IN THE COURT OF SH. RAVINDER SINGH-II
ADDL. SESSIONS JUDGE-05
DWARKA COURTS: NEW DELHI

CA No. : 990/2025 CNR No. DLSW01-013622-2025

DHARMENDER CHAUDHARY
S/o Sh Rajkumar Chaudhary
R/o H. No. 102, C Block, Najafgarh
New Delhi - 110043 …. Appellant

VERSUS

SH SHRI NATH KUMAR CHOUDHARY
S/o Sh Satya Narayan Choudhary
R/o Plot No. 218 & 219, 1st Floor,
Gali No. 6, Laxmi Vihar, Near Baba Oil Mill,
Najafgarh, New Delhi - 110043 …. Respondent

Date of Institution of the Case : 18.12.2024
Date of Pronouncement of Order : 25.07.2026

JUDGMENT

1. Vide this Judgment, I shall dispose of the present criminal appeal preferred by the appellant/complainant against the judgment dated 18.11.2025 passed by the Learned Judicial Magistrate First Class *in complaint case bearing CC No.28379/2023 titled Dharmender Chaudhary Vs Shrinath Kumar Choudhary*, whereby the respondent herein was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter said as the NI Act*).

2. At the outset, the maintainability of the present appeal is required to be

considered. The appellant is the complainant in proceedings instituted under Section 138 of the NI Act before the Ld. Trial Court and claims to have suffered loss on account of dishonour of the cheque. The Hon'ble Supreme Court in ***Celestium Financial v. A. Gnanasekaran, 2025 SCC OnLine SC 1320*** held that a complainant under Section 138 of the NI Act qualifies as a "victim" within the meaning of Section 2(wa) Cr.P.C. and such a complainant is entitled to maintain an appeal against acquittal under the proviso to Section 372 Cr.P.C. without obtaining special leave under Section 378(4) Cr.P.C.

3. Therefore, since an appeal against a conviction recorded by a Judicial Magistrate First Class ordinarily lies before the Court of Sessions, an appeal preferred by a complainant against an acquittal recorded by the Ld. Judicial Magistrate would also lie before the Court of Sessions. The present appeal is, therefore, maintainable and is being adjudicated on merits.

BRIEF FACTS OF THE CASE, PROCEEDINGS BEFORE THE LD. TRIAL COURT AND GROUNDS OF APPEAL AND THE

4. Before adverting to the grounds taken by the appellant in the present appeal it is imperative for this court to understand the complete case of the appellant/complainant and the respondent/accused before the Learned Trial Court.

5. The case set up by the appellant before the Learned Trial Court is that the parties were known to each other and shared cordial relations and the respondent and his father allegedly owned a plot measuring one katha in their native place and had agreed to sell the same to the appellant.

Pursuant to the said understanding, the appellant allegedly paid a total amount of ₹3,60,000/- in cash as token money in two instalments, namely, ₹2,00,000/- on 05.11.2021 and ₹1,60,000/- on 12.11.2021. In support of the payment, the appellant relied upon an acceptance letter/receipt dated 12.11.2021, allegedly written and signed by the respondent upon a copy of his Aadhaar card. The said document was tendered in evidence before the Ld Trial Court as Ex. CW1/A.

6. According to the appellant, in March 2022, the respondent and his father refused to sell the property and assured him that the token amount would be returned within five to six months. Upon the appellant subsequently demanding repayment, the respondent allegedly sought further time on the ground that his father had recently expired.

7. The appellant alleged that towards repayment of the token amount, the respondent issued cheque bearing No. 011383 dated 01.07.2023 for ₹3,60,000/-, drawn on Union Bank of India, Najafgarh Branch, New Delhi and upon presentation, the cheque was returned unpaid vide return memo dated 02.08.2023 with the remarks "Funds Insufficient". The appellant thereafter issued a legal demand notice dated 13.08.2023 calling upon the respondent to pay the cheque amount but despite service of the notice, the payment was not made within the statutory period and consequently, the complaint under Section 138 of the NI Act was instituted by the appellant against the respondent before the Ld Trial court.

8. *Now coming to the Proceedings before the Learned Trial Court.* Upon consideration of the pre-summoning evidence, the respondent was

summoned by the Learned Trial Court vide order dated 22.05.2024. Notice under Section 251 Cr.P.C. was served upon him on 27.02.2025, to which he pleaded not guilty and claimed trial.The appellant examined himself as CW1 and tendered his evidence by way of affidavit Ex. CW1/1. He relied upon the copy of the Aadhaar card bearing the alleged acknowledgment/receipt as Ex. CW1/A, original cheque as Ex. CW1/B, cheque-return memo as Ex. CW1/C, legal demand notice as Ex. CW1/D, postal receipt as Ex. CW1/E, tracking report along with the certificate under Section 65B of the Indian Evidence Act as Ex. CW1/F and the copy of the complaint made before the DCP as Ex. CW1/G.

9. The statement of the respondent under Section 313 Cr.P.C. was recorded by the Ld Trial Court on 24.07.2025. Although the respondent initially opted to lead defence evidence, he subsequently closed his defence evidence without examining himself, his brother Chanchal Kumar Choudhary, the concerned bank official, any handwriting expert or any other witness.

10. The Learned Trial Court thereafter vide the impugned Judgment dated 18.11.2025 acquitted the respondent primarily on the ground that the respondent had denied his signatures upon the cheque and the appellant had neither summoned the concerned bank official with the account-opening form nor sought comparison of the disputed signatures through a handwriting expert or the Forensic Science Laboratory. The Learned Trial Court held that the appellant had failed to prove the foundational ingredient of Section 138 of the NI Act, namely, that the cheque had been drawn and signed by the respondent. On that basis, the statutory presumptions under Sections 118(a) and 139 of the NI Act were not

drawn and the remaining aspects of the case were not adjudicated.

11. *Now coming to the grounds of appeal.* The appellant has assailed the impugned judgment principally on the ground that the Learned Trial Court incorrectly placed the entire burden of proving the signatures appearing on the cheque in question upon the complainant and failed to appreciate the relevant material, including the reason for dishonour and the receipt/acknowledgment Ex. CW1/A.

12. The appellant has further contended that the Learned Trial Court failed to appreciate the oral and documentary evidence in its proper perspective. It is submitted that the cheque admittedly pertained to the respondent's bank account and had been dishonoured for "Funds Insufficient" and not for "Drawer's Signature Differs".

13. It is further contended that the respondent took mutually inconsistent defences. At one stage, the respondent asserted that an unsigned cheque had been handed over to his brother Chanchal Kumar Choudhary for use in MACT proceedings arising out of the death of their father. However, during the cross-examination of the appellant, a suggestion was allegedly given that the appellant had procured a blank signed cheque from the respondent's brother.

14. The appellant has further contended that the respondent did not examine his brother, the concerned bank official or any handwriting expert and did not produce any material to substantiate the allegation of forgery or misuse. It is accordingly submitted that the impugned judgment is based upon an erroneous application of the burden of proof and is liable to be

set aside.

SUBMISSIONS ON BEHALF OF THE APPELLANT

15. Ld. Counsel for the appellant has submitted that the entire reasoning of the Learned Trial Court is confined to the alleged failure of the complainant to independently prove the respondent's signatures upon the cheque in question. It is argued that the Learned Trial Court failed to consider that the cheque belonged to the respondent's account and was dishonoured for insufficiency of funds.

16. Ld. Counsel has further submitted that the plea that the cheque was unsigned and was forged by the respondent's brother is inconsistent with the suggestion that the appellant had procured a blank signed cheque from the said brother. It is also submitted that the appellant had produced an acknowledgment/receipt Ex. CW1/A concerning payment of ₹3,60,000/-, but the said document was not properly considered. According to the appellant, the judgment of acquittal is based upon a partial and incomplete appreciation of evidence and deserves to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

17. *Conversely*, Ld. Counsel for the respondent has supported the impugned judgment. It is submitted that the appellant was unable to furnish complete particulars of the property allegedly agreed to be sold and failed to establish his financial capacity or the source of the alleged cash payment of ₹3,60,000/-. It is further submitted that mere possession of a cheque pertaining to the respondent's bank account would not prove that

the respondent had signed or issued it. Since the signatures were specifically denied from the initial stage, the burden of proving execution of the cheque remained upon the appellant. It is accordingly argued that the view taken by the Learned Trial Court is a possible view arising from the available evidence and should not be interfered with in an appeal against acquittal.

18. *I have heard the submissions of the Ld. Counsel for the appellant as well as the Ld. Counsel for the respondent. Further, I have carefully perused the entire record.*

ANALYSIS & FINDINGS

19. Upon consideration of the grounds of appeal, rival submissions and the Trial Court Record, the principal questions which arises for determination are whether the Learned Trial Court correctly appreciated the material concerning execution of the cheque; whether the finding regarding the disputed signatures is sustainable; whether the statutory presumptions could have been drawn on the existing evidence; and whether the facts warrant final adjudication by this Court or a limited remand to the Learned Trial Court.

SCOPE OF INTERFERENCE BY THE APPELLATE COURT AGAINST ACQUITTAL

20. An appellate Court possesses full power to review, reappreciate and reconsider the evidence upon which an order of acquittal is founded. Nevertheless, an acquittal reinforces the presumption of innocence available to the accused, and interference cannot be made merely because another view may also be possible.

21. In ***Chandrappa v. State of Karnataka*, (2007) 4 SCC 415**, the Hon'ble Supreme Court held that an appellate Court has full power to review, reappreciate and reconsider the evidence upon which an acquittal is founded. However, in the case of an acquittal, there operates a double presumption of innocence in favour of the accused. If two reasonable conclusions are possible on the basis of the evidence, the appellate Court should not disturb the finding of acquittal. Relevant portion of the said judgment is reproduced hereunder:

> *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
> *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
> *(2) The Criminal Procedure Code, 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.*
> *(3) 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.*
> *(4) 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 is 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.*
> *(5) 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."*

22. Further it is trite to say that the protection afforded to an acquittal does not prevent interference where the decision is manifestly illegal, perverse, based upon a misreading of the evidence or rendered by ignoring material evidence. The appellate Court is required to determine whether the view adopted by the Trial Court is a reasonably possible view arising from a complete and legally correct appreciation of the evidence. Further section 386(a) of the Cr.P.C. empowers the appellate Court, in an appeal from acquittal, to reverse the order of acquittal and direct a further inquiry or retrial or to find the accused guilty and pass sentence according to law. Such power of remand or retrial is not to be exercised routinely. It may be invoked where the trial or adjudication is incomplete on a foundational issue and a limited remand is necessary to prevent failure of justice.

INGREDIENTS OF SECTION 138 OF THE NI ACT

23. Now coming to the essential ingredients required to establish the commission of an offence under Section 138 of the NI Act. The Hon'ble Supreme Court in ***Gimpex (P) Ltd. v. Manoj Goel: (2022) 11 SCC 705***, has enumerated the essential ingredients required to establish the commission of an offence under Section 138 of the NI Act in the following terms:

> *"26. The ingredients of the offence under Section 138 are:*
> *26.1. The drawing of a cheque by person on an account maintained by him with the banker for the payment of any amount of money to another from that account;*
> *26.2. The cheque being drawn for the discharge in whole or in part of any debt or other liability;*
> *26.3. Presentation of the cheque to the bank;*

> *26.4. 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 arranged to be paid from that account;*
> *26.5. 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*
> *26.6. The drawer of the cheque failing 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."*

24. As such to constitute an offence under Section 138 of the NI Act, the cheque in question must have been issued in discharge of a legally enforceable debt or liability. However, Section 139 of the NI Act provides that once the drawer admits his signature on the cheque, a statutory presumption arises that the cheque was issued for the discharge, in whole or in part, of a debt or other liability. Section 118 of the NI Act further lays down a presumption that every negotiable instrument, when held by a holder in due course, has been made or drawn for consideration.

25. In the case of ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197,*** the Hon'ble Supreme Court held as under *(paragraph No.18, 20, 24 and 33)*:

> *"18. In passing the impugned judgment and order dated 21-11-2017, the High Court misconstrued Section 139 of the Negotiable Instruments Act, which mandates that unless the contrary is proved, it is to be presumed 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. Needless to mention that the presumption contemplated under Section 139 of the Negotiable Instruments Act, is a rebuttable presumption. However, the onus of proving that the cheque was not in discharge of any debt or other liability is on the accused drawer of the cheque.*

20. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact as held in Hiten P. Dalal.

24. In K.N. Beena v. Muniyappan, this Court held that in view of the provisions of Section 139 of the Negotiable Instruments Act read with Section 118 thereof, the Court had to presume that the cheque had been issued for discharging a debt or liability. The said presumption was rebuttable and could be rebutted by the accused by proving the contrary. But mere denial or rebuttal by the accused was not enough. The accused had to prove by cogent evidence that there was no debt or liability. This Court clearly held that the High Court had erroneously set aside the conviction, by proceeding on the basis that denials averments in the reply of the accused were sufficient to shift the burden of proof on the complainant to prove that the cheque had been issued for discharge of a debt or a liability. This was an entirely erroneous approach. The accused had to prove in the trial by leading cogent evidence that there was no debt or liability.

33. A meaningful reading of the provision of the Negotiable Instrument Act, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces the evidence to rebut the presumption that the cheque had been issued for payment of debt or in discharge of a liability. It is immaterial that the cheque may have been filled by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted"

26. In the case of ***Kishan Rao v. Shankargouda, (2018) 8 SCC 165 (paragraph Nos. 18 to 22)*** the Hon'ble Supreme Court has held as under:-

> *"18. Section 139 of the 1881 Act provides for drawing the presumption in favour of holder. Section 139 is to the following effect:*
>
> *"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.*
>
> *19. This Court in Kumar Exports v. Sharma Carpets, had considered the provisions of the Negotiable Instruments Act as well the Evidence Act. Referring to Section 139, this Court laid down the following in paras 14, 15, 18 and 19: (SCC pp. 519-20)*
>
> > *"14. Section 139 of the Act provides that 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.*
> >
> > *15. Presumptions are devices by use of which the courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence. Under the Evidence Act all presumptions must come under one or the other class of the three classes mentioned in the Act, namely, (1) "may presume" (rebuttable), (2) "shall presume" (rebuttable), and (3) "conclusive presumptions" (irrebuttable). The term "presumption" is used to designate an inference, affirmative or disaffirmative of the existence of a fact, conveniently called the "presumed fact" drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact, either judicially noticed or admitted or established by legal evidence to the satisfaction of the tribunal. Presumption literally means "taking as true without examination or proof".*
> >
> > *18. Applying the definition of the word*

> *"proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.*
>
> *19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over."*

20. This Court held that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose. Following was held in paragraph 20 (Kumar Exports v. Sharma Carpets):

> *"20....The accused may adduce direct evidence to prove that the note in question was not*

supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the nonexistence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their nonexistence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist..."

21. In the present case, the trial court as well as the Appellate Court having found that cheque contained the signatures of the accused and it was given to the appellant to present in the Bank of the presumption under Section 139 was rightly raised which was not rebutted by the accused. The accused had not led any evidence to rebut the aforesaid presumption. The accused even did not come in the witness box to support his case. In the reply to the notice which was given by the appellant the accused took the defence that the cheque was stolen by the appellant. The said defence was rejected by the trial court after considering the evidence on record with regard to which no contrary view has also been expressed by the High Court.

22. Another judgment which needs to be looked into is Rangappa vs. Sri Mohan, 2010 (11) SCC

441. A three Judge Bench of this Court had occasion to examine the presumption under Section 139 of the Act, 1881. This Court in the aforesaid case has held that in the event the accused is able to raise a probable defence which creates doubt with regard to the existence *of a debt or liability, the presumption may fail. Following was laid down in paragraphs 26 and 27:*

"26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat, (2008) 4 SCC 54, may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof."

27. It is also relevant to take note of the judgment of the Hon'ble Supreme Court in the case of ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC***

735, paragraph No.8 of the said Judgment read as:

> *"8. It is true that this is a case under Section 138 of the Negotiable Instruments Act. Section 139 of the NI Act provides that court shall presume 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. This presumption, however, is expressly made subject to the position being proved to the contrary. In other words, it is open to the accused to establish that there is no consideration received. It is in the context of this provision that the theory of "probable defence" has grown. In an earlier judgment, in fact, which has also been adverted to in Basalingappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571] , this Court notes that Section 139 of the NI Act is an example of reverse onus (see Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184]). It is also true that this Court has found that the accused is not expected to discharge an unduly high standard of proof. It is accordingly that the principle has developed that all which the accused needs to establish is a probable defence. As to whether a probable defence has been established is a matter to be decided on the facts of each case on the conspectus of evidence and circumstances that exist."*

28. In addition to the above judgments of the Hon'ble Supreme Court, it is also relevant to take note of the dictum of the Hon'ble Supreme Court in the case of ***Basalingappa V. Mudibasappa1, (2019) 5 SCC 418,*** paragraph No.25 reads as:

> *"25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:*
>
> *25.1. 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. 25.2. 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 a for rebutting the presumption is that of preponderance*

> *of probabilities.*
> *25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the 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.*
> *25.4. 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.*
> *25.5. It is not necessary for the accused to come in the witness box to support his defence."*

29. Therefore, it is trite law that in a prosecution under Section 138 of the NI Act, the Court is required to examine whether the ingredients of Section 138 of the NI Act are satisfied and whether the accused has rebutted the statutory presumption under Section 139 of the NI Act in backdrop of the essential ingredients for the offence under section 138 of the NI Act include drawing of cheque, presentation, dishonour, issuance of demand notice within time and failure to pay within 15 days of receipt of notice. Further Section 139 of the NI Act creates a reverse onus clause. Once the foundational facts are proved and execution/signature on the cheque is admitted, the Court is required to presume that the cheque was issued in discharge of a debt or liability. Section 139 shifts the evidential burden upon the accused to prove non-existence of the presumed fact, namely that the cheque was not issued in discharge of debt/liability.

PROOF OF DISPUTED SIGNATURES

30. Execution of a cheque, like any other fact, may be proved through direct or circumstantial evidence. Examination of a handwriting expert is not an invariable statutory requirement in every case where signatures are

denied. However, where the dispute is real and the available evidence is inconclusive, banking records and expert comparison may constitute the best available evidence.

31. In ***Ajitsinh Chehuji Rathod v. State of Gujarat, (2024) 4 SCC 453,*** the Hon'ble Supreme Court observed that where an accused disputes the signatures appearing on a cheque, certified copies of the specimen signatures maintained by the bank may be obtained and the concerned bank official may be summoned. A request may also be made for comparison of the disputed signatures with admitted or specimen signatures in accordance with law. The Hon'ble Supreme Court further held that the Court is not expected to collect defence evidence for an accused who, despite having an opportunity, does not produce the bank record or examine the concerned witness. The statutory presumptions are rebuttable, but the party seeking to disprove the signatures must avail itself of the available evidentiary means. The observations of the Hon'ble Supreme Court in this regard are as under:-

> *"14. Certified copy of a document issued by a Bank is itself admissible under the Bankers" Books Evidence Act, 1891 without any formal proof thereof. Hence, in an appropriate case, the certified copy of the specimen signature maintained by the Bank can be procured with a request to the Court to compare the same with the signature appearing on the cheque by exercising powers under Section 73 of the Indian Evidence Act, 1872.*
> *15. Thus, we are of the view that if at all, the appellant was desirous of proving that the signatures as appearing on the cheque issued from his account were not genuine, then he could have procured a certified copy of his specimen signatures from the Bank and a request could have been made to summon the concerned Bank official in defence for giving evidence regarding the genuineness or otherwise of the signature on the cheque. 16. However, despite having opportunity, the accused appellant did not put any question to the bank official examined in defence for establishing his plea of purported mismatch of signature on the cheque in*

> *question and hence, we are of the firm opinion that the appellate Court was not required to come to the aid and assistance of the appellant for collecting defence evidence at his behest. The presumptions under the NI Act albeit rebuttable operate in favour of the complainant. Hence, it is for the accused to rebut such presumptions by leading appropriate defence evidence and the Court cannot be expected to assist the accused to collect evidence on his behalf." (Emphasis added)*

32. In ***L.C. Goyal v. Suresh Joshi,*** **(1999) 3 SCC 376**, the Hon'ble Supreme Court treated the dishonour of a cheque for insufficiency of funds, rather than mismatch of signatures, as a relevant circumstance while considering a plea of forged signatures. It was observed that if the signatures had materially differed from the specimen signatures maintained by the bank, the cheque would ordinarily have been returned with a remark concerning mismatch of signatures.

33. The Hon'ble Delhi High Court in ***S. Minz v. Madhu Bala Gupta,*** **2012 SCC OnLine Del 2936,** while relying upon *L.C. Goyal (Supra)*, observed that where a cheque is returned for insufficiency of funds and not due to mismatch of signatures, the reason for dishonour is a material circumstance. It was further observed that in a dispute regarding signatures, the concerned bank official may be a more relevant witness than a handwriting expert.

34. The reason "Funds Insufficient" cannot, however, be treated as conclusive proof of signatures in every case. Its effect must be assessed along with the evidence of the bank regarding the process adopted while clearing the cheque, the specimen signatures maintained by the bank and the other surrounding circumstances.

35. The Hon'ble Delhi High Court in ***S. Minz v. Madhu Bala Gupta: 2012 SCC OnLine Del 2936***, while relying upon the decision of the ***Hon'ble Supreme Court in L.C. Goyal v. Suresh Joshi (Supra)*** has observed that where a cheque is dishonoured due to insufficiency of funds, and not on account of signature mismatch, reference of the disputed signatures to a handwriting expert may not be warranted. In such circumstances, the most relevant and competent witness would be the concerned Bank Manager. The relevant portion of the decision reads as under:

> ***6. In view of the facts and circumstances of the present case, I am in agreement with the observations of the learned MM. The bank had not disputed the signatures of the petitioner on the cheque. The cheques were dishonored due to insufficiency of funds in the account of petitioner. The judgment of kalyani Bhaskar (Supra) is clearly distinguishable from the present case, as in that case the bank manager, during cross-examination had clearly stated that the signatures on the cheque had not been verified by the bank at the time of dishonor of the cheque.No such statement has been made by the bank official in his examination before the learned MM. Further in the case of P.R. Ramakrishnan(Supra), the Madras High Court had allowed the petition for verification of signatures on cheque on the facts of that case, as the reasons given by the trial Court for dismissing the application of the petitioner for verification of the signature, was delay in filing of the application, which was not considered justified. The learned MM in the present case has given sufficient and cogent reasons for dismissing the application of the petitioner.***
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> ***7. In the case of L.C. Goyal (Supra) the Supreme Court observed in para (8) of its judgment observed as under :***
>
> ***"The complainant alleged that when the appellant realized that the complainant has come to know that he has misappropriated a sum of Rs. 25,491, he gave a cheque for a sum of Rs. 38,000 which is Ext.C-4. The said cheque was drawn on UCO Bank and the same was deposited in the Central Bank of India in the account of Union, viz., Siemens' Employees Union, New Delhi. But the said cheque was dishonored due to insufficient funds. The appellant denied his signature on Ext. C-4 and contended that his signature was forged by the complainant. It is in this context that it was urged before the Bar Council of India that some handwriting expert be examined in order to find out the genuineness of the signature on Ext. C-4. As stated above, the cheque bounced not on account of the fact that the signature on Ext. C-4 was not tallying with the specimen signature***

of the appellant kept with the Bank, but on account of insufficient funds. Had the signature on Ext. C-4 been different, the bank would have returned the same with the remark that the signature on Ext. C-4 was not tallying with the appellant's specimen signature kept with the bank. The memos Ext. C-6 and Ext. C-8 issued by the bank clearly show that signature of the appellant on Ext, C-4 was not objected to by the bank, but the same was returned with the remark "insufficient fund". This circumstance shows that the signature on Ext. C-4 was that of the appellant."

8.In the case of Manda Syamsundra Vs. Kurella Anjaneyachari & Others 2009(1) DCR 726, the Andhra Pradesh High Court relied upon the case of HM Satish Vs. B.N. Ashok 2007(3) Crimes 502 and L.C. Goyal(supra) and held thus;

"In the light of the above decisions and in the light of the return of the cheque not on the ground of signature not tallying, no purpose will be served in sending the document to the handwriting expert and there are no grounds to interfere with the order of the lower Court."

9. This Court recently in the case of Kashi Ram Bansal (supra) also relied upon the decision of L.C. Goyal (supra) and held that in the case of denial of signature by the drawer of a cheque, the best witness would be the concerned Bank Manager and not a handwriting expert.

10. In view of the above observations, I find no infirmity with the order of the learned MM. Hence the petition is dismissed. (Emphasis added)

36. *Now coming to the case in hand.* In the present case, the Learned Trial Court was justified in recognising that the statutory presumptions under Sections 118(a) and 139 of the NI Act could not be invoked without first addressing the respondent's specific denial of his signatures. However, the inquiry could not have ended merely upon observing that the appellant had failed to summon a bank witness or obtain an expert opinion.

37. Cheque Ex. CW1/B admittedly pertains to the respondent's bank account. The respondent has admitted that the cheque leaf emanated from his custody and claimed that it was handed over to his brother Chanchal

Kumar Choudhary. The cheque was returned with the remarks "Funds Insufficient" and not "Drawer's Signature Differs". In view of *L.C. Goyal* and *S. Minz*, this was a relevant circumstance which required consideration, though it was not conclusive by itself.

38. The versions of the defence also required closer scrutiny. On the one hand, the respondent claimed that the cheque handed over to his brother was blank and unsigned and that the signatures were subsequently forged. On the other hand, a suggestion was allegedly given during the cross-examination of CW1 that the appellant had procured a blank signed cheque from the respondent's brother.

39. A suggestion given during cross-examination is not, by itself, substantive evidence of the fact suggested. It may, however, indicate the nature of the defence and may be considered for determining whether the defence has remained consistent and probable.

40. The appellant also produced the alleged acknowledgment/receipt Ex. CW1/A concerning payment of ₹3,60,000/-. The Learned Trial Court did not examine whether Ex. CW1/A contained any admitted writing or signatures of the respondent which could provide relevant comparison material or corroboration regarding the transaction.

41. The impugned judgment does not discuss the cumulative effect of the cheque-return memo, the respondent's admitted connection with the cheque leaf, the inconsistent defence versions, acknowledgment of the payment paid by the respondent vide Ex. CW1/A and the failure to examine the respondent's brother, who was stated to be the person to

whom the cheque was entrusted.

42. At the same time, this Court cannot lose sight of the fact that the respondent disputed the signatures from the stage of notice under Section 251 Cr.P.C. Neither the concerned bank official nor any person acquainted with the respondent's signatures was examined. The account-opening form and specimen signature card maintained by the bank were not produced. No expert comparison of the signatures was obtained.

43. The observations in the Judgments discussed above become fully operative only after the foundational fact of execution is admitted or proved. Since the signatures themselves remain disputed and the evidence on that foundational question is incomplete, it would not be appropriate to straightaway convict the respondent merely by invoking the presumptions.

44. The return of the cheque for "Funds Insufficient" is a strong and relevant circumstance, but the respondent should have an opportunity to question the bank official regarding the process adopted by the bank while processing the cheque. Equally, the appellant should have an effective opportunity to produce the bank record or appropriate expert evidence to establish the signatures.

45. It would also not be appropriate for this appellate Court to record a conclusive finding merely by visually comparing the signatures appearing on the cheque with the writing or signatures available on Ex. CW1/A in terms of Section 73 of Indian Evidence Act, 1872/ Section 72 of the BSA, 2023. Although comparison by the Court is legally permissible as

an aid, prudence requires that where the entire case has been decided upon disputed signatures, appropriate banking or expert evidence should be made available.

46. The Learned Trial Court disposed of the complaint solely upon the question of signatures without undertaking a complete examination of the relevant circumstances and without adjudicating the other ingredients of Section 138 of the NI Act. Conversely, the material presently available is not sufficient for this Court to conclusively hold beyond reasonable doubt that the disputed signatures were affixed by the respondent.

47. Therefore, neither an unqualified affirmation of the acquittal nor a direct conviction by this Court would secure the ends of justice. The appropriate course is to set aside the impugned judgment and remand the matter for a limited retrial confined to the genuineness and execution of the signatures appearing on cheque in question Ex. CW1/B.

48. Such limited remand would not amount to permitting the parties to alter their original cases or lead evidence afresh upon every aspect of the complaint. The evidence already recorded shall continue to form part of the Trial Court Record. Additional evidence shall remain confined to the genuineness or otherwise of the signatures and execution of the cheque.

49. After recording the limited additional evidence, the Learned Trial Court shall reconsider the entire material in accordance with settled legal position and the ingredients of Section 138 of the NI Act.

50. ***In view of the foregoing discussion, the present appeal is allowed. The judgment of acquittal dated 18.11.2025 passed by the Court of the Learned Judicial Magistrate First Class (NI Act-09), South-West District, Dwarka Courts, New Delhi, in CC No. 28379/2023 titled Dharmender Chaudhary v. Shrinath Kumar Choudhary is hereby set aside.***

51. The matter is remanded to the Learned Trial Court for a limited retrial confined to the question of the genuineness and execution of the signatures appearing on cheque bearing No. 011383 dated 01.07.2023 for ₹3,60,000/-, Ex. CW1/B. The Learned Trial Court shall restore the complaint to its original number and grant a reasonable and effective opportunity to the appellant/complainant to prove the disputed signatures by summoning the concerned bank official along with the account-opening form, specimen signature card and other relevant banking record or by seeking comparison through a duly qualified handwriting or forensic expert, in accordance with law.

52. The respondent/accused shall be granted a corresponding opportunity to cross-examine the witnesses produced by the appellant and to produce rebuttal evidence limited to the genuineness or otherwise of the signatures on the cheque in question Ex. CW1/B. The respondent shall also be at liberty to summon the relevant bank record, examine the concerned bank official and seek expert comparison if required.

53. No party shall be permitted to lead any additional evidence upon an issue unconnected with the signatures or execution of cheque Ex. CW1/B, except where the Learned Trial Court finds such evidence inseparably connected with the remanded issue.

54. Upon completion of the limited additional evidence, the Learned Trial Court shall, if required, record a supplementary statement of the respondent under Section 313 Cr.P.C., grant both parties an opportunity to address final arguments and thereafter pass a fresh judgment upon the entire evidence and material available on record as per law.

55. The Learned Trial Court shall decide all questions independently and shall not treat any observation contained in this judgment as a final expression regarding the genuineness of the signatures, existence of the alleged debt or liability, financial capacity of the appellant, rebuttal of the statutory presumptions or guilt of the respondent.

56. The Learned Trial Court shall not grant unnecessary adjournments to either side and shall make endeavour to complete the limited evidence expeditously and pronounce a fresh judgment within six months.

57. **Both parties are directed to appear before the Learned Trial Court on 24.08.2026 at 2:00 PM.**

The Trial Court Record, along with a copy of this judgment, be sent back forthwith to the Learned Trial Court for information and compliance.

Appeal file be consigned to Record Room after due compliance.

RAVINDER SINGH

Digitally signed by RAVINDER SINGH
Date: 2026.07.25 16:57:02 +0530

Pronounced today
in the open Court on 25.07.2026.

(Ravinder Singh - II)
ASJ-05/South-West District,
Dwarka Courts/New Delhi