



IN THE COURT OF SH. PARVEEN SINGH,
ADDL. SESSIONS JUDGE-03, NORTH EAST DISTRICT,
KARKARDOOMA COURT, DELHI.

CA No. 18/2026

CNR No. DLNE01-000175-2026

Sarita,
w/o Sh. Jai Bhagwan Sudarshan,
r/o H. No. W-38, Near Mata Chowk,
Welcome, Delhi – 110053.

..... Appellant.

VERSUS

Naresh Sharma,
s/o Sh. Laxmi Narayan Sharma,
r/o H. No. 54, Gali No. 5,
Prem Nagar, Karawal Nagar,
Delhi-110094 .

.....Respondent.

Date of Institution : 19.01.2026.

Date of Arguments: 11.08.2026.

Date of Judgment : 11.08.2026.

CRIMINAL APPEAL U/S 374 Cr.P.C AGAINST THE JUDGMENT DATED
19.12.2025 AND ORDER ON SENTENCE DATED 20.12.2025 PASSED BY
LD. JMFC, NORTH EAST DISTRICT.

JUDGMENT:

1. The present appeal has been preferred against the impugned judgment dated 19.12.2025 and order on sentence dated 20.12.2025 passed by Id. JMFC whereby Id. trial court convicted the appellant for offence punishable u/s 138 NI Act and directed the appellant/ convict to pay a fine of Rs.3,70,000/- as compensation to the complainant/ respondent and in default, she was to undergo simple imprisonment of one month.

2. Briefly stated the facts of the case as per the trial court record are, that on 25.04.2022, on the request of appellant, respondent advanced a friendly loan of Rs.3 lacs in cash to the appellant. This loan was advanced for a period of one year. On the same day, appellant / accused executed a promissory note, a receipt and also issued one post dated cheque bearing no. 655866 dated 25.04.2023 of Rs.3 lacs drawn on SBI, Vikas Minar, New Delhi. However, on presentation the said cheque was dishonoured due to insufficiency of funds. Thereafter, respondent sent a legal notice to the appellant. However, the said notice was not complied with. Hence, respondent filed a complaint u/s 138 of NI Act against the appellant.

3. During the trial, opportunity was given to the appellant to file an application u/s 145(2) NI Act. However, the appellant failed to do so and the right of the appellant to file an application u/s 145 (2) NI Act was closed by Id. trial court and the right of cross examination of appellant was closed. Thereafter, on completion of trial, impugned judgment and order on sentence were passed. Hence, the present appeal.

4. The grounds taken for filing the appeal are, that the Id. trial

court did not consider the basic idea of section 138 NI Act and had passed the impugned judgment in a mechanical way thereby violating the right of fair trial of the appellant. It is further submitted that the cross examination of the respondent was very essential for just decision of the case and appellant was having a probable ground in her favour. Ld. trial court did not consider the defence of the appellant as she categorically stated in notice framed on 09.05.2024 that the cheque in question was not filled by her and she had taken loan of Rs.30,000/- only and had returned it. Even in her statement u/s 281 r/w section 313 Cr.P.C, appellant had again taken her defence. It is further submitted that the appellant is a house wife and is not having good financial condition. She had only taken a loan of Rs.30,000/- and had repaid the same. At the time of giving the loan, respondent had taken her signatures and the signatures of her son on a blank page and a security cheque which was later on manipulated. It is further submitted that the appellant, due to lack of proper legal advice, could not file application u/s 348 BNSS on time and the said application was dismissed by ld. trial court on the ground that the matter was at the stage of judgment. However, section 348 BNSS/ 311 Cr.P.C states that the application can be moved at any stage. The purpose of this section is that the true case should not go unpunished for want of material evidence and innocent person should also not be punished. Reliance in this regard is placed on the judgment of **Rajaram Prasad Yadav v. State of Bihar (2013) 14 SCC 461.**

5. I have heard ld. counsels for the parties and perused the record very carefully.

6. It has been contended by ld. counsel for appellant that the

trial court erred in deciding the matter hastily. He has further contended that no effective opportunity was given to the appellant / accused to cross examine the respondent/ complainant. It was on the first date only the opportunity to cross examine the respondent/ complainant was closed and that too when the evidence was recorded in absence of the appellant. He has further contended that as per the Cr.P.C, evidence is required to be recorded in the presence of the accused and thus, the process adopted by ld. trial court vitiated the entire proceedings. Even after recording of statement u/s 313 Cr.P.C, no proper opportunity was granted to the appellant/ accused to lead evidence to prove her defence as visible from the trial court.

7. Per contra, ld. counsel for respondent has contended that ld. trial court had granted an opportunity to the appellant/ accused to move an application u/s 145 (2) NI Act and the appellant failed to move any such application and thus, ld. trial court rightly closed the opportunity of the appellant to cross examine the complainant/ respondent. Even during the entire trial, the appellant never availed this opportunity or chose to file any such application. It is only when the matter was at the stage of judgment that the appellant moved an application u/s 311 r/w 145 (2) NI Act. He has further contended that Hon'ble Bombay High Court in Navneet Singh Gogia & anr. v. State of Maharashtra & Anr., Crl. Rev. App. No. 70/2023, 2025: BHC-AS:3054, has held that when the accused deliberately absents himself/ herself in a trial u/s 138 NI Act, the matter can be taken up in absentia.

8. I have considered the rival submissions.

9. The only ground that has been taken by the appellant is, that

she was not given an opportunity to cross examine the respondent/ complainant.

10. A perusal of the trial court record reveals that the notice u/s 251 Cr.P.C was issued to the appellant on 09.05.2024. The appellant sought time to move an application u/s 145 (2) NI Act. Ld. trial court categorically ordered the appellant to supply advance copy of the application to the respondent/ complainant within 30 days from that day and listed the matter for arguments on application u/s 145 (2) NI act/ complainant's evidence.

11. On the next date of hearing, the matter was taken up. The appellant was not present. No application u/s 145 (2) NI Act had been moved before ld. trial court and record does not reflect that any copy in advance had been supplied to the complainant/ respondent to show any intent to move such an application. Ld. trial court then proceeded to accept the evidence as had been filed by way of affidavit at the pre-summoning stage as post summoning evidence and in absence of the application u/s 145 (2) NI Act, closed the opportunity of the appellant / accused to corss examine the complainant/ respondent. On the same day, appellant appeared before ld. trial court and the trial court proceedings record that she had been informed of the proceedings that had happened as well as the next date of hearing. This had happened on 12.07.2024.

12. On the next date of hearing i.e. on 28.09.2024, her statement u/s 313 Cr.P.C was recorded and the appellant preferred to lead evidence in defence.

13. Hence, the accused/ appellant did not choose to challenge the order whereby her right to cross examine the complainant/

respondent or his witnesses was closed and allowed the matter to proceed at the stage of 313 Cr.P.C. Therefore, evidently by not moving an application u/s 145 (2) NI Act either at the prescribed date or subsequently, the appellant had waived of her right to cross examine the complainant/ respondent. As is visible from the further proceedings, she had decided to prove her defence through her own evidence. However, despite a number of opportunities being given, the appellant failed to lead any evidence and hence, defence evidence was also closed. Therefore, it is apparent that there was no error on the part of Id. trial court when the trial court, on the failure of the appellant to move an application u/s 145 (2) NI Act, closed her right to cross examine the complainant/ respondent.

14. In these circumstances, I do not find any illegality or infirmity in the proceedings of the trial court which would vitiate the entire proceedings.

15. On merits, the evidence of the respondent has remained unrebutted. The appellant had admitted her signatures on the cheque and therefore, the presumptions u/s 118 and 139 NI Act had arisen which the appellant failed to rebut either through the cross examination of the complainant/ respondent, or through her own evidence.

16. Furthermore, she admitted the receipt of legal notice but never replied it which raises an adverse presumption against her. Apart from the cheque, there is also a pronote (Ex.CW1/2) on the trial court record which has also been unrebutted and establishes the liability of the appellant.

17. In view of the above discussion, I find no merits in the

appeal. The appeal is accordingly dismissed. Copy of the order be sent to ld. trial court with TCR. Appeal file be consigned to record room.

Announced in the
open court on 11.08.2026.
(This judgment contains 7 pages
and each page bears my signature.)

(PARVEEN SINGH)
Addl. Sessions Judge-03, NE Distt.
Karkardooma Court, Delhi.