IN THE COURT OF MS. SHEETAL CHAUDHARY PRADHAN
ADDL. SESSIONS JUDGE-02 : SOUTH EAST DISTRICT
SAKET COURT : NEW DELHI

Criminal Appeal No. 292/2025
PS- Pul Prahlad Pur
U/Sec. 138 NI Act

In The Matter Of :-

MINTU KUMARI
W/o SH. ASHUTOSH KUMAR
R/o H. No. HR-63D, 60 FOOTA ROAD,
PUL PRAHLADPUR,
NEW DELHI-110044
ALSO AT: C/o MAHINDER,
JALIM MOHALLA, OPP. GANGA
MEMORIAL PUBLIC SCHOOL,
VILLAGE TUGHLAKABAD, NEW DELHI

...APPELLANT

VERSUS

KRISHAN PAL
S/o LATE SH. CHATTAR SINGH
R/o H. NO. B-156, NEAR NEW MOTHER
LAND PUBLIC SCHOOL,
PUL PRAHLADPUR,
NEW DELHI-110044

...RESPONDENT

Date of Institution	:	22.08.2025
Date of Arguments	:	07.01.2026
Date of pronouncement	:	24.01.2026
Decision	:	**Appeal Stands Dismissed. Judgment & Order On Sentence by Ld. Trial Court, Stands Upheld.**

JUDGMENT

1. Appellant namely Mintu Kumari has filed present appeal thereby challenging judgment of conviction dated 30.06.2025 and Order on Sentence dated 23.07.2025 passed by Ld. Trial Court in Complaint Case No. 38292/2019 titled as *"Krishan Pal vs. Mintu Kumari"* vide which appellant was held guilty of the offence u/sec. 138 NI Act and was sentenced to pay fine of Rs. 4,00,000/- with simple interest @ 6 % p.a. as compensation to the complainant within 60 days from the passing of the said order and in default, convict shall undergo simple imprisonment for a period of one month.

2. Appellant herein was the accused and respondent herein was the complainant before Ld. Trial Court. In order to avoid any confusion, both the parties shall be referred with the same nomenclature with which they were referred before Ld. Trial Court, in my subsequent paragraphs.

3. The factual backdrop giving rise to the present challenge, in *brief* are that :-

> *" That the complainant is the resident of above mentioned address and the accused are known through Satya Singh Walia who is very well known and friend to the Complainant. The accused approached the Complainant for a urgent friendly loan of Rs.2,00,000/- alongwith Satya Singh Walia as the accused was need financial help for purchase of Taxi Car and the Complainant has given him a*

friendly loan sum of Rs.50,000/- as cash on 07.12.2018 and Rs.1,50,000/- through cheque bearing No.300076619637, drawn on Syndicate Bank, Kalkaji Branch, New Delhi on 14.12.2018, total Rs.2,00,000/- has been paid by the Complainant to the accused. That the accused have assured the Complainant that he will repay the said friendly loan amount within a period of 06 months but the accused again approached on 10.06.2019 and made demand a sum of Rs. 2,00,000/- and the complainant believing upon the accused, the Complainant has paid again a sum of Rs. 2,00,000/- by way of cheque bearing No.300076619639, drawn on Syndicate Bank, Kalkaji Branch, New Delhi. The accused assured the complainant that the total borrowed amount a sum of Rs. 4,00,000/- will be returned within one month and against the liability the accused have issued a cheque bearing no. No. 405415, sum of Rs.4,00,000/- dated 16.07.2019, drawn on Punjab National Bank, Specialized Micro Finance Branch, Deoli, New Delhi-110062. That in pursuance of the money taken by the accused and with a view to clear his liability towards the Complainant, the accused had issued the said cheque. The said cheque was deposited as per accused's instructions with the Syndicate Bank, Kalkaji Branch, New Delhi by the Complainant for encashment on 18.07.2019, however, it is regretted that the said cheque was returned unpaid on account of the "Funds Insufficient" on 19.07.2019. The accused were duly informed about the same by the Complainant. That the above facts make it abundantly clear that the accused have mischievously and intentionally issued the above said cheque with ulterior designs and motive and instructed the Complainant to present the same for encashment, knowing fully-well that the said cheque would not be honoured on its presentation on account of "Funds Insufficient" in hes account. That on account of the above acts, the accused are *liable to be prosecuted under Section 138 N.I. Act under which the accused are liable to be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with the both. That the complainant sent legal notice through his counsel on 01.08.2019 through Regd. A.D./Courier at the above mentioned both correct known addresses of the accused. That the above facts make it abundantly clear that the accused has mischievously and intentionally issued the above said cheque with ulterior designs and motive and instructed the complainant to present the same for encashment, knowing fully-well that the said cheque would not be honoured on its presentation on account of "Funds Insufficient" in accused account. That the accused had issued the said cheque deliberately knowingly to cheat the complainant whereas the accused is aware about the offence of dishonouring of the cheque. known address of the accused through Regd. A.D. and courier which duly served. That the above facts make it abundantly clear that the accused has mischievously and intentionally issued the above said cheque with ulterior designs and motive and instructed the complainant to present the same for encashment, knowing fully-well that the said cheque would not be honoured on its presentation on account of "Funds Insufficient" in accused account. That the accused had issued the said cheque deliberately knowingly to cheat the complainant whereas the accused is aware about the offence of dishonouring of the cheque. That the complainant is residing in Delhi and the bank of the complainant falls in the jurisdiction of this Hon'ble Court hence this Hon'ble Court is competent to entertain the present complaint as per the law of the land. That the complainant's bank is fallen within the jurisdiction of this Hon'ble Court at Kalkaji, New Delhi hence the complainant* *prepared the local jurisdiction of this Hon'ble Court as such this Hon'ble Court is competent to take cognizance of the offence committed by the accused and take all eventual action."*

4. The complainant led his evidence by way of affidavit (Ex.CW1/1) and relied on the following documents :-

a) Ex.CW1/A - Original cheque bearing no. 405415 drawn on PNB dated 16.07.2019 for an amount of Rs. 4 Lakhs.
b) Ex.CW1/B - Original return memo
c) Ex. CW1/C - Certified copy of legal demand notice.
d) Ex.CW1/D to Ex. CW1/G - Proof of delivery and postal receipts (colly).
e) Ex. CW1/H and Ex. CW1/K - Tracking report.
f) Ex. CW1/L - Reply to legal notice dated 13.08.2019.
g) Ex. CW1/N and Ex. CW1/Q - Bank Account Statement of Syndicate Bank of the complainant from 06.04.2019 to 20.07.2019 and 02.12.2018 to 14.12.2018.

5. After leading the pre-summoning evidence, accused was summoned vide order dated 05.09.2019, by Ld. Trial Court. After appearance of accused, he was admitted to bail vide order dated 07.02.2020 and thereafter, the Notice u/sec. 251 CrPC was framed against him by Ld. Trial Court on 07.02.2020. Accused did not plead

guilty and claimed trial.

6. During trial, complainant was cross-examined by the accused. Complainant only examined himself. Thereafter, complainant evidence was closed and matter was fixed for recording of statement of accused u/sec. 313 CrPC. During statement u/sec. 313 CrPC, all the incriminating evidence was put to her upon which, she denied the case of the complainant completely and preferred to lead evidence in her defence.

7. During trial, accused has examined herself as **DW1**. Thereafter, defence evidence was closed and matter was reserved for pronouncement of judgment after hearing final arguments.

8. Vide impugned judgment and order on sentence, accused was held guilty of the offence and was sentenced to pay fine of Rs. 4,00,000/- with simple interest thereon @ 6 % per annum as compensation to the complainant within 60 days from the passing of the said order and in default, convict shall undergo simple imprisonment for a period of one month.

9. Feeling aggrieved by aforesaid judgment and order on sentence passed by Ld. Trial Court, present appeal was preferred by the accused on the followings *grounds* :-

A. The impugned judgment is against facts, law and settled principles laid down by the Hon'ble Supreme Court and High Courts; it suffers from non-application of judicial mind and mechanical acceptance of the Complainant's version.

B. The Ld. Trial Court erred in holding that the presumption u/s 139 NI Act stood unrebutted despite clear and consistent defence that the cheque was given as security to a third party and not to the Respondent.

C. The Ld. Trial Court failed to appreciate the defence evidence, which corroborated that the transactions were with Mr. Walia and repayments were made to him, and Ld. Trial Court ignored the same without any convincing and cogent reasoning.

D. The Ld. Trial Court failed to appreciate that contradictory stands attributed to the appellant were in fact clarifications of her case and that the burden never shifted back to her once a probable defence was raised.

E. That the Ld. Trial Court has wrongly discarded the viable piece. of Defence Evidence i.e. Ex. DW-1/1 i.e. the entry in the cheque book of the Appellant which is timely sequenced and there is no possibility of any manipulation to insert the entry at a later stage (point of time.

F. The NCR (Ex. DW1/C1) regarding loss of cheque, though filed after the legal notice, was wrongly disregarded without considering that the blank signed cheque had been in the possession of a third party much prior to the inception of the present case.

G. The Ld. Trial Court misapplied the law laid down in Sripati Singh v. State of Jharkhand by ignoring that the loan (if any) had already been repaid to the actual lender, and hence no subsisting liability existed towards the Respondent.

H. That the Ld. Trail Court failed to appreciate that the Respondent unambiguously admitted that he had no direct dealings with the Appellant and follow up circumstantial evidence also suggests that the cheque in question was not issued in discharge of any liability to the Respondent.

I. That the Ld. Trail court failed to appreciate that the payee in the present case was Mr. S. S. Walia not the Respondent, as such one of the basic ingredient of the offence was not fulfilled in the present case.

J. That the Ld. Trail Court failed to appreciate that the Respondent miserably failed to discharge the reverse onus when it was proved by the Appellant that the cheque in question was not issued to the Respondent but was issued to Mr. S S Walia and the Respondent did not examine Mr. S. S. Walia to rebut this assertion of the Appellant and as such the Respondent failed to prove his own case beyond reasonable doubt and Appellant was successful to rebut the presumption by preponderance of probabilities cited above.

K. That the Ld. Trial Court has wrongly held that the cheque in question was issued to the Respondent and that the presumption U/s 139 NI Act arose in favour of the Respondent.

L. That the Ld. Trial Court has wrongly held that the loan of Rs.50,000/- cash and Rs.1,50,000/- and Rs.2,00,000/- was advanced to the Appellant and this conclusion of the Ld. Trial Court is contrary to the facts of the case.

M. That the Ld. Trial Court, not-withstanding the fatal contradictions cited above, wrongly held that the Respondent successfully withstood the cross-examination and Appellant failed to elicit material contradictions.

N. That the Ld. Trial Court has wrongly held that no cogent evidence is brought by'the Appellant to show that she did not any liability towards the Respondent. That the Ld. Trial Court has relied upon surmises and conjectures and passed the judgment.

10. **In addition, Ld. Counsel for appellant/ accused has argued that** Ld. Trial Court did not appreciate the falsity in the claim of complainant and impugned judgment and order on sentence are based on conjectures and surmises. The impugned judgment has been passed in flagrant violation of the principle of natural justice. The case of complainant as alleged creates a doubt in the issuance of the cheque in question which proves that she has no legal liability against the complainant. It has been argued that the appellant was working as an officer clerk in the office of one Sh. Karan Singh who was the friend of Sh. Satya Singh Walia. Further, Sh. Satya Singh Walia used to visit the office of Sh. karan Singh and they had financial transactions with the appellant. Further, that hte appellant had taken Rs. 3.5 Lakhs loan from aforesaid Sh. Satya Singh Walia which he paid through cheques of the complainant and in the meanwhile there was a legal dispute between Satya Singh Walia and Sh. Karan Singh and thereafter a false case was filed by Mr. Satya Singh Walia for an amount of Rs. 8 Lakhs by misusing the security cheques of Karan Singh and the same was settled for an amount of Rs. 3 Lakhs and for the aforesaid settlement the appellant gave 3 cheques as guarantor to Sh. Satya Singh Walia. Further, that aforesaid Sh. Satya Singh Walia even after receiving hte settlement amount of Rs. 3 Lakhs from Sh. Karan Singh, did not return the cheque in question to the appellant and out of the three cheques Sh. Satya Singh Walia himself misused two cheques

and filed a false case against the appellant wherein the appellant had been acquitted and misused the third cheque through the complainant herein. Further, that the appellant was not known to the respondent even prior to filing of the present case and the cheque in question was issued by the appellant to the complainant / respondent. It has been argued that the appellant has no legal liability and she is liable to be acquitted.

11. Per contra, Ld. Counsel for complainant/ respondent has argued that impugned judgment and order on sentence needs no interference and appeal must be dismissed. It has been argued that cheque in question was issued and signed by the accused and the said fact has also been corroborated by the accused in her statement recorded u/sec. 251 CrPC. It has been argued that complainant has succeeded in proving his case by leading evidence. It has also been argued that once the cheque was signed and handed over by accused, it would attract presumption u/sec. 139 NI Act. It has further been argued that accused had himself handed over the cheque in question therefore, the question of misuse of aforesaid cheque, does not arise. Lastly, it has been argued that accused has failed to dislodge the case of complainant by leading any cogent evidence during trial. It has been prayed that the presumption as stated u/sec. 118 and 119 of the NI Act, are against accused and therefore, the conviction of accused be upheld and appeal must be dismissed. It has also been argued that the complainant had admitted her signatures on the cheque in question and even upon being asked if she had issued the cheque, she had

stated in affirmative in her statement recorded U/s 251 CrPC. Further, in her reply to the legal notice, the complainant had admitted that she had sought loan from the complainant twice, i.e. when the same is denied during her statement recorded U/s 313 CrPC.

12. I have heard Ld. Counsel for accused/ appellant, Ld. Counsel for complainant/ respondent and have carefully gone through the record.

13. In order to appreciate and decide present appeal, I find it relevant to mention here law relating to Section 138 NI Act and with respect to the presumptions U/s. 118 (a) and 139 NI Act. Section 118 (a) and Section 139 of NI Act are mentioned in verbatim below :-

> *"**Section 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, was indorsed, negotiated or transferred for consideration;"*
>
> *"**Section 139** : **Presumption in favour of holde**r – 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."*

14. It is a well settled legal position that presumptions U/s. 118 and 139 NI Act are rebuttable presumptions and burden lies on accused to

prove that he had no liability/debt on the date of issue of cheque. It is also a settled principle of law that to bring home an offence under any of the penal provisions, it is essential to prove the case beyond reasonable doubt and ingredients of offence should be satisfied. Hon'ble Apex Court had the occasion to appreciate said provisions in certain case laws which are relevant for purpose of adjudication of appeal. Relevant observations of said case laws are mentioned in my subsequent paragraphs.

15. Hon'ble Apex Court had the occasion to appreciate and interpret aforesaid provision in case titled as ***Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Pyarelal (1999) 3 SCC 35***, wherein it was observed as under :-

> *"Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled*

under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist."

"Section 139 of the Act is an example of 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 the absence of compelling justification, reverse onus clauses usually impose an evidentiary burden and not a

persuasive burden. Keeping this in view, it is settled position that when an accused has to rebut the "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in citations, the accused can rely on materials submitted by complainant in order to raise such a defence and it is conceivable that in some cases accused may not need to adduce evidence of his/her own."

16. In Case titled as **M/s. Kumar Exports Vs. M/s. Sharma Carpets Crl. Appeal No. 2045 of 2008 passed by Hon'ble Supreme Court of India,** it was held as under :-

"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. 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 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 t****hat the note in question was not supported by consideration or that he had not incurred any debt or liability, 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.* ***The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial.*** *Once such rebuttal evidence is adduced and accepted by court, having regard to all the circumstances of case and preponderance of probabilities, evidential burden shifts back to complainant and* ***thereafter, presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.***"

17. It should be noted that once the ingredients mentioned in the foregoing paragraph are established by the complainant, then as soon as

the execution of impugned cheque is admitted by the accused, a factual base is established to invoke the presumption of cheque having been issued in discharge, in whole or in part of any debt or other liability by virtue of Section 118(a) read with Section 139 of NI Act. This is a reverse onus clause, which means that unless the contrary is proved, it shall be presumed that the impugned cheque was drawn by the accused for a consideration and that the complainant had received it in discharge of a debt/ liability from the accused. In the case titled as Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197, it was held by Hon'ble Supreme Court of India that once the accused has admitted the signature on the cheque in question, then the court is bound to raise presumption under Section 139 of the NI Act.

18. It has been held by Hon'ble Supreme Court in the case of ***Rangappa vs. Sri Mohan, (2010) 11 SCC 441*** that a reverse onus clause usually imposes an evidentiary burden and not a persuasive burden and when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. It was further held that the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

19. In the case of ***Devender Kumar Vs. Khem Chand Crl. Rev. P. No. 679/2012*** decided on 06.10.2012 by Hon'ble High Court of Delhi, it was held that :-

> *21. In* ***Rangappa v. Sri Mohan (2010) 11 SCC 441****, Section 139 of the NI Act is stated to be an example of a reverse onus clause which is in tune with the legislative intent of improving the credibility of negotiable instruments. Section 138 of the NI Act provides for speedy remedy in a criminal forum, in relation to dishonour of cheques. Nonetheless, the Supreme Court cautions that the offence under Section 138 of the NI Act is at best a regulatory offence and largely falls in the arena of a civil wrong and therefore the test of proportionality ought to guide the interpretation of the reverse onus clause.* ***An accused may not be expected to discharge an unduly high standard of proof. A reverse onus clause requires the accused to raise a probable defence for creating doubt about the existence of a legally enforceable debt or liability for thwarting the prosecution. The standard of proof for doing so would necessarily be on the basis of "preponderance of probabilities" and not "beyond shadow of any doubt"****.*

20. In Case titled as ***John K. John v. Tom Varghese 2007 (4) Civil Court Cases 690 (SC)***, it was held by Hon'ble Apex Court that :-

> *".....Presumption raised in terms of Section 139 of the Act is rebuttable. If, upon analysis of the evidence brought on records by the parties, in a fact situation obtaining in the instant case, a finding of fact has been arrived at by the High Court that the cheques had not been issued by the respondent in discharge of any debt, in our opinion, the view of the High Court cannot be said to be perverse warranting interference by us in exercise of our discretionary jurisdiction under Article 136 of the Constitution of India. The High Court was entitled to take*

notice of the conduct of the parties. It has been found by the High Courts of fact that the complainant did not approach the court with clean hands. His conduct was not that of a prudent man.

Why no instrument was executed although a huge sum of money was allegedly paid to the respondent was a relevant question which could be posed in the matter. *It was open to the High Court to draw its own conclusion therein. Not only no document had been executed, even no interest had been charged. It would be absurd to form an opinion that despite knowing that the respondent even was not in a position to discharge his burden to pay installments in respect of the prized amount, an advance would be made to him and that too even after institution of three civil suits. The amount advanced even did not carry any interest. If in a situation of this nature, the High Court has arrived at a finding that the respondent has discharged his burden of proof cast on him under Section 139 of the Act, no exception thereto can be taken."*

22. Keeping the above proposition of law in mind, on an analysis of fact, the scale of balance tills in favour of the respondent. The respondent appears to have rebutted the presumption under Section 139 of the NI Act, namely, the existence of a legally enforceable debt by establishing that no loan was advanced to him even though there was an agreement and a corresponding promissory note and an affidavit. **The aforesaid loan was not shown in the ITR return of the petitioner. An adverse inference could be drawn against the petitioner on that account. The loan amount also appears to be doubtful**.

23. **The advance of loan of such amount is required to be disclosed under the ITR return (referred to Section 269 SS of the Income Tax Rules and Section 271 D of the Income Tax Act.)**

21. In the case of ***G. Pankajakshi Amma & Ors. Vs. Mathai Mathew (dead) through LRs & Anr., (2004) 12 SCC 83,*** it has been held that

> *"10. There is any reason also why the impugned judgment cannot be upheld. According to the 1st respondent these transactions were to be unaccounted transactions. According to the 1st respondent, all these amounts are paid in cash.* ***If these are unaccounted transactions then they are illegal transactions. No court can come to the aid of the party in an illegal transaction. It is settled law that in such cases the loss must be allowed to lie where it falls. In this case as these are unaccounted transactions, the Court could not have lent its hands and passed a decree****. For these reasons also the suit was required to be dismissed."*

22. In ***John. K. Abraham vs. Simon C. Abraham and Ors. in Crl. Appeal 2043 of 2013 decided on 05.12.2013*** in which it was held by Hon'ble Supreme Court of India that :-

> *"It has to be stated that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favor of the complainant."*

23. In the case of ***M.S. Narayana Menon Alias Mani Vs. State of Kerala and Another, (2006) 6 SCC 39,*** it was observed that :-

> *"32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies."*

24. In ***Rajaram (since deceased through LRs vs. Maruthachalam (since deceased) Through LRs. Criminal appeal no. 1978 of 2013 decided on January 18, 2023*** by Hon'ble Supreme Court of India, the acquittal of the accused by the trial court was upheld by Apex Court and it was held that the agricultural income was not shown by the complainant in his Income Tax Returns and from the income shown in the ITR, it is proved that the complainant did not have the financial capacity to lend Rs. 3,00,000/- to the accused.

25. In ***Tedhi Singh vs. Narayan Dass Mahant (2022) 6 SCC 73***, the Hon'ble Supreme Court of India has held that it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. However, the accused has the right to demonstrate that the complainant in a particular case did not have the financial capacity to lend the loan. The same can be done by accused by producing independent materials, namely, by examining his witnesses and producing documents, by pointing to the materials produced by the complainant himself, or through the cross-examination of the witnesses of the complainant.

26. Therefore, the settled law is that in cases in which the underlying debt transaction is a cash transaction, the accused can raise a probable

defence by questioning the claim of the complainant as well as the sources of funds to lend the loan, and once the said question is raised, the onus shifts on the complainant to prove it.

27. Keeping in mind above mentioned law and understanding of law, I am proceeding further with the case in hand.

28. Therefore, it is imperative for the Court to look into the case of the complainant by perusing the complaint, the documents relied upon by complainant, Legal Notice issued as well as the testimony of the complainant. In the present matter, the complainant examined himself as CW1 and his evidence by way of affidavit was Ex.CW1/1. In the aforesaid evidence, the complainant has reiterated his version as stated in the complaint. The complainant in the present matter relied upon the cheque in question dated 16.07.2019 drawn on PNB Bank for the amount of Rs. 4 Lacs, which was Ex. CW1/A. Further, the complainant has relied upon the cheque returning memo pertaining to the aforesaid cheque with the remarks "funds insufficient" (Ex.CW1/B). The Legal Demand Notice was Ex.CW1/C wherein it has been stated that complainant/ respondent was known to the accused through Satya Singh Walia and approached the complainant for a friendly loan of Rs. 2 Lakhs as the accused was in financial need for purchase of a taxi car and thereafter complainant advanced friendly loan of Rs. 50,000/- by way of cash on 07.12.2012 and by way of cheque of Rs. 1,50,000/- drawn on Syndicate Bank on

14.12.2018 and paid an amount of Rs. 2 Lakhs. Further, the accused had promised to repay the aforesaid loan amount within a period of 6 months, however, the accused again approached the complainant on 10.06.2019 and demanded further loan of Rs. 2 Lakhs and believing the accused, accused gave a further sum of Rs. 2 Lakhs by way of cheque to the accused on 10.06.2019. Further, the accused assured to return the borrowed amount of Rs. 4 lakhs within a period of 1 month against the aforesaid liability and thereafter, in discharge of the aforesaid liability issued a cheque bearing no. 405415 drawn on Punjab National Bank dated 16.07.2019 for an amount of Rs. 4 Lakhs, which on presentation was dishonored on account of funds insufficient.

29. **The complainant was cross-examined on behalf of the applicant/ accused wherein complainant has deposed he** was working as driver in DTC at the time of advancing alleged loan. He was drawing a salary of rupees 70,000/- approx per month. He was filing his ITR return. It was correct that he had a very intimate friendship with Mr. Satya Singh Walia. He knew that Mr. Satya Singh Walia had filed a cheque bouncing case against the accused. It was correct that Satya Singh Walia was his friend and have been accompanying him in attending the court proceedings. It was correct that he is not directly acquainted with the accused. It was correct that he had never had any direct dealings with the accused. He had also got the documents that is his passbook regarding the same wherein the entry has been made regarding the payment of rupees 50000/- to

complainant and further payment which is hereby EX.CW1/N at the point A, B, C and D respectively. Satya Singh Walia who was his friend had a business of water in name Mount Kailash and he is now not working for last two years. It was correct that whatsoever money transactions were done by him, they were through Satya Singh Walia and he knew that accused Mintu Kumari runs the Taxi Business. He had also used her taxi services few times. He could not tell the address of her business place. He had once called the accused over phone after the dishonour of the cheque. He had paid the said loan amount on 07/12/2023 between 11am to 1pm in the office of Satya Singh Walia situated at Suraj Kund Road besides 60 Foota Road opposite Aggarwal Sweets. He did not remember the exact property number. When on the instance of Satya Singh Walia he had lent the money to the accused that is 1.5 lakhs in cheque and 50000/-in cash, He did not get any agreement executed for the same. There were only three persons present at that time when the loan was given i.e. CW-1, Satya Singh Walia and accused. On 7/12/2018 Satya Singh Walia called in the morning to lend the loan to the accused. Mintu Kumari who is the accused did not come to him in person asking for loan. It was correct that the loan was given to the accused by him on the instance of Satya Singh Walia. He had given the loan to Mintu Kumari in cheque and cash on his own. At the alleged dated of giving loan to accused Mintu Kumari she herself reached first in point of time to the office of Satya Singh Walia and CW-1 was informed by Satya Singh Walia that Mintu Kumari had reached his office around 12pm when he was at his house. He reached his office at around 12:30 to 1:45pm. His office is located at about 600-700 meters from the house of CW-1. He did not remember whether he had shown the alleged extended loan to accused in his ITR filed for that year. He had not filed his ITR on record. CW-1 did not know as to how many cases for how many cheques were filed by Mr. Walia against the accused. It was correct that he cannot tell the office address of accused as he was never in direct contact with the accused. It was correct that he had never contacted the accused on telephone and that is why he cannot give the details of the same. Further, that he used to know the accused through Satya Singh Walia. It was correct that no meeting with accused had taken place in the office of Walia but the alleged money was given to accused by CW-1 on the instance of Walia. The cheque was handed over to CW-1 by Mintoo Kumari herself who is the alleged accused and not by Mr. Satya Singh Walia. The cheque that was given to CW-1 was filled with particulars (typed) and was signed by the accused. The cheque was not typed before CW-1. Accused came to him with the filled cheque and signed it before him. When the cheque got dishonoured, then, he informed Mr. Satya Singh Walia about the same who further informed the accused that her given cheque got dishonoured. He did not remember the date however, sent the legal demand notice through advocate. The notice was sent to accused by his counsel. There were transactions between Mr. Satya Singh Walia and Mintoo Kumari about which, he had no idea. CW-1 did not know that whether three security cheques were given by Mintoo Kumari to Mr. Satya Singh Walia pertaining to this matter about which the accused has deposed.

30. On the other hand, the appellant/ accused during framing of Notice u/sec. 251 CrPC ***has categorically stated that the cheque in question was having the signatures. Further, upon being asked if the cheque in question was issued to the complainant, the accused answered in affirmative. Further, she relied to have received the legal demand notice. In her defence accused stated that she had given 3 cheques as blank, signed security cheques to the complainant. She had taken an amount of Rs. 1.5 lakhs from the complainant which she had already paid in cash to the complainant in June, 2019. Further, at the time of taking the said loan she had given 3 blank signed security cheques to the complainant in June, 2018.***

31. Appellant / accused examined herself as DW-1 and deposed that she did not know the complainant. Her whole transaction was with Mr. Satya Singh Walia. She had taken Rs. 1,50,000/- from Mr. Satya Singh Walia in the month of December 2018 and the same was returned to him in cash in the month of February 2019. Mr. Satya Singh Walia had given her Rs.1,50,000/- through cheque and the said cheque was belonging to the complainant. Again in the month of June 2019, she requested to Mr. Satya Singh Walia to advance her Rs.2 lacs and she gave a cheque of Rs. 2 lacs belonging to the complainant. The said amount of Rs. 2 lacs was also returned to Mr. Satya Singh Walia in cash. She had given three blank

cheques to Mr. Satya Singh Walia. The cheque in question is one of the said cheque. One case was filed by Mr. Satya Singh Walia against Mr Karan Singh for Rs. 9 lacs. The said case was settled in Rs. 3 lacs. At that time, she was the employee of Mr Karan Singh. She had given three cheques to Mr. Satya Singh Walia in lieu of settlement between Mr. Satya Singh Walia and Mr. Karan Singh as guarantor. She had entries regarding same in her chequebook. The said entry is written at Point A. The chequebook is Ex.DW1/1. Mr. Satya Singh Walia misused her two cheques and filed complaint against her in Saket Court for Rs.4 lacs each. Mr.Satya Singh Walia misused her third cheque in connivance with the complainant and filed the present complaint.

32. **During cross-examination of DW1**, stated that she was XII" passed and left her education while pursuing graduation. She can sign documents. A settlement between Mr. Satya Singh Walia and Mr. Karan Singh took place in the year 2018. Mr. Karan Singh already paid the settled amount of Rs. 3 lacs to Mr. Satya Singh Walia in installments. She did not remember the date and month when settlement between Mr. Satya Singh Walia and Mr. Karan Singh arrived. She had not taken cheques from the complainant. She can write in English Language. She had filed police complaint against loss of present cheque Ex.CW1/A. She had brought the copy of NCR. The same was Ex.DW1/C1. It was correct that she had not filed any complaint for misuse of her cheque. It was correct that she had received statutory demand notice Ex.CW1/C. It was correct that she had

given reply of the statutory demand notice. The reply is already on record Ex.CW1/L. Attention of the witness was drawn at Ex.CW1/L. **(Court Observation- Witness was allowed to read the contents of Ex.CW1/L)**. It was correct that it was not written in her reply that three cheques were given to Mr. Satya Singh Walia as guarantor of settlement between Mr. Satya Singh Walia and Mr. Karan Singh. Attention of the witness was drawn on portion A to A1 of para 2 of Ex. CW1/L. It was not correct that she had taken money from the complainant Krishan Pal. Attention of the witness was drawn on portion A to A1 of para 3 of Ex.CW1/L. She had not approached the complainant ever for money.

33. The witness examined DW-2 Chander Bhan, who deposed that he was working as a driver with Kabir Rental Car of Sh. Karan Singh from the year 2004 to 2020. Accused Mintu Kumari was also working at the aforesaid office as office Assistant. In the year 2019 accused was in need of some money and she had requested Mr. Walia for the same and upon her request Mr. Walia gave cheque to the accused in the second week of May, 2019. Accused Mintu Kumari had returned Rs. 2 Lakhs in cash to Mr. Walia in June, 2019 in the office.

34. During cross examination, DW-2 deposed that Mr. Walia had given cheque of Rs. 2 Lakhs to Mintu Kumari in the office of M/s Rental Cars of Sh. Karan Singh and he did not remember the exact date in May, 2019 when the said cheque was given to the accused. DW-2 did not know

complainant Kishan Pal and he did not know whether complainant had given 2 cheques to accused Mintu Kumari. It was correct that accused Mintu Kumari was in need of money in the year 2019.

35. In the Notice u/sec. 251 CrPC, accused had stated that she had not received the Legal Demand Notice, i.e. when in her statement recorded U/s 313 CrPC the legal notice as well as the reply of the same Ex. CW1/C and Ex. CW1/L. The witness admitted the aforesaid documents during her cross examination.

36. **The net result in the light of above dictum is that complainant in a case filed U/s. 138 NI Act has to prove the ingredients of said provision, beyond reasonable doubt.** The presumptions U/Sec. 118 (a) and 139 NI Act do favour complainant but those presumptions are rebuttable. Accused can rebut those presumptions based on preponderance of probabilities. Accused can rebut the aforesaid presumptions on the basis of material brought on record by complainant.

37. It should be noted that there exists a statutory presumption in favour of the complainant regarding the existence of a legally enforceable debt. It is for the accused to rebut the said presumption. The burden of proof to prove that no debt was due upon accused, lies on the accused.

38. In this case, it is an admitted fact that accused had issued the cheque in question to the complainant. The issuance of cheque is not disputed by the accused/ appellant. The signatures on the cheque is not disputed by the accused/ appellant. Further, the accused/ appellant has admitted that she had handed over the cheque in question to the complainant/ respondent. However, it is stated that she had handed over the same to one person namely Mr. Satya Singh Walia. Both the parties have admitted that they did not enter into any agreement with regard to the aforesaid payment. The complainant has claimed that the cheque were issued to Sh. Satya Singh Walia in respect of the settlement between Satya Singh Walia and Sh. Karan Singh and the accused stood guarantor for the same. Further, the accused had claimed, that the loan was taken by her from Sh. Satya Singh Walia and not the complainant and qua the loan given to the accused/ appellant by Sh. Satya Singh Walia she had returned the amount of Rs. 2 Lakhs by way of cash. However, the aforesaid defence raised by the accused remained bald as she did not rebut the same by leading any cogent evidence and failed to substantiate her claims by bringing on record any evidence contradictory to the version of the complainant and did not produce any document regarding repayment of any amount allegedly paid by way of cash to Satya Singh Walia.

39. There are material contradictions in the depositions of appellant/ accused as in the statement recorded u/sec. 251 CrPC, the accused/

appellant denied to have received the Legal Notice, that is when in her cross-examination, she admitted to have received the Legal Notice anf further admitted that she had sent reply of the same. Further, the accused has not disputed the issuance of cheque or her signatures even in the cross-examination conducted. The defence of the accused remained bald. In the present matter there are two defences taken by the accused i.e. she had sought loan in the year 2018 from one person namely Satya Singh Walia for an amount of Rs. 2 Lakhs, which she had repaid by way of cash in the year 2019 and the second defence taken by the accused is that there was some settlement between her employer namely Karan Singh and Sh. Satya Singh Walia and for the same she stood as guarantor and issued three cheques to Sh. Satya Singh Walia. Further, the accused/ appellant has stated that the aforesaid cheque was only issued being the guarantor and she did not have any legal liability for the same. Further, it is the defence of the accused that the same were never returned to her by Satya Singh Walia despite her asking and therefore, she had filed a report rearding lost cheques which she had exhibited as Ex.DW1/C1 which is dated 09.08.2019 and the same is after the date of hte cheque i.e. 16.07.2019 and also that the cheque was dishonored on 19.07.2019. DW-1 in her defence has examined DW-2 who in the testimony was unable to clarify regarding any date of repayment of the amount received as loan by the accused from Sh. Karan Singh and even the aforesaid witness does not mention regarding loan being received from Satya Singh Walia. The aforesaid defences taken by the accused are contradictory to her stand taken in the reply to the legal notice. In her reply to the legal notice Ex. CW1/L, the witness does not state that she did not know the complainant and infact has admitted that she had taken loan from the complainant. In the present matter it is claimed by the accused that the cheques were misused by Sh. Satya Singh Walia, however, the accused failed to substantiate the same by leading any cogent evidence and being a prudent person did not file any complaint against misuse of cheque before any authority. The aforesaid itself shows that the defence of accused was bald and inconsequential since she was not able to substantiate the same by leading any cogent evidence. Further, the defence of the accused that she had filed a complaint regarding loss of cheques is also belated as the same was filed only once the cheques were dishonored and it came to the knowledge of the accused / appellant. Therefore, in the absence of any documentary proof on record, the said claims of accused, are bald claims and are discarded accordingly.

40. In the present matter, it is not the case of accused that her signature were forged on the cheques in question rather the signatures were admitted by accused herself. Further, the issuance of cheque by the accused/ appellant to the complainant is also not disputed. As per the Act, presumption is in favour of the holder of cheque regarding the execution of cheque for consideration and in discharge of a legally enforceable debt. If the accused is issuing a cheque after signing the same to the complainant ***albeit blank***, she is also giving implied authority to the

complainant to fill the blank details and to present the cheque on or after the date mentioned in the cheque. Therefore, aforementioned statutory presumptions can be raised in favour of the complainant even in case of blank cheque also. Reliance in this regard is placed upon the decision of the Hon'ble Supreme Court in the case of ***Bir Singh vs. Mukesh Kumar (2019) 4 SCC 197*** , wherein Hon'ble Apex Court while upholding the validity of blank signed cheque and post dated cheque in a proceeding u/s 138 of the Act has interalia held the following :-

> *"36. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.*
>
> *38.* ***If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."***

41. The complainant has categorically mentioned the manner in which, cheque in question was issued by the accused in favour of the complainant against the liability. Once, the accused admitted her signature on the cheque in question Ex.CW1/A, the trial court has to presume that the cheque was issued as consideration for a legally enforceable debt. Reliance in this regard is placed upon the case law

titled as ***Kalamani Tex & Anr. Vs. P. Balasubramanian (2021) 5 SCC 283.*** Therefore, in view of the aforesaid appreciation, it can be safely concluded that cheque in question was issued by the accused in due liability against the complainant.

42. Further, once execution of the signature on cheque in question is admitted by the accused, the presumption u/sec. 118(1) of the NI Act applies in favour of the complainant. Reliance in this regard is placed upon the case laws titled as ***Krishna Janardhan Bhat Vs. Dattaraya G. Hegde (2008) 4 SCC 54***. Thus, when the signature on a cheque is admitted by the accused, there is a very strong view in favour of the complainant. Where the accused has failed to satisfactorily explain or proved the circumstances under which the cheques was issued by accused or failed to explain as to how the given cheque was misused by the complainant, then it can be safely inferred/ presumed that the cheque was issued in discharge of legally recoverable debt/liability, in view of the aforesaid discussion. Therefore, in my considered view, accused has failed to rebut the said presumption.

43. I have perused the records of Ld. Trial Court placed by both the parties and the impugned judgment passed by Ld. Trial Court vide which Ld. Trial Court has discussed and appreciated not only the aforesaid contentions of accused and but also appreciated the testimonies of the parties extensively, which are not repeated here for the sake of brevity.

44. Rest of the contentions raised by way of present are of little relevance to adjudicate the present case and therefore are of no help to the cause of accused. The accused could not bring on record any evidence or document which could demolish the claim of complainant. Therefore, I discarded the testimony of accused, accordingly.

45. So, the net result is that, accused did not put his specific case to the complainant by way of suggestions or by way of putting questions or by way of documentary evidence. While cross-examining complainant, accused failed to rebut the case of complainant and presumptions u/sec. 118/139 NI Act. There was nothing unreasonable and improbable about the conduct and facts deposed by complainant in his testimony. I believed his testimony, to be trustworthy and reliable. **Therefore, in my considered view, the defence raised by accused does not inspire confidence or meet the standard of 'preponderance of probabilities'.**

46. The grounds of appeal as such, are vague in nature. In the absence of any relevant material, accused failed to highlight any shortcoming in the reasoning given by Ld. Trial Court in impugned judgment of conviction, based on facts and law. Therefore, present appeal has been filed just for the sake of it. Same did not help his cause.

47. **In view of the aforesaid appreciation of record and discussion, I am of the considered view there is no merit in the present appeal filed by**

the accused and the same stands dismissed. Impugned judgment of conviction dated 30.06.2025 and Order on Sentence dated 23.07.2025 passed by Ld. Trial Court stands upheld.

File be consigned to Record Room after due compliance.

Announced In The
Open Court Today

Sheetal chaudhary

Digitally signed by Sheetal chaudhary
Date: 2026.01.27 16:32:17 +0530

[Sheetal Chaudhary Pradhan]
ASJ-02, South-East/Saket/Delhi
24.01.2026(m)