IN THE COURT OF SH. ASHISH RASTOGI
ADDITIONAL SESSIONS JUDGE- 05
EAST, KARKARDOOMA COURTS, DELHI

CA No.373/2025

Hemant Saigail
Prop of M/s Shield Coating (India)
Regd. Office at B9/105,
Pharma Appts, Plot No.88,
Patparganj, Delhi.

…. Appellant

Vs.

1. Anil Mishra
Prop of M/s Maa Durga Traders,
Sole Distributor of Euro Vitrified Tiles,
Plot No.2, Shop No.14/15, Puru Plaza, Alt Road,
Ghaziabad, Uttar Pradesh.

2. Sidharth Jain
M/s Jain Hardware
Railway Road, Jwalapur,
Hardwar, Uttrachal.

…. Respondent

Date of Institution : 28.07.2010 (before Hon'ble High Court)
Appeal Assigned to this court: 26.11.2025
Arguments heard : 09.06.2026
Date of order : 25.07.2026

JUDGMENT

1. Initially a criminal leave petition to appeal U/s 378(4) Cr.P.C assailing the judgement dated 08.02.2010 passed by Ld. JMFC, KKD Courts in CC No.3315/07 titled as "Hemant Saigal vs Anil Mishra & Anr." whereby the respondent has been acquitted U/s 138 of NI Act, was filed before the Hon'ble High Court of Delhi and vide order dated 13.10.2025, the said petition has been

transferred to Ld. Principal District & Sessions Judge, East, KKD Courts, Delhi, observing that the present petition be treated as appeal in light of the recent decision of the Hon'ble Supreme Court in "Celestium Financial vs A. Gnansekaran 2025 SCC OnLine SC 1320".

2. Accordingly, the aforesaid petition was sent to the Ld. Principal District & Sessions Judge, East, KKD Courts, Delhi, who has assigned the same to this Court vide order dated 26.11.2025.

Factual Matrix

3. Briefly the facts of the case as per complaint, are that complainant is running business of manufacturing and trading in adhesive, grouting power and tiles etc. Accused no.2 approached the complainant to supply some material to accused no.1. Both accused with mutual understanding sent a demand letter dated 21.02.2006 to the complainant to supply certain material and they requested the complainant to raise the bill/invoice in the name of M/s Jain Hardware. Both accused are further alleged to have told complainant that the payment shall be made by M/s M Durga Traders and asked the complainant to to deliver the goods/materials to accused no.2 at his given address. It is further alleged that the complainant supplied the material/goods as per demand of total worth Rs.65,450/- which was accepted by the accused no.2 and accused no.1 (respondent) issued a post dated cheque bearing No.104602 dated 13.03.2007 for Rs.65,450/- (the cheque in question).

4. It is alleged that on presentation, the said cheque got dishonoured and returned unpaid vide returning memo

dated 16.05.2006 with remarks "Insufficient Funds'. Thereafter, the complainant sent a legal notice dated 14.06.2006 through Speed Post as well as UPC to the accused persons advising them to pay the amount of the cheque within 15 days of the receipt of the notice i.e. the period prescribed under NI Act. Accused no.2 is stated to have relied the said notice while accused no.1 is stated to have refused to accept the notice. As the accused did not pay the amount within the said period from the date of service of the notice, the present Criminal Complaint was filed.

5. Thereafter, after the pre-summoning evidence of the complainant, the notice U/s 251 Cr.P.C was framed against the appellant on 20.10.2007 wherein he pleaded not guilty and claimed trial.

6. After completion of complainant's evidence, statement of accused/appellant was recorded U/s 313 Cr.P.C on 21.07.2008 in which accused stated that he placed an order vide document Ex.CW1/1 and the said material has not been supplied to him by the complainant till date and the cheque in question was given as an advance and the material was to be supplied till 31.03.2006. Accused admitted receipt of the legal notice sent by the complainant/appellant. Accused opted to lead defence evidence and accordingly, matter was listed for defence evidence.

7. On 23.11.2009, accused examined himself as DW1 and tendered his evidence by way of affidavit Ex.DW1/1. Thereafter, matter was posted for final arguments.

8. Vide separate judgement dated 08.02.2010, accused/respondent was acquitted. Against the said impugned Judgment, the appellant has filed this instant Appeal.

9. Ld. Counsel for appellant submitted that the impugned judgement of the Ld. Trial Court suffers from various infirmities as the Ld. Trial Court failed to acknowledge the fact that there is a clear purchase order dated 21.02.2006 from respondent no.1 (Annexure P4 of the appeal) placed for the supply of materials i.e. adhesive and grouting power for Rs.65,450/-. The same is at Ex.CW1/1 in TCR. Against the same, an invoice was raised for a sum of Rs.57,200/- which is placed on record as Annexure P6 of the appeal. The same is Ex.CW1/2 in TCR. Hence, it is clear that the material against the said invoice was supplied to accused no.1. It is because of the said reason, a postdated cheque (the cheque in question) was given to the complainant. He further submits that as per section 139 read with section 119 of NI Act, a clear presumption operates in favour of the complainant. It is admitted that all the other ingredients U/s 138 of NI Act sufficient to kick in the presumption have been proved. The cheque has been bounced due to insufficiency of funds, the payment has admittedly not been made out, The legal notice which was sent to the respondent has not been replied and therefore, the complainant has clearly proved his case as per mandate of section 138 of NI Act. He further submitted that if no liability arose for the respondent, then there was no reason for the respondent to get the cheque bounced because of

insufficiency of funds and respondent should have stopped the payment. He further submitted that legal notice was sent to the respondent wherein it was clearly mentioned that the accused no.2 i.e. Sidharth Jain has mentioned that the entire liability to pay the amount of cheque in question falls upon the respondent because the cheque in question was given by the respondent. He further submitted that the cheque in question was given on 13.03.2006 whereas the goods were received on 27.02.2006 as per Ex.CW1/2.

10. Ld. Counsel for respondent, on the other hand, submitted that there is a clear misinterpretation of facts on the part of the appellant. It is true that the purchase order was placed on the appellant as per Ex.CW1/1 but the goods were never supplied to the respondent. The invoice which the Ld. Counsel for appellant is relying upon, is in the name of M/s Jain Hardware of which sole proprietor is Sidharth Jain who was made an accused i.e. accused no.2 in the complaint but due to his collusion with the appellant, the complaint against the accused no.2 Sidharth Jain was withdrawn. The Hon'ble High Court of Delhi also directed the appellant to delete the accused no.2 from the array of the parties in the Appeal and file amended memo of parties which has not been filed till date. It is further submitted that the appellant has filed invoice Ex.CW1/2 purportedly issued against the purchase order Ex. CW-1/1 in which description of goods is different from the purchase order placed by the respondent and amount is also different i.e. Rs.57,200/. Most importantly, the goods were supplied to M/s Jain Hardware and the Appellant used the said invoice

to present the postdated cheque and has got the same bounced and filed the present complaint against the respondent. He further submitted that as per purchase order also, on which the appellant himself is relying, there is no mention that the goods may be supplied to M/s Jain Hardware. There is no tripartite agreement that if the goods were supplied to M/s Jain Hardware then the respondent Anil Mishra shall make the payment. He further submits that if any tripartite agreement exists then it is not understood as to why complaint against the accused no.2 was withdrawn as he is one of the necessary parties. He further submits that in his cross-examination, complainant has clearly admitted that against the invoice i.e. CW1/2, Rs.20,000/- has been taken from Sidharth Jain i.e. sole proprietor of M/s Jain Hardware. If that be the same, then even believing the same for the sake of argument, the liability comes to around Rs.45,450/- and not Rs.65,450/-. He further submits that even if the case of the appellant is believed then why invoice of Rs.57,200/- has been raised against the purchase order of Rs.65,450/-. Therefore, the respondent has successfully raised the presumption U/s 119 of NI Act. Ld. Counsel for respondent further submitted that the respondent got himself examined as DW1 and the appellant did not even cross-examine the DW1 so as to prove his case. He further submitted that standard of proof to rebut the presumption under NI Act is not beyond reasonable doubt and preponderance of probabilities and he has successfully rebutted the said presumption and Ld. Trial Court has also acknowledged this fact and has rightly dismissed the complaint of the appellant.

11. In rebuttal, Ld. Counsel for appellant submitted that although the appellant has admitted that Rs.20,000/- was received from Sidharth Jain but it is nowhere mentioned that said amount was received in lieu of bill/invoice Ex.CW1/2.

12. Ld. Counsel for respondent no.1 has also filed following rulings relied upon by him in support of his arguments.

(i) Basalingapaa vs Mudibasappa, Supreme Court [2019] 6 S.C.R. 555.

(ii) Manoj Kumar Panchal vs Mahendra Kumar Panchal 2025 DHC:4537.

(iii) Chandrappa vs State of Karnataka, Supreme Court Reports [2007] 2 S.C.R.

(iv) Rajesh Jain vs Ajay Singh (2023) 10 Supreme Court Cases 148.

<u>Appeal against Acquittal: -</u>

13. Before moving on the findings, it is pertinent to discuss in brief as to the law related to appeals against acquittal. The Hon'ble Supreme Court in "***Jafarudheen v. State of Kerala", (2022) 8 SCC 440***, made a detailed analysis of the precedents, with respect to the scope of an appeal against acquittal and recorded as under:

> *It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.*
>
> *If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State; Wilayat Khan v. State of U.P.) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing*

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the entire evidence and coming to its own conclusions.'

31.4. In K. Gopal Reddy, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."

(emphasis in original)

27. N. Vijayakumar v. State of T.N.as hereunder : (SCC pp. 695-99, paras 20-21 & 23-24):

"20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a "possible view", having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under : (SCC p. 432)

'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 Code of Criminal Procedure, 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.'*
>
> *21. Further in the judgment in relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of "possible view" to "erroneous view" or "wrong view" is explained. In clear terms, this Court has held that if the view taken by the trial court is a "possible view", the High Court ought not to reverse the acquittal to that of the conviction.*
>
> *****
>
> *23. Further, in Hakeem Khan v. State of M.P. this Court has considered the powers of the appellate court for interference in cases where acquittal is recorded by the trial court. In the said judgment it is held that if the "possible view" of the trial court is not agreeable for the High Court, even then such "possible view" recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court."*

14. Before moving further, it shall be pertinent to mention the relevant provisions of NI Act as the same shall be pressed into service for deciding the subject matter of this dispute.

<u>**Purpose and relevant provisions of NI Act:**</u>

15. The purpose of NI Act is to safeguard the sanctity of Negotiable Instruments and to make sure that they do not become a paper tiger and also to curb their widespread misuse. With the gradual increase in the financial transactions between the parties, the need was felt to enact a legal framework wherein transactions could freely be concluded between the parties and payments could be done

with the help of Negotiable Instruments. For the same, it was very necessary that there should be a confidence in public at large that a legal framework exists which can get the Negotiable Instruments enforced. With this salutary purpose in mind, the provisions of the NI Act mainly Section 138 and 139 NI Act were enacted. The same hold as under:-

> **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.

> **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 section138 for the discharge, in whole or in part, of any debt or other liability.

16. In addition, Section 118 of NI Act engrafts an additional presumption in favor of the holder of the Negotiable Instrument and that is that it shall be presumed that every Negotiable Instrument was drawn for consideration. Section 118(a) of NI Act holds as under:-

> **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 endorsements**: —that the endorsements 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.

17.**Effect of the presumption under Section 139 NI Act:-** The combined effect of both these Sections when read in consonance with each other is that once the basic ingredients of Section 138 NI Act are satisfied, the presumption under Section 139 automatically kicks in. The said essential ingredients are as follows:-

> 1. Issuance of a Cheque: The first requirement is the issuance of a cheque by the drawer, which could be in favor of the payee.
>
> 2. Presentation of the Cheque: The payee must present the cheque to the bank within a period of three months from the date of issue. It is essential to adhere to this timeline, as a delayed presentation might weaken the case.
>
> 3. Dishonoured Cheque: If the bank dishonours the cheque due to insufficient funds or other specified reasons, it is considered a dishonoured cheque.
>
> 4. Notice to the Drawer: The payee must serve a legal notice to the drawer within 30 days of receiving the information about the dishonoured cheque from the bank. The notice should demand the payment of the cheque amount within 15 days from the receipt of the notice.
>
> 5. Failure to Make Payment: If the drawer fails to make the payment within the stipulated 15-day period, the payee can proceed with filing a complaint.

18.Once the said presumption kicks in, it is presumed that the cheque was issued for or in discharge of some legally enforceable liability. In *"Bir Singh v. Mukesh Kumar ; (2019) 4 SCC 197"*, this Court held that presumption under Section 139 of the Act is a presumption of law. The Court held as under:-

> "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 [Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16 : 2001 SCC (Cri) 960] .

19. The words used in the said Section are ***"shall be presumed".*** The same, hence, is a mandatory presumption of law. Regarding the purport of the said expression, it has been observed by the Hon'ble Supreme Court in *Neeraj Dutt Vs. State, SLP(Crl.) No. 6497/2020* as under: -

> ".........Courts are authorized to draw a particular inference from a particular fact, unless and until the truth of such inference is disproved by other facts. The court can, under Section 4 of the Evidence Act, raise a presumption for purposes of proof of a fact. It is well settled that a presumption is not in itself evidence but only makes a prima facie case for a party for whose benefit it exists. As per English Law, there are three categories of presumptions, namely, (i) presumptions of fact or natural presumption; (ii) presumption of law (rebuttable and irrebuttable); and (iii) mixed presumptions i.e., "presumptions of mixed law and fact" or "presumptions of fact recognized by law". The expression "may presume" and "shall presume" in Section 4 of the Evidence Act are also categories of presumptions. Factual presumptions or discretionary presumptions come under the division of "may presume" while legal presumptions or compulsory presumptions come under the division of "shall presume".
>
> "May presume" leaves it to the discretion of the court to make the presumption according to the circumstances of the case but "shall presume" leaves no option with the court, and it is bound to presume the fact as proved until evidence is given to disprove it, for instance, the genuineness of a document purporting to be the Gazette of India. The expression "shall presume" is found in Sections 79, 80, 81, 83, 85, 89 and 105 of the Evidence Act."

20. The accused in his statement U/s 313 Cr.P.C admitted receipt of legal notice sent by the appellant/complainant. In light of the above, it stands proved that the legal demand notice was served upon the accused.

21. It is admitted fact that he did not make any payment within 15 days of the service of summons. The Hon'ble Supreme Court in *"C.C. Alavi Haji v. Palapetty Muhammad, 2007(6) SCC 555"*, held that the true intent behind the service of legal demand notice is to be seen as a precursor to launch of prosecution against the Accused and that is providing ample opportunity to the Accused to repay the cheque amount and avoid the legal proceedings against him. The Service of summons upon the Accused fulfills the said purpose and provides ample opportunity to the Accused to pay the amount in dispute. Any Accused who fails to pay the said amount within 15 days of service of summons cannot hide behind this technical plea of non-service of legal demand notice, to evade his liability.

22. Hence, all the ingredients i.e. issuance of cheque, dishonor of cheque, notice to drawer and failure to make payment stand satisfied and therefore the presumption 139 and 118 of NI Act automatically becomes operative in this case i.e. that the cheques were issued in discharge of a legally enforceable debt.

23. Therefore, the combined implication of both Section 138 and 139 NI Act is that once the essential ingredients of Section 138 are satisfied and the presumption under Section 139 is pressed into service then the case of the Complainant against the accused/appellant stands proved that the

negotiable instrument was issued in discharge of a legally enforceable debt and now it is upto him to rebut the presumption drawn against him by leading evidence to the Contrary. The burden which the accused has to discharge in rebutting the said presumption is "preponderance of probabilities" while the Complainant has to prove her case beyond reasonable doubt. Therefore, what has been envisaged is that the accused should raise a probable defence which is an expression i.e. different from possible defence. In *"Kumar Exports v. Sharma Carpets; (2009) 2 SCC 513"*, it was held that mere denial of existence of debt will not serve any purpose but accused may adduce evidence to rebut the presumption. This Court held as under:-

> "20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt 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 in a criminal trial. 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 non-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

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> 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 under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act."

24. Therefore, in order to travel from the point of possible defence to probable defence, the accused has to have some credible material on record so as to raise a doubt on the version of the Complainant.

25. With the above factual and legal background in mind, the task cut out for this court is to undertake an independent analysis of evidence on record to determine that whether the accused has successfully rebutted the said presumption by demonstrating the inconsistency/untrustworthiness in the testimony of the Prosecution witnesses or by successfully proving her own defence by her defence evidence.

26. The first leg of discussion is the independent analysis of evidence and relevant facts so as to come to a conclusion whether the respondent has infact produced sufficient material before the consideration of this court to prove his case beyond reasonable doubt and whether the Appellant has able to successfully rebut the same.

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Analysis:

27. At the outset, the main contention of the appellant (complainant) is that the purchase order was placed by the respondent as Ex.CW1/1 but the invoice placed as Ex.CW1/2 was in the name of M/s Jain Hardware, the sole proprietor of which is Mr. Sidharth Jain. It is submitted that the same was upon the instruction of respondent. While the stand of the respondent is that the purchase order as placed as Ex.CW1/1 was issued but goods were never supplied. In this connection, it is observed that in the evidence, it has been clearly stated by the appellant that he supplied the goods to M/s Jain Hardware on the instruction of the respondent who gave guarantee to the appellant.

28. In this connection, it is observed that if the same is correct then it is not understood as to why there is no noting etc. mentioned on the purchase order that the goods were to be supplied to M/s Jain Hardware. In addition, no document has been filed where the said understanding has been manifested that while the purchase order has been placed by the respondent, the goods are to be supplied to M/s Jain Hardware. There exists no tripartite agreement/document/communication also that if the goods were supplied to M/s Jain Hardware then respondent no.1 Anil Mishra shall make the payment. In addition to the same, the description on the goods as mentioned in the purchase order Ex.CW1/1 and the invoice Ex.CW1/2 does not match. The description of goods as per Ex. CW1/1 is (*1) 30 KG bag of adhesive 1st quality 500 bag (2) Grouting power 1 bag 30 kg* but in the invoice Ex.CW1/2, the description of the goods is simply 'Adhesive' 500 bags. While the amount as mentioned in the purchase order is Rs.65,450/- but the invoice is of Rs.57,200/-. Moreover, the cheque i.e. CW1/3 matching the the amount as mentioned in Ex.CW1/1 i.e. Rs.65,450/-.

29.It is further observed that if the case of the appellant is believed that the goods were supplied to M/s Jain Hardware, proprietor of which was Sidharth Jain and the payment was to be made by the respondent then there appears no reason as to why the instant complaint was withdrawn against the accused no.2 (Sidharth Jain) on 16.10.2007 since, he is a necessary party in the entire transaction. It is further noteworthy to mention here that in the cross-examination, the appellant has submitted that as per document Ex.CW1/2, the invoice amount is Rs.57,200/- while he is claiming the amount of Rs.65,450/-. However, he was asked about his dealings with M/s Jain Hardware to which he replied that it is correct that he also trades with M/s Jain Hardware. In addition, he also mentions that it is true that Mr. Siddharth Jain is the proprietor of M/s Jain Hardware and that he gave him Rs.20,000/-. If that be the case then it has not been explained that whether Mr. Sidharth Jain gave him Rs.20,000/- towards invoice Ex.CW1/2 of the answer to the question is in affirmative then why would the appellant claiming an amount of Rs.65,450/-. Secondly, if the appellant himself admits that Mr. Sidharth Jain paid him Rs.20,000/- then the earlier stance which the appellant took that the payment shall be made by respondent no.1 is diluted.

30.In this connection, Ld. Counsel for appellant tried to argue that the appellant who was examined as CW1 did not mention that Rs.20,000/- was received from Sidharth in lieu of or towards invoice Ex.CW1/2 rather the payment was made in relation to some other transaction. It that be the

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case, then the said clarification has nowhere come in the cross-examination. Moreover, it is settled law that one line cannot be seen in isolation and the entire cross examination has to be read in totality. In the cross-examination, transaction which is being referred is the invoice Ex.CW1/2 as per the appellant which pertains to the purchase order i.e. Ex.CW1/1. Therefore, in the cross-examination, if the witness has mentioned that Sh. Sidharth Jain paid Rs.20,000/- to the appellant then the same has to be taken in that context and not completely out of context with respect to some other transaction which is not even being referred once in the entire cross-examination.

31. Therefore, upon independent appreciation of evidence in this matter, this court agrees that the reasoning of the Ld. Trial Court that the entire story of the appellant creates confusion in relation to the understanding which was allegedly arrived between the appellant and respondent regarding the payment of material. The appellant has not been able to prove whether Ex.CW1/1 is connected to the invoice i.e. Ex.CW1/2. He has also not been successful in proving by some other piece of evidence that the goods as were demanded vide Ex.CW1/1 were ever supplied to the respondent.

32. It is well settled law that once the ingredients of section 138A are satisfied then the presumption U/s 139 r/w section 118(a) of NI Act operates against the accused i.e. that the cheque was given in discharge of legally enforceable debt but the said presumption is rebuttable presumption and accused can raise a probable defence. The respondent has

in the considered opinion of this court, casted enough doubt upon the prosecution story so as to rebut the presumption drawn on the touchstone of the preponderance of probabilities, against him U/s 118 of NI Act in relation to the existence of legally enforceable debt.

33. Cumulatively taking into account the reasoning of Ld. Trial Court and by independent appreciation of evidence, it is the considered opinion of this Court that the respondent has been successful in rebutting the presumption on the touch stone of preponderance of probability and the view taken by the Ld. Trial Court can be considered to be a possible view and hence, the same does not warrant any interference of this Court in exercise of this appellate jurisdiction. Hence, the appeal stands dismissed.

34. TCR be sent back along with copy of this order.

35. Appeal file be consigned to the Record Room.

Announced in the open Court
on 25.07.2026.

ASHISH RASTOGI

Digitally signed by ASHISH RASTOGI
Date: 2026.07.25 16:37:06 +0530

(Ashish Rastogi)
Additional Sessions Judge-05
East/Karkardooma Courts/Delhi