

**IN THE COURT OF AJAY GARG  
SPECIAL JUDGE-NDPS/ASJ (SOUTH),  
SAKET COURTS, NEW DELHI**

**Crl. Appeal No. 81/25  
CNR No. DLST01-003272-2025**

**JAYANTI MEDHI BARUAH**

R/o 6A, Barua Enclave Zoo,  
Narengi Road, Hatigarh, Charialli,  
Guwhati, Assam – 781024.

**.....Appellant**

**Vs.**

**KAVITA SHARMA**

R/o N-226, Greater Kailash- I,  
New Delhi - 110048

**....Respondent**

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|---------------------------|----------|-------------------|
| <b>Date of assignment</b> | <b>:</b> | <b>25.02.2025</b> |
| <b>Date of Arguments</b>  | <b>:</b> | <b>08.06.2026</b> |
| <b>Date of decision</b>   | <b>:</b> | <b>11.07.2026</b> |

**JUDGMENT**

**1.0** The present appeal arises out of judgment dated 04.06.2024 and order on sentence dated 20.12.2024 passed by the Ld.JMFC (South) in Complaint Case No. 462887/2016 titled as “*Kavita Sharma Vs. Jayanti Medhi Baruah*”, whereby the appellant herein was convicted u/s 138 NI Act and sentenced to pay a fine of Rs.15,00,000/- to the complainant / respondent as compensation u/s 138 NI Act and in default thereof to undergo simple imprisonment for a period of 06 months.

**1.1** Succinctly stated, the facts leading up to filing of the present appeal are that a complaint u/s 138 of the NI Act was filed before the Ld. Trial Court with the allegations that the appellant entered into a Memorandum of Understanding (MoU) dated

15.02.2013 with the respondent herein to lease out the premises located at 216, B/1, Gautam Nagar, New Delhi for Rs. 3,40,000/- towards monthly rent including fixtures and fittings owned by the respondent. The appellant made several defaults regarding payment and later respondent entered into one hire agreement dated 12.10.2013 w.r.t., fixtures and fittings installed in the property and the appellant agreed to pay Rs.1,00,000/- as monthly charges plus service tax during the subsistence of lease agreement dated 11.11.2013. As per the hire agreement, the appellant had to pay Rs.6,00,000/- as interest free security deposit, which was duly paid by the appellant. It is submitted that the possession of the aforesaid premises was given to the accused and the accused enjoyed the usage of assets therein but thereafter, did not pay the hire charges for the period of occupation. In lieu of the hire agreement dated 12.10.2013, the appellant issued the cheques (1) bearing No. 457165 dated 15.10.2013 for Rs. 6,00,000/-, drawn on SBI, Narangi Road, Guwahati Assam, (2) bearing No. 457167 dated 15.10.2013 for Rs. 51,180/-, drawn on SBI, Narangi Road, Guwahati Assam, (3) bearing No. 169726 dated 05.11.2013 for Rs. 1,02,360/- drawn on SBI, Green Park, New Delhi and (4) bearing No. 169728 dated 05.12.2013 for Rs.1,02,360/- drawn on SBI, Green Park, New Delhi. However, the cheques got dishonoured for "funds insufficient" vide return memos dated 21.11.2013 and 10.12.2013. Thereafter, the appellant vacated the premises on 08.12.2013 by issuing possession letter and thereby breaching the terms of the hire agreement executed between the parties. The respondent issued legal demand notice dated 11.12.2013 upon the appellant but the appellant/ accused failed to pay the cheque

amount within the prescribed period. Hence, the complaint under Section 138 of NI Act was filed.

**3.0** As per the Trial Court record, vide order dated 30.08.2016, notice u/s 251 Cr.P.C was served upon the appellant. The appellant while getting her plea recorded, stated that she does not have any liability towards the complainant / respondent. She further stated that the complainant / respondent did not handover the equipments stated in the complaint and hence, the payment of the cheques were stopped. Further, that she has no legal liability to pay the cheque amount to the respondent. She further stated that she had received the legal demand notice and had replied to the same. Complainant evidence was recorded by the Ld. Trial Court. The husband of the respondent was examined as CW1. During his cross examination, he did not deter from the facts of the case. After closure of CE, statement of the accused / appellant under section 313 CrPC was recorded wherein all the incriminating circumstances appearing in evidence were put to the appellant. The appellant denied all the allegations levelled against her and stated that she had executed the hire agreement dated 12.10.2013 with the complainant and she had given cheques in question. The amounts in the cheques were filled and signed by her but the other particulars i.e. date and name of the payee were not filled by her. She further stated that she had handed over the cheques to the husband of the respondent as security at the time of execution of the lease agreement. She further stated that she had responded to the legal notice and that she does not the respondent herein.

The appellant chose to lead defence evidence but she did not lead any evidence lateron and thereafter, DE was closed vide order dated 28.04.2022.

**3.1** The Ld. Trial Court after hearing the final arguments addressed by both the sides, pronounced the impugned judgment convicting the appellant herein by recording a detailed finding that the appellant failed to rebut the presumptions raised against her and failed to put forth a probable defence. Aggrieved by the said judgment and order on sentence, the appellant approached this court by preferring an appeal.

**4.0** At this stage, it is pertinent to mention herein that though several opportunities were given to the appellant to advance arguments, the appellant failed to appear and advance arguments in the appeal. Accordingly, this Court proceeded to decide the matter on the material on record.

**4.0** The grounds of appeal put forth on behalf of the appellant in the appeal are that the Ld. Trial Court passed the impugned judgment mechanically and without appreciating that the appellant had a valid defence to make. It was further argued that the Ld. Trial Court committed a grave error which resulted in miscarriage of justice as the impugned judgment is not sustainable either in law or on facts.

**4.1** Per contra, Ld. Counsel for the respondent argued that a detailed and reasoned judgment has been passed by Ld. Trial Court. It was argued that the defence taken by the appellant before the Ld. Trial Court is a sham and that there is nothing to show that the appellant had ever filed any complaint for misuse of his cheques. Further, the appellant admitted her signatures on the cheques in notice u/s 251 Cr. PC and in her statement recorded u/s 313 Cr.PC. It was argued that the appellant herein has no defence and also failed to rebut the presumptions raised against him and as such, it was prayed that the appeal be dismissed.

**5.0** Arguments heard. Record perused. Considered.

**6.0** Under the scheme of Section 138 of the NI Act, where a cheque issued by a person from a bank account maintained by him, in discharge of any debt or liability, cannot be honored on the ground of “insufficient funds” or otherwise, such person shall be deemed to have committed an offence and shall be punished with imprisonment for a term of two years or with fine up to twice the amount of the cheque, or both.

**6.1** In order to make out an offence u/s 138 of the NI Act, it has to be shown that the cheque was issued in discharge of a debt or liability, a demand notice in writing was issued within 30 days from the receipt of information regarding dishonor and that the drawer failed to make the payment within 15 days of receipt of notice.

**6.2** At this juncture, it would be apposite to refer to the presumptions under sections 118 and 139 of the NI Act. Section 118 of the NI Act declares that presumptions shall be raised unless contrary is proved (i) as to consideration, (ii) as to date of instrument, (iii) as to time of acceptance, (iv) as to appropriate stamp, and (v) as to holder being a holder in due course. Section 139 of the NI Act provides that it shall be presumed, unless the contrary is proved that the holder of the cheque received the same in discharge of any debt or liability. For the offence under section 138, the presumptions under sections 118 and 139 have to be compulsorily raised as soon as execution of cheque is admitted by the accused or proved by the complainant and thereafter, burden is shifted upon the accused to prove otherwise. The said presumptions however are rebuttable. These presumptions will live, exist and survive and shall end only when the contrary is

shown by the accused, that is to say the cheque was not issued for consideration and was not in discharge of any debt or liability.

7.0 The Hon'ble Supreme Court in the case of ***Hiten P. Dalal vs. Bratindranath Banerjee 2001 SCC (Crl.) 960*** while elucidating the provisions of section 118 and 139 of the NI Act observed as under :

*“...It introduces an exception the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the Court may presume a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence because by latter all that is meant is that the prosecution is obliged 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 or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact...*

*... Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of a prudent man...*

*... In the case of discretionary presumption, the presumption, if drawn, may be rebutted by an explanation which might reasonably be true and which is consistent with the innocence of the accused. On the other hand, in the case of a mandatory presumption, the burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words ‘unless the contrary is proved’ which occur in the provision make it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible.”*

The Hon'ble Supreme Court in the case of *Kumar Exports vs. Sharma Carpets (2009) 2 SCC 513*, held that an accused in a trial under section 138 of the Act has two options to rebut the presumptions. He can either show that the consideration and debt did not exist or that under the particular circumstances of the case, the non existence of consideration is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions, an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant. 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 existence 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 non-existence was so probable that a prudent man would, upon the circumstances of the case, act upon the plea that they did not exist.

**8.0** Coming to the facts of the present case, as noted above, the appellant had admitted the issuance of the cheques and

her signatures thereon and also admitted that the amounts in the same were written by her. Under these circumstances, the presumptions under sections 118 and 139 stood raised against the appellant and the burden shifted upon the appellant to dislodge the presumptions.

**8.1** The testimony of complainant could not be shaken during the cross examination. The accused could not bring any material evidence on record that the cheques were presented for payment by the respondent dishonestly in violation of the hire agreement. The appellant during her testimony admitted the execution of hire agreement with the complainant for taking the premises bearing No. 216, B/1, Gautam Nagar, New Delhi, on lease rent alongwith the fixtures and fittings. She also admitted the issuance of the cheques in question towards the execution of the hire agreement. The appellant could not bring on record any evidence that she was not handed over the equipments as stated in the agreement or that the cheques were given as security. She also failed to bring on record any evidence that the husband of the respondent forced her to vacate the premises. It is pertinent to note that no complaint was made before any forum regarding misuse of cheques given to the respondent. It appears that the defence raised by the appellant is an after thought and moonshine, thus failed to rebut the presumptions raised u/S 118 and 139 NI Act against him.

**9.0** In view of above, I find no infirmities in the judgment dated 04.06.2024 passed by the Ld. JMFC (NI Act-01), South.

**9.1** Now coming to the order on sentence, it is noted that the Ld. Trial Court after considering all the mitigating circumstances has already taken a lenient and benevolent view

while imposing the sentence upon the appellant and has not awarded any substantive imprisonment. Thus, I find no reason to interfere with the order on sentence dated 20.12.2024 passed by the Ld. Trial Court. **Accordingly, the judgment dated 04.06.2024 and order on sentence dated 20.12.2024 passed by the Ld. Trial Court is upheld.**

**10.0** It is pertinent to mention herein that during the pendency of the appeal, some settlement took place between the parties, however, since the appellant has not pursued the appeal, the same cannot be verified and thus, the appeal is being decided on the basis of merits of the case only. The said settlement is not taken into consideration by this Court.

**11.0 The present appeal is therefore, dismissed.**

TCR be sent back to the Ld. Trial Court along with a copy of the judgment.

**Appeal file be consigned to Record-Room.**

**Announced & dictated in  
open Court on 11.07.2026**

**(Ajay Garg)**  
Special Judge-NDPS/ASJ (South)  
Saket Courts, New Delhi