., in ***Rajesh Jain's case*** analysed the proper application of the statutory presumption under Section 139, NI Act, how it shifts the evidential burden onto the accused once the cheque's execution is established. The Apex Court found errors in Trial Court and High Court's reasoning and held that the accused failed to rebut the presumption on preponderance of probabilities and allowed the appeal, convicted the accused and sentenced him to a fine and alternative imprisonment.

38. In ***Rajesh Jain's case***, the Supreme Court clarified and reinforced several key legal principles regarding prosecutions under Section 138 of the NI Act, particularly concerning the operation of statutory presumptions and the burden of proof:

38.1. ***Presumption Under Section 139 and Shifting Burden***:

38.1.1. *Once execution/signature on the cheque is admitted*: the presumption under Section 139 NI Act is automatically activated. This presumption is that the cheque was issued in discharge of a debt or liability.

38.1.2. *The evidential burden then shifts to the accused:* The accused must rebut the presumption, either by leading defence evidence or by establishing, on a preponderance of probabilities, that no debt or liability existed at the time of cheque issuance.

38.1.3. *Nature and Standard of Rebuttal*: The accused can rebut the presumption by – leading direct evidence to prove non-existence of debt, liability or relying on circumstances and probabilities arising from the case record, including the complainant's own evidence. The standard of proof for the accused is not "beyond reasonable doubt" but the lesser standard of "preponderance of probabilities"—like a civil case.

38.1.4. *<u>Role of the Court in Evaluating Evidence</u>*: Once the presumption is activated, the Court's focus must shift to the accused's case and whether the accused has discharged the evidential burden. If the accused fails to discharge this burden, the presumption stands, and the complainant is not required to do anything further. If the accused does discharge the burden, the complainant must independently prove the existence of debt/liability, without the aid of the presumption. The proper approach is to first determine if the accused has rebutted the presumption; only then, if rebutted, does the onus shift back to the complainant.

38.1.5. *<u>Consistency and Credibility in Defence</u>*: The Court emphasized that the defence set up by the accused must be credible and consistent. Contradictory or implausible defences, unsupported by evidence or reasonable explanation, will not suffice to rebut the presumption.

38.2. ***<u>General Principles on Presumptions and Burden of Proof</u>***: The Court reiterated the distinction between legal burden (remains on complainant) and evidential burden (can shift during trial). Section 139 is a "shall presume" provision, meaning the court is compelled to raise the presumption once basic facts are established.

39. His Lordship Amit Mahajan, J., of Hon'ble High Court of Delhi in a latest judgment in the case of ***Manoj Kumar Panchal v. Mahender Kumar Panchal – 2025 DHC 4537*** dismissed a leave-to-appeal against an acquittal under Section 138 of the NI Act, concerning a disputed cheque for ₹1,68,000 and conflicting claims about an alleged loan between relatives engaged in an aluminium fabrication business. The Trial Court acquitted the respondent after finding the complaint lacked material particulars and the complainant's statements inconsistent.

40. On appeal, the High Court analysed statutory presumptions under Sections 118 and 139, examined handwriting and FSL evidence, and applied Supreme Court precedent on rebutting presumptions – *See* ***Rajesh Jain's case***. Finding no perversity in the Trial Court's evaluation and that the respondent successfully raised a probable defence, the High Court dismissed the petition.

***Analysis***

41. Now coming to the case at hand with the above-said legal standards as anchor point, to ascertain whether the impugned judgment is marred by perversity and ought to be interfered with. Surender Tanwar is aggrieved by the impugned judgment passed by the Trial Court, whereby the Trial Court acquitted Sunny Kumar based on its findings.

42. For the purpose of a structured framework for analysing, logical reasoning and enabling the parties to understand this decision, the Court deems fit to note the points for determination in the present appeal, which are as below:

42.1. Whether the Trial Court erred in law or on facts in holding that the accused successfully rebutted the presumption under Section 139 of the NI Act on a preponderance of probabilities?

42.2. Whether the impugned judgment suffers from perversity, manifest illegality, or gross miscarriage of justice warranting interference by the Appellate Court?

43. An Appellate Court may interfere with an acquittal only when the view taken by the Trial Court is perverse, manifestly illegal, or such that no reasonable person could have arrived at it on the evidence on record. Where two views are possible, the one favouring the accused is ordinarily to be adopted.

44. On carefully weighing the grounds urged in the appeal, oral submissions advanced by the learned counsel for the parties, written submissions filed by them and also through sifting and examining the trial court record (TCR), this Court finds that the appeal lacks legal merit, and the Trial Court has correctly appreciated the evidence and applied the statutory presumptions.

45. This Court also finds that the appeal preferred by Surender Tanwar has extremely weak legal merits, and the Trial Court's judgment of acquittal is highly plausible and well-reasoned for the reasons and observations stated in the ensuing paragraphs of this judgment.

## *Adverse Inference for Withholding Crucial Evidence*

46. The foundational claim of the appellant was that he advanced a friendly cash loan of ₹12,00,000/- to the accused in the year 2010. During his cross-examination on 07.08.2015, the complainant made a fatal admission that a receipt for this massive cash loan was signed by the accused, but he claimed it was "untraceable" and failed to produce it before the Trial Court. The Trial Court rightly invoked Section 114, Illustration (g) of the Indian Evidence Act, 1872, which lays down that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. The non-production of this fundamental document cast a severe and irrecoverable shadow of doubt over the very existence of the loan transaction. The appellant's argument that the accused should have demanded its production is legally absurd; the onus to prove the debt as a matter of fact shifts back to the complainant once a probable defence is raised by highlighting such gaping holes in the complainant's case.

***Failure to Prove Financial Capacity and Unaccounted Cash***

47. The advancement of a massive sum of ₹12,00,000/- entirely in cash is in direct contravention of Section 269SS of the Income Tax Act. While a violation of Section 269SS alone may not universally invalidate a Section 138 proceeding, it assumes grave significance when coupled with the questionable financial capacity of the complainant. During cross-examination, the complainant admitted that his monthly income was merely ₹50,000/-, and he could not even remember the amount he had declared in his Income Tax Returns for the year 2010. He vaguely claimed that the funds were arranged by

selling agricultural land, yet he completely failed to produce any sale deed or banking trail to corroborate this assertion.

48. Relying on the binding precedent of the Supreme Court in ***Basalingappa v. Mudibasappa***, once the accused successfully questions the financial capacity of the complainant to advance a huge cash loan, the evidential burden shifts heavily back to the complainant. The appellant miserably failed to discharge this burden. Relying on the precedent of ***G. Pankajakshmi Amma v. Mathai Mathew***, the Trial Court appropriately held that courts cannot come to the aid of a party trying to enforce an illegal, unaccounted cash transaction of such a huge magnitude without any corroborating financial proof.

***Effect of the Dismissal of the Motion for Additional Evidence***

49. The glaring evidentiary vacuum in the complainant's case was sought to be cured at the appellate stage. The appellant moved an application under Section 391 of the CrPC to bring the "untraceable" receipt on record. As elaborated in paragraphs 9 to 11 of this judgment, this Court *vide* order dated 22.07.2026 dismissed the said application as it was a mala fide attempt to fill up lacunae by introducing a fabricated document bearing the name of a stranger witness, 'Mangatram (Rohit)'. The dismissal of this motion seals the fate of the appellant. Without the receipt, and without proof of financial capacity, the statutory presumptions under the NI Act stand comprehensively rebutted.

50. The wholesome effect of the non-production of the receipt, the highly suspect financial capacity of the complainant, and the

undocumented, illegal nature of the massive cash transaction clearly establishes that the accused successfully dislodged the statutory presumptions under Sections 118 and 139 of the NI Act on the standard of a preponderance of probabilities.

***Decision***

51. On a careful re-appraisal, this Court finds that the view taken by the Trial Court is a possible and plausible view on the evidence on record, and cannot be termed perverse or manifestly illegal. In short, the Court does not find any perversity, impropriety in the impugned judgment and that the Trial Court ignored any material evidence or misapplied settled law.

52. The Hon'ble High Court in ***Manoj Kumar Panchal v. Mahender Kumar Panchal – 2025 DHC 4537*** held that a decision of acquittal fortifies the presumption of innocence of the accused, and the said decision must not be upset until the appreciation of evidence is perverse. The case at hand of acquittal under challenge, is no different.

53. In view of the aforesaid legal provisions, legal principles, foregoing reasons and observations, this Court holds that there is neither any perversity in the impugned judgment passed by the Trial Court nor any merit in the appeal preferred by Surender Tanwar in challenging the impugned judgment dated 06.09.2016 passed by the Trial Court in a complaint case titled as ***Surender Tanwar v. Sunny Kumar & Anr. – CC No. 468473/2016***. This Court finds and rules that the Trial Court rightly acquitted Sunny Kumar for the alleged offence under Section 138, NI Act.

54. Accordingly, the instant appeal titled as ***Surender Tanwar v. Sunny Kumar – CA No. 607/2025*** is dismissed and the impugned judgment dated 06.09.2016 passed by the Trial Court is upheld and affirmed.

55. All pending applications, if any, also stand disposed of. Parties to bear their own costs.

56. Let a copy of this judgment along with the TCR be transmitted *forthwith* to the Trial Court for information and compliance, if any, as per rules. File be consigned to the Record Room on compliance of directions and as per applicable rules.

Hargurvarinder Singh jaggi

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| **Pronounced in the open Court on July 30, 2026** | **(Hargurvarinder Singh Jaggi)<br>Addl. Sessions Judge (FTC-01)<br>South District<br>Saket Courts, New Delhi** |

***Note***: *This judgment comprises **25** pages in total. The electronic signature certificate (digital signature) of the Presiding Officer has been appended on the last page of the electronic or digital copy (PDF) of this document.*