IN THE COURT OF SHRI SUSHIL ANUJ TYAGI
ADDITIONAL SESSIONS JUDGE, (FTSC) (RC):
SOUTH-WEST DISTRICT, DWARKA COURTS, NEW DELHI.

CNR No. DLSW01-009744-2025
CA No. 644/2025

In the matter of :

Baljinder Singh
S/o Sh. Pritam Singh
R/o WZ 59A, Gali no.4, Nanak Nagar,
Near Singh Sabha Gurudwara, MBS Nagar,
Tilak Nagar, New Delhi-110018.

…... **Appellant**

Versus

M/s. MCF Finlease P.Ltd
(Through its Director)
Sh. Tarun Chawla,
B-204, Vikas Tower,
Community Centre, Vikaspuri,
New Delhi. .....**Respondent**

Date of institution of Appeal	**: 10.10.2025**
Date on which order reserved	**: 08.06.2026**
Date on which order pronounced	**: 06.07.2026**

J U D G M E N T

1. The present appeal has been filed by the appellant under Section 415 Bharatiya Nagarik Suraksha Sanhita 2023

(hereinafter referred to as BNSS) against the impugned judgment dated 28.07.2025 and order on sentence dated 04.09.2025 passed by learned JMFC (NI Act) DC-04, South-West District, Dwarka Courts, New Delhi in a complaint case No.4624/2023 titled as "M/s MCF Finlease (P) Ltd Vs. Baljinder Singh".

2. Vide the impugned judgment and order on sentence, the appellant has been convicted for offence punishable under Section 138 Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) and is sentenced to fine of Rs. 2,50,000/- with 9% interest p.a payable from the date of filing of complaint till the payment of entire amount to be paid as compensation to the complainant. In default of payment of said compensation, convict shall undergo simple imprisonment for a period of three months.

BRIEF FACTS

3. The brief facts of the case are that accused alongwith the borrower Mr. Amritpal Singh, Co-borrower Mr. Harjinder Singh and Guarantor namely Mrs. Inderjeet Kaur approached the complainant company at it's official address and had applied for a loan against property of Rs.3,50,000/-. The complainant approved the abovesaid loan and same was granted to the borrower vide loan account No.3515 dated 12.11.2018 which was to be repaid in sixty equal monthly installments of Rs. 11,100/- each. It has been alleged that the borrower had been irregular in paying the monthly

installments and on 03.11.2022, the accused had agreed to mutually settle the abovesaid loan with the complainant in sum of Rs.7,00,000/-. It is further alleged that towards the aforesaid liability, the accused had issued cheque bearing number 000089 dated 05.11.2022 for a sum of Rs.2,50,000/- drawn on Andhra Bank, Janakpuri, New Delhi in favour of the complainant. When the complainant presented the cheque in question for encashment, the same was returned unpaid upon presentation for the reason "Funds Insufficient" vide return memo dated 07.11.2022. A legal notice dated 17.11.2022 was duly sent by the complainant to the accused in this regard, but to no avail as the accused failed to pay the amount of cheque within the prescribed period. Hence, the present complaint under Section 138 of NI Act was filed.

4. Appellant was summoned to face trial. Notice under Section 251 Cr.P.C. was framed against him to which the appellant pleaded not guilty and claimed trial. The appellant admitted his signature on the cheque in question but denied filling the particulars of it. He claimed that the loan was taken by his neighbour Ms. Inderjeet Kaur and the cheque in question was issued by him for security purpose being the guarantor. He further claimed that Ms. Kaur had already paid more than the loan amount availed and the complainant has been demanding money beyond the extent of loan.

5. Complainant examined its AR as CW-1 who proved his affidavit as Ex CW 1/A, certificate issued by RBI as Ex CW 1/1(OSR), incorporation certificate Ex CW 1/2, Form-32 Ex

CW 1/3, board resolution Ex CW 1/4, Loan agreement Ex.CW1/5 (OSR), promissory note Ex.CW1/6 (OSR), receipt of payment Ex.CW1/7 (OSR), copy of reminder letters dt.11.03.2022 Mark "A", copy of postal receipts Mark "B", copy of letter dt.03.11.2022 Ex.CW1/10, loan account statement alongwith certificate U/s 65B of Indian Evidence Act Ex. CW1/11, cheque in question Ex.CW1/12, return memo Ex.CW1/13, legal demand notice Ex.CW1/14, postal receipt Ex.CW1/15 and tracking report alongwith certificate U/s 653 of Indian Evidence Act Ex. CW1/16.

6. Thereafter, Statement of the appellant under Section 313 CrPC was recorded wherein all the incriminating evidence were denied by him and he had taken the same defence as disclosed in his plea of defence.

7. The appellant did not lead any defence evidence in support of his case. After that, learned Trial Court heard the final arguments and passed the impugned judgment.

8. Aggrieved by the said impugned judgment, the present criminal appeal has been preferred by the appellant challenging the same on following grounds:

> *a) That the Ld. Trial Court failed to appreciate that under the law, in order to attract Section 138 NI Act, the cheque must be issued in discharge of a legally enforceable debt or liability. The cheque in question was a security cheque, not issued for any liability owed by the appellant personally.*
>
> *b) That the Ld. Trial Court erred in ignoring the settled law that a security cheque issued by a guarantor, without a*

specific and immediate liability to pay, cannot form the basis of conviction under Section 138 NI Act.

c) That the Ld. Trial Court failed to consider that the appellant had no direct financial dealing with the complainant. The loan was sanctioned to Mr.Amritpal Singh, and the appellant was merely a guarantor, and no amount was disbursed to or received by him.

d) That the Ld. Trial Court erred in not drawing adverse inference against the complainant for failing to implead the principal borrower and co-borrowers in the complaint, who were the actual parties liable for repayment under the loan agreement.

e) That the Ld. Trial Court ignored that the entire transaction is secured by mortgaged property, and the complainant had alternative civil remedies through recovery proceedings or property attachment, and hence, criminal prosecution against the guarantor was premature and legally untenable.

f) That the cheque in question was admittedly filled by the complainant and not written by the appellant, except for his signature. As such, no presumption under Section 139 NI Act can arise unless the complainant proves that the cheque was issued for a legally enforceable debt.

g) That mere admission of signature on a blank cheque does not constitute admission of liability, especially where the complainant fills the amount arbitrarily. The burden of proof was on the complainant to establish the legally enforceable debt, which was not discharged.

h) That the appellant's testimony (DW-1) and defence witness (DW-2) clearly support the version that the cheque was taken under coercion and without any legal obligation. This vital defence was disregarded by the Ld. Trial Court without adequate reasoning.

i) That the impugned judgment is based on surmises and conjectures, rather than cogent evidence and settled legal *principles. The Ld. Trial Court failed to appreciate the burden of proof that lies on the complainant under Sections 118 and 139 NI Act and the scope for rebuttal by the accused.*

j) That the complaint was not maintainable in absence of privity of contract between the appellant and the complainant regarding repayment of the loan in question.

k) That the quantum of punishment is excessive and disproportionate to the facts and circumstances of the case, particularly when the appellant is a senior citizen, aged and suffering from kidney failure and other old-age ailments.

9. This court has heard the contentions from both the sides and has perused the judicial record.

ARGUMENTS ON BEHALF OF THE APPELLANT

10. It is contended by the counsel for appellant that the learned trial court has passed the order in a mechanical manner and the impugned order is bad in the eyes of law. It is argued that the appellant was only a guarantor in the said loan and that he has given the impugned cheque for security and his signatures were also taken on blank papers and thereafter he never met the complainant. It is argued that no notice was served upon the appellant. It is further argued that the complainant admitted that there are no signatures of the complainant on the settlement letter. It is further argued that there are material contradictions and inconsistencies in the statement of complainant and the accused is liable to be acquitted. Ld. counsel for appellant relied the following judgments in support of his arguments:-

a. *M/s Rahul Builders Vs. Arihant Fertilizers & Chemicals (2008) 2 SCC 321.*

b. *Kulvinder Singh Vs. Kafeel Ahmed delivered by Hon'ble High Court of Delhi on 04.01.2020.*

c. *Basslingappa Vs. Mudibasappa of Hon'ble Supreme Court of India dated 09.04.2019.*

d. *Vipul Kumar Gupta Vs. Vipin Gupta delivered by Hon'ble High court of Delhi on 24.08.2012*

e. *Krishna Janardhan Bhat Vs. Dattatraya G Hedge AIR 2008 SC 1325.*

<u>ARGUMENTS ON BEHALF OF THE RESPONDENT.</u>

11. Ld. Counsel for the respondent has submitted that the order passed by the learned Trial Court has no illegality and infirmity and requires no intervention and the same has been passed by the learned Trial Court after due application of mind and considering all the material on record. It is further argued that the respondent has proved its case beyond all doubts and has satisfied all the presumptions of sections 118 and 139 of NI Act. It is further argued that the appelland has admitted that he is the guarantor of the loan and no single document has been filed by the appellant regarding the payment of loan by the main borrower. It is further argued that in the letter Ex CW 1/10, the appellant admitted the liability as a guarantor and also issuing of the impugned cheque. It is further argued that signature on the aforesaid

letter has also been admitted by the appellant. It is further argued that the bail bonds bears the same address as mentioned on the legal notice and the tracking report bears the same number as of the receipt. It is further argued that the learned Trial Court has rightly convicted appellant/accused for the offence punishable under Section 138 NI Act.

LAW, ANALYSIS AND FINDINGS

12. Before proceeding further, it would be pertinent to note that in prosecution under Section 138 NI Act, the statutory presumptions under Sections 118 and 139 NI Act stand in favour of the complainant/respondent. Once the complainant/respondent proves that the negotiable instrument/cheque was executed by the maker in favour of the holder of the cheque, the law presumes that it was drawn for consideration and the holder received it in discharge of any debt or liability.

13. A presumption is not in itself evidence but only makes a prima facie case for a party for whose benefit it exists. Presumptions both under Sections 118 and 139 are rebuttable in nature. This was also held by the Hon'ble Supreme Court of India in ***Hiten P. Dalal v. Bratindranath Banerjee*** **(2001) 6 SCC 16**. The burden shifts on the accused to prove the contrary, which he can do through cross-examination of the complainant or/and by leading any cogent evidence in defence. The burden on the accused however is not that of

beyond reasonable doubt, but one of *'preponderance of probabilities'*.

14. In ***Rangappa v. Mohan***, AIR 2010 SC 1989 wherein the Hon'ble Apex Court observed—

> *"Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the complainant."*

15. Further in the case of ***K. Bhaskaran v. Sankaran Vaidhyan Balan***, 1999 (4) RCR (Criminal) 309, it has been held by the Hon'ble Supreme Court as under—

> "*As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the court to presume that the holder of the cheque received it for the discharge of any debt or liability."*

16. Thus, as per the settled law, once the appellant/accused admits the signatures on the cheque, the initial presumption as contemplated under Section 139 of the Act has to be raised in favour of the complainant and in the present case as well the appellant had admitted his signatures on the cheque. No fault can be found with the observations of the learned Trial Court in this regard.

17. In the present case, the respondent discharged his burden of establishing a *prima-facie* case by leading evidence and meeting the basic ingredients of Section 138 of NI Act. The

burden shifted upon the appellant to rebut the presumptions under Sections 118 and 139 NI Act, standing in favour of the respondent.

18. The first defence of the appellant is that he has not received the legal demand notice however, such defence holds no water as the legal demand notice bears the same address as mentioned in the bail bonds and it is not disputed that the address belongs to the appellant. The tracking report Ex CW 1/6 clearly mentions that the legal notice was served to "Baljinder". Be that as it may, the accused had received the summons but he has not tendered the cheque amount within 15 days of receipt of the summons. The purpose of service of legal notice is to provide opportunity to the issuer of cheque to pay the cheque amount to the drawee. If it was the defence of the appellant that he has not received the legal demand notice then he could have tendered the cheque amount within 15 days of receipt of the summons to avoid the prosecution u/s 138 N.I. Act. In default, the defence of non service of legal demand notice is not sustainable. Reference in this regard may be made to the observations of the Hon'ble Apex Court in ***C.C. Alavi Haji Vs. Palapetty Muhammed (2007) 3 SCC (Cri) 236*** where it was held as follows:-

> *" A person who does not pay within 15 days of the receipt of summons from the court alongwith the copy of complaint u/s 138 of the Act, cannot obviously contend that there was no proper service of notice as required u/s 138, by ignoring statutory*

presumption to the contrary u/s 27 of the GC Act and Section 114 of the Evidence Act."

19. The other defence taken by the accused is that the impugned cheque was issued for security at the time of grant of loan and therefore he is not liable u/s 138 N.I. Act. In this regard, the Ld. trial court has correctly relied upon the judgment of the Hon'ble High Court of Delhi in ***Suresh Chandra Goel Vs. Amit Singhal CRL.L.P 706/2014*** wherein it was noted that the penal provision does not distinguish between a cheque issued by the debtor in discharge of an existing debt, other liability or even issued as a security on the premise to pay the debt whenever it crystallizes on a future date.

20. It is settled law that the security cheques are also within the domain of Section 138 N.I. Act as far as the legally enforceable liability exists on the date of presentation of the security cheque. In the present case, the appellant has failed to show that he was not having the liability to the tune of cheque amount on the date of presentation of the impugned cheque. Therefore, by mere pleading that the impugned cheque was issued for security purpose, the appellant cannot evade his liability u/s 138 N.I. Act.

21. There is no denial regarding the execution of the loan agreement. The appellant has not denied his signatures as guarantor on the loan agreement Ex CW 1/5, receipt Ex CW 1/7 and promissory note Ex CW 1/6. It is settled law that the liability of the guarantor is co-extensive with the borrower. The liability of guarantor is joint and several as per Section

128 of the Contract Act. It has not been proved by the appellant that the main borrower has repaid the loan or that he is not having the liability to the extent of the loan amount.

22. To add further, the appellant has not denied his signatures on the foreclosure letter dated 03.11.2022 Ex CW 1/10 in which there is admission on the part of appellant that he is the guarantor of the said loan and that he is issuing the impugned cheque towards the balance payment of the mutually agreed foreclosure amount. The only defence taken by the appellant is that his signatures were taken on blank papers but there is no evidence to substantiate the defence except the oral bald allegations.

23. For the foregoing reasons, this court is of the considered opinion that learned Trial Court had rightly found the appellant guilty u/s 138 N.I. Act. The impugned judgment of conviction passed by the Ld. trial court is hereby upheld.

24. As far as the question of quantum of sentence is concerned, the Ld. trial court had not passed any substantive sentence of imprisonment but rather imposed fine of Rs. 2,50,000/- with 9% p.a payable from the date of complaint till the entire payment to be paid as compensation to the complainant. The Ld. trial court had also allowed such compensation to be paid in three equal installments and in default to undergo simple imprisonment for three months. No interference is warranted in the said impugned order on sentence and the

same has been passed by the Ld. trial court after due application of mind.

CONCLUSION

25. The impugned judgment of conviction dated 28.07.2025 and the impugned order on sentence dated 04.09.2025 are upheld. The appeal is, accordingly, dismissed.

26. Trial Court Record be sent back along with copy of this order.

27. A copy of this order be also given dasti to the appellant.

28. File be consigned to Record Room after completing necessary formalities.

SUSHIL ANUJ TYAGI

Digitally signed by SUSHIL ANUJ TYAGI
Date: 2026.07.06 15:44:08 +0530

Announced in the open Court
on this day of 6th July, 2026

(SUSHIL ANUJ TYAGI)
ADDL. SESSIONS JUDGE, FTSC (RC)
SOUTH WEST DISTRICT
DWARKA COURTS/DELHI
06.07.2026(a)